

**THE KING'S BENCH
Winnipeg Centre**

BETWEEN:

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

Plaintiff,

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant.

Re
FRESH AS AMENDED STATEMENT OF CLAIM

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TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, **WITHIN 20 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 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

(Date) July 23, 2019

Issued by L. RANVILLE
Registrar

TO: THE ATTORNEY GENERAL OF CANADA
284 Wellington Street
Ottawa, ON

SM
March 21
C. DYSON

pe
17K
NOVEMBER 22

J. MACLEOD
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA

CLAIM

1. The Plaintiff, on his own behalf, on behalf of the Roseau River Anishinabe First Nation, and on behalf of a group of persons described in Paragraph 5 herein, makes claim for the following relief as against the Defendant (the “Crown”):
 - a) a declaration that Treaty 1 (the “Treaty”) contains an augmentation provision, or a provision for indexation, whether express or implied;
 - b) a declaration that the Treaty monies, which are paid to the individual members of the Treaty 1 First Nations, should be indexed to adjust for losses in purchasing power which are associated with persistent inflation;
 - c) a declaration that the Crown, for the years 1872-1874, and in the addition or alternative from the year 1876 until the year of the determination of this matter, breached its obligations pursuant to the Treaty by failing to increase the amounts paid to the Plaintiffs as described herein;
 - d) a declaration that the Crown, for the years 1872-1874, and in the addition or alternative from the year 1876 until the year of the determination of this matter, breached its fiduciary duty to the Plaintiffs by failing to increase the amounts paid to the Plaintiffs as described herein;
 - e) a declaration that the Crown, for the years 1872-1874, and in the addition or alternative from the year 1876 until the year of the determination of this matter, failed to act honourably by failing to increase the amounts paid to the Plaintiffs as described herein;
 - f) a declaration that the Crown breached its duty to properly consult and accommodate the Plaintiffs with respect to the appropriate manner, and the appropriate amount, by which the nominal amount of the annuity should have been, and should be, increased;

- g) a declaration which orders the Defendant to perform its future Treaty payments to the Plaintiffs in a manner which is consistent with the interpretation of the Treaty and the legal obligations of the Crown by this Honourable Court;
- h) an Order for an accounting of, and payment of, monies which were not paid by the Defendant to the Plaintiffs as described herein;
- i) compensation for breach of the Treaty, breach of the honour of the Crown and breach of fiduciary duty in the amount of \$11,000,000,000 (Eleven Billion Dollars) or such other amount to be determined at trial which may be aggregated;
- j) aggravated, punitive, and exemplary damages;
- k) such further and other compensation and damages as may be proven at trial;
- l) pre-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to *The Court of Queen's Bench Act, C.C.S.M. c. C280*;
- m) post-judgment Interest on the foregoing sums in the amount of 2% per month, compounded monthly or alternatively, pursuant to *The Court of Queen's Bench Act, C.C.S.M. c. C280*;
- n) costs on a solicitor client basis;
- o) the appointment of the Plaintiff Zongidaya Nelson, by way of a Representation Order, to represent all individual members of Treaty 1 First Nations in relation to their interests in this proceeding; and
- p) such further and other relief as counsel may advise and this Honourable Court

may allow.

A. THE PARTIES

I. The Plaintiff

2. The Plaintiff, Zongidaya Nelson is an Indian, as that term is defined in the *Indian Act*, R.S.C. 1985, C. I-5, and is a member of the Roseau River Anishinabe First Nation (the "RRAFN") which is located in the Province of Manitoba.
3. The Plaintiff is a member of the RRAFN and is thus an Indian of a First Nation who is a signatory to the Treaty.
4. The Plaintiff is a beneficiary of the Treaty and is entitled to receive payments from Canada, pursuant to the Treaty, as hereinafter referenced.
5. The Plaintiff is a representative plaintiff, within the meaning of Manitoba Court of Queen's Bench Rule 10, for a class of persons, resident or situated in Canada or elsewhere, more particularly described as follows:

All persons (including their estates, executors, or personal representatives) who:

are Indians of the Treaty 1 First Nations and who are entitled to receive payments pursuant to Treaty 1 from Canada.

(hereinafter both resident and non-resident class members are collectively referred to as "Plaintiffs".)

II. The Defendant

6. The Defendant, the Attorney General of Canada ("Canada") is the representative of

Her Majesty the Queen in Right of Canada, pursuant to s.23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, as amended.

B. BACKGROUND

7. This action arises from the failure of the Defendant to, *inter alia*, meet its legal requirement to increase the amount of Treaty payment annuities to Indians as payable pursuant to Treaty 1.
8. The RRAFN is a signatory to Treaty 1 which was signed between Her Most Gracious Majesty the Queen of Great Britain and Ireland and the Treaty 1 First Nations in or about the month of August of 1871.
9. The Defendant, the Attorney General of Canada, is the Minister of Her Majesty the Queen in Right of Canada and is the successor to the legal obligations which are owed by Her Most Gracious Majesty the Queen of Great Britain and Ireland pursuant to Treaty 1.
10. The following First Nations are successors to the original First Nation signatories of the Treaty and the members of these First Nations are status Indians, as that term is defined in the *Indian Act*, as amended, and as such the members of these First Nations are beneficiaries to the Treaty and are thus entitled to receive annuity payments pursuant to the Crown's obligations under the Treaty:
 - a) Roseau River Anishinabe First Nation;
 - b) Brokenhead First Nation;
 - c) Sandy Bay First Nation;
 - d) Peguis First Nation;
 - e) Fort Alexander First Nation;
 - f) Long Plain First Nation; and
 - g) Swan Lake First Nation.

11. The First Nations of Treaty 1, and the members of the Treaty 1 First Nations are Aboriginal peoples within the meaning of section 35 of the *Constitution Act, 1982*.
12. This claim is brought without prejudice to any other rights of the Treaty 1 First Nations, or the members of any Treaty 1 First Nation, including any Aboriginal rights or treaty rights under Treaty 1 or which may vest under any other Treaty.
13. Pursuant to the Treaty, the Indian signatories agreed to cede, release and surrender to Her Most Gracious Majesty the Queen of Great Britain and Ireland certain lands which they had inhabited up until and after the signing of Treaty 1. The lands were described as follows:

"Beginning at the international boundary line near its junction with the Lake of the Woods, at a point due north from the centre of Roseau Lake; thence to run due north to the centre of Roseau Lake; thence northward to the centre of White Mouth Lake, otherwise called White Mud Lake; thence by the middle of the lake and the middle of the river issuing therefrom to the mouth thereof in Winnipeg River; thence by the Winnipeg River to its mouth [at what is; thence westwardly, including all the islands near the south end of the lake, across the lake to the mouth of Drunken River; thence westwardly to a point on Lake Manitoba half way between Oak Point and the mouth of Swan Creek; thence across Lake Manitoba in a line due west to its western shore; thence in a straight line to the crossing of the rapids on the Assiniboine; thence due south to the international boundary line; and thence eastwardly by the said line to the place of the beginning."

14. Treaty 1 further reads, in part:

"Her Majesty's Commissioner shall, as soon as possible after the execution of this treaty, cause to be taken an accurate census of all

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

III. Notes of Adams G. Archibald Which Were Taken at The Time of Treaty

15. Found within the Manitoba Archives are the Archibald Papers, Adams G. Archibald Correspondence (Items 421-440), 1871, P7921/8 (those representing the correspondence of Sir Adams George Archibald, the first Lieutenant Governor of Manitoba) and within which are contained the original drafts of the Articles of Indian Treaty, in reference to Treaty 1, and which are dated July 30th, 1871.
16. Item 421 from the above noted archive sets out that the originally drafted text contains the following distinction when compared to the wording of Treaty 1:

“...such payment to be made in such articles as the Indians shall require in Blankets, Clothing, Prints, (assorted colours) Twine or Traps at the Current Cash price in Montreal - ~~or in Cash~~ at the choice of the Indians, or if her Majesty shall think it better for the Interests of her Indian people the payments are to be made otherwise in Cash.”

(emphasis added)

17. Item 421 also contains boxed text which references the "discretion of Her Majesty" provision above. If the boxed text is replaced with the reference the wording then reads:

"...such payment to be made in such articles as the Indians shall require in Blankets, Clothing, Prints, (assorted colours) Twine or Traps at the Current Cash price in Montreal - ~~or in Cash~~ at the choice of the Indians, or if her Majesty shall deem the same desirable in the interests of her Indian People otherwise in Cash."

18. The amounts payable to each Indian were modified by a subsequent Order in Council which was executed on or about April 30th of 1875 and which reads, in part:

"That the Indian Commissioner be instructed to inform the Indians, parties to Treaties Nos. 1 and 2, that, while the Government cannot admit their claim to any thing which is not set forth in the treaty, and in the memorandum attached thereto, which treaty is binding alike upon the Government and upon the Indians, yet, as there seems to have been some misunderstanding between the Indian Commissioner and the Indians in the matter of Treaties Nos. 1 and 2, the Government, out of good feeling to the Indians and as a matter of benevolence, is willing to raise the annual payment to each Indian under Treaties Nos. 1 and 2, from \$3 to \$5 per annum, and make payment over and above such sum of \$5, of \$20 each and every year to each Chief, and a suit of clothing every three years to each Chief and each Headman, allowing two Headmen to each band, on the express understanding, however, that each Chief or other Indian who shall receive such increased annuity or annual payment shall be held to abandon all claim whatever against the Government in connection with the so-called "outside promises," other than those contained in

the memorandum attached to the treaty”

19. While the cash payment option at the time of Treaty 1 was, ostensibly, at the discretion of “Her Majesty”, the text of the Treaty sets out the equivalent cash value of fifteen dollars per family of three and relates such payment to a “basket of goods” and the price of the basket of goods at the “current cost price in Montreal.”
20. To the extent of the discretion which was, ostensibly, afforded to the Crown as to whether to provide cash or the referenced goods, the monies or goods were to reflect the current market price of the goods at Montreal and, accordingly, the Treaty, expressly or by inference, contains such terms as relating to augmentation or indexation to account for the erosive power of inflation.
21. Without limiting the generality of the foregoing the monies paid to Treaty 1 Indians pursuant to the Treaty should be indexed to account for the losses in purchasing power associated with persistent inflation.
22. This indexation is necessary in order to account for an unknown or unforeseen event which was not necessarily contained within the conceptual lexicon of the First Nations who were signatories to the Treaty.
23. As such the doctrine of unforeseen circumstances and the honour of the Crown demands that the Crown not advantage itself to the detriment of its First Nation “subjects” in order to advantage the Crown at the expense of the members of the Treaty 1 First Nations by unlawfully utilizing the eroding power of inflation.
24. The Treaty represents a constitutionally entrenched relational and ongoing agreement which is reflective of the reciprocity and the honour of the Crown and which includes duties of loyalty, good faith, diligence, integrity and fair dealing.
25. The aforesaid provision, in relation to, *inter alia*, the augmentation or indexing of the sum paid to the members of Treaty 1 First Nations is reflective of an ongoing duty of honourable implementation, to take into account the changing issues and trends which

are reflective of the Treaty relationship.

26. It was central to the First Nation signatories to Treaty 1, and consistent with the principles of reconciliation, that there be the maintenance of an ongoing and honourable relationship with the Crown.
27. The rights which flow from the Treaty were not meant to be treated in static, or rigid, fashion but were rather to be treated in a dynamic and evolving fashion.
28. As such, the provision of the Treaty, in relation to, *inter alia*, the augmentation or indexing of the sum paid to the members of Treaty 1 First Nations is representative of a relational and sui generis agreement and one which is constitutionally entrenched pursuant to, *inter alia*, section 35 of the *Constitution Act, 1982*.
29. It is also of note that, at the time the Treaty was made, the Indian signatories concept of what was of value was likely not the utility of the pieces of paper which represented three or five dollars but rather the ability of the pieces of paper to be exchanged into the goods and services which were required by the Indians and which were further incorporated into the “basket of goods” provisions asset out in Treaty 1.
30. Of further note, at the time of Treaty 1, the currency which was issued by Canada was “in specie on demand”, in other words, banknotes (referenced in the Treaty as “cash”) represented a specific claim to a quantity of gold which could be converted on demand upon the presentation of the banknote at a financial institution or to the Crown.

IV. The Obligations of the Crown Pursuant to the Treaty

31. Flowing from the fiduciary duty of the Crown, the honour of the Crown, and the Crown’s obligations pursuant to the Treaty the Crown was legally obligated, for the the years 1871 to 1874, to *inter alia*:
 - a) provide each Indian family of five persons with as many blankets, clothing, prints (assorted colours), twine or traps, that \$15.00 would have purchased, at

the 1871 cost price in Montreal (the "basket of goods");

- b) provide the basket of goods to each Indian family of five in each and every year after 1871 until 1874;
 - c) furnish each Treaty 1 Indian with the ability to choose and receive goods which would have the equivalent value of \$3.00 at the 1871 cost price of the goods in Montreal;
 - d) furnish each Treaty 1 Indian with the ability to choose whether the annual payment was to be received in cash, instead of providing the basket of goods, and if cash was chosen, the Crown was under a continuing obligation to provide the annual cash payment in an amount sufficient to purchase the basket of goods at the current cost price in Montreal in the year in which the cash payment was made;
 - e) in the addition or alternative and without limiting the generality of the foregoing, in the event that the Crown chose to make an annual payment in cash, instead of providing the basket of goods, the Crown was under a continuing obligation to provide such annual cash payment in an amount sufficient to purchase the basket of goods at the current cost price in Montreal in the year in which the cash payment was made; and
 - f) in the addition or alternative and without limiting the generality of the foregoing, the Crown was only permitted to substitute the basket of goods with cash if it was desirable, and in the interests of the Indians.
32. Flowing from the fiduciary duty of the Crown, the honour of the Crown, and the Crown's obligations pursuant to the Treaty, the Crown was legally obligated for the year 1875 and for each and every year in perpetuity thereafter, to *inter alia*:
- a) provide each Treaty 1 Indian with as many blankets, clothing, prints (assorted

colours), twine or traps, that \$5.00 would have purchased, at the 1875 cost price in Montreal;

- b) provide the basket of goods to each Treaty 1 Indian in each and every year after 1875;
 - c) furnish each Treaty 1 Indian with the ability to choose and receive goods which would have the equivalent value of \$5.00 at the 1875 cost price of the goods in Montreal;
 - d) furnish each Treaty 1 Indian with the ability to choose whether the annual payment was to be received in cash, instead of providing the basket of goods, and if cash was chosen, the Crown was under a continuing obligation to provide the annual cash payment in an amount sufficient to purchase the basket of goods at the current cost price in Montreal in the year in which the cash payment was made;
 - c) in the addition or alternative and without limiting the generality of the foregoing, in the event that the Crown chose to make an annual payment in cash, instead of providing the basket of goods, the Crown was under a continuing obligation to provide such annual cash payment in an amount sufficient to purchase the basket of goods at the current cost price in Montreal in the year in which the cash payment was made; and
 - f) in the addition or alternative and without limiting the generality of the foregoing, the Crown was only permitted to substitute the basket of goods with cash if it was desirable, and in the interests of the Indians.
33. While the cost of the items in the "basket of goods" which was contemplated by Treaty 1, and indeed the cost of gold, has risen greatly from 1871 until present day the payment made by Canada to each Treaty 1 Indian has not commensurately increased.

34. Notwithstanding the fiduciary and legal obligations which were owed by the Crown, and the principles of law in relation to the honour of the Crown, the Crown privileged, and continues to privilege, its own interests through the continued erosion of the value of the sums which were paid to the Plaintiffs, by reason of inflation.
35. The Crown breached, and continues to breach, its obligation of honourable implementation of the duties it owed, and continues to owe, pursuant to the Treaty and by privileging its own interests at the expense of the First Nation members of Treaty 1 territory and, in consequence, at the expense of the Plaintiffs.
36. The Plaintiff, being a "Treaty 1 Indian", is entitled to receive Treaty payments from Canada on a yearly basis which flow from the legal obligations of the Crown pursuant to the Treaty.
37. The Plaintiffs are entitled, pursuant to the Treaty, to receive the referenced sum of five dollars, or goods which are of the equivalent historical value, in a state which is augmented or indexed to reflect the persistent inflation which has occurred following the signing of the Treaty.
38. Accordingly, expressly or by necessary inference, the provision referring to the sum carries with it a reference to augmentation or indexation which would act to prevent the erosion of value of the sum of five dollars by reason of ongoing inflation.
39. The Plaintiff has received numerous annual payments from Canada in the amount of five dollars per year.
40. The Plaintiffs have not received any increase in their Treaty annuity nor has the annuity been increased since 1875.
41. Treaty 1 was a Nation to Nation negotiation and was intended by the parties to provide real and substantive compensation in a manner which was consistent with the honour of the Crown and various duties owed by the Crown to the Indians of Treaty 1.

42. The Treaty was representative of an ongoing relationship which was meant by the parties to be fair and reasonable, not exploitative, both economically and socially.
43. Inherent and included in such legal duties of the Crown was real and substantial compensation to the Treaty 1 Indians in the form of Treaty monies, and such indexation and augmentation thereof.
44. As a result of the failure of the Defendant to increase the amount of payment to the Treaty 1 Indians the Plaintiffs have experienced loss and damage which includes, but is not limited to:
 - a) Insufficient amount of monies received for Treaty payments;
 - b) insufficient amount of goods received for Treaty payments;
 - c) Loss of inheritance; and
 - d) Loss of opportunity to invest.

V. Indian Act Provisions which Prevented Indian People From Obtaining Representation

45. Of further note, Section 141 of the Indian Act of 1927 states:

“Every person who, without the consent of the Superintendent General expressed in writing, receives, obtains, solicits or requests from an Indian any payment or contribution or promise of any payment or contribution for the purpose of raising a fund or providing money for the prosecution of any claim which the tribe or band of Indians to which such Indian belongs, or of which he is a member, has or is represented to have for the recovery of any claim or money for the benefit of the said tribe or band, shall be guilty of an offence and liable upon summary conviction for each such offence to a penalty not exceeding two hundred dollars and not less than fifty dollars or to imprisonment for any term not exceeding two months.”

46. The Defendant, by way of Section 141, made it a criminal offence for Indians to retain counsel.
47. The Crown thereby sought to prevent Indians, such as the Plaintiffs, from enforcing their Treaty Rights, which included such rights and entitlements which referenced the indexation or augmentation of Treaty Monies.
48. Even prior to Section 141 the Defendant, by administrative means, prevented Indians, such as the Plaintiffs, from retaining counsel so that said Defendant could privilege itself at the expense of Indians and so to advantage said Defendant in its negotiations with Indians, including as to the framing of the terms of Treaty 1.
49. As a result the Honourable Court should interpret Treaty 1 in such a way as to comport with the honour of the Crown in its dealings with Indians including as to the provision, express or implied, as to indexation or augmentation of Treaty monies as claimed herein.

C. LEGAL BREACHES OF THE DEFENDANT

VI. Breach of Treaty

50. The Defendant breached the terms of the Treaty, whether express or implied, by:
 - a) failing to provide the “basket of goods”, at the current cost price in Montreal, for the years 1872-1874 and from 1876 until present day;
 - b) failing to provide an increase in the annuity payment, when said payment was made in cash, to reflect the price of the “basket of goods” current cost price in

Montreal for the years 1872-1874 and from 1876 until present day;

- c) failing to properly consider whether the substitution of cash, in lieu of the “basket of goods” at the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- d) failing to properly consider whether the substitution of cash, without any increase in nominal value, in lieu of the “basket of goods” for the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- e) failing to provide any increase in the annuity payment, to reflect the “in specie” conversion of banknotes to the price of gold for the years 1872-1874 and from 1876 until present day;
- f) failing to provide any increase in the annuity payment, to reflect an increase reasonably expected by way of inflation, or the CPI index, for the years 1872-1874 and from 1876 until present day;
- g) failing to provide an option to the Plaintiffs to choose to receive their annuity payment by way of the “basket of goods” at the current cost price in Montreal or in cash;
- h) actively depriving the Plaintiffs of a legal mechanism, or means by the Plaintiffs could have historically retained Counsel and advanced their claims in a Court of law; and
- i) failing to provide an accurate accounting to the Plaintiffs of the Treaty Benefits which they have received and that they continue to be entitled to.
- j) failing to respond appropriately, to the Plaintiffs, in a way which would promote reconciliation.

VII. Breach of the Honour of the Crown

51. The honour of the Crown is paramount and guides the conduct of the Crown in each of its dealings with Indigenous peoples.
52. The Crown must act with honour, integrity, good faith, and fairness in all dealings with First Nations and First Nations people.
53. The Crown has a duty to treat First Nations and First Nations people with respect and as full partners in Confederation, with their rights, treaties, and agreements being fully recognized and implemented.
54. The honour of the Crown requires that the Crown take a broad and purposive approach to the interpretation of promises which were made and act diligently to fulfill them.
55. The honour of the Crown, pursuant to the Treaty and the obligations owed by the Crown to the Plaintiffs was, and continues to be, engaged.
56. The Defendant failed to act honourably toward the Plaintiffs in a manner which is inconsistent with the honour of the Crown, *inter alia*;
 - a) failing to diligently implement the payments made to the Plaintiffs;

- b) failing to provide the “basket of goods”, at the current cost price in Montreal, for the years 1872-1874 and from 1876 until present day;
- c) failing to provide an increase in the annuity payment, when said payment was made in cash, to reflect the price of the “basket of goods” current cost price in Montreal for the years 1872-1874 and from 1876 until present day;
- d) failing to properly consider whether the substitution of cash, in lieu of the “basket of goods” at the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- e) failing to properly consider whether the substitution of cash, without any increase in nominal value, in lieu of the “basket of goods” for the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- f) failing to provide any increase in the annuity payment, to reflect the “in specie” conversion of banknotes to the price of gold for the years 1872-1874 and from 1876 until present day;
- g) failing to provide any increase in the annuity payment, to reflect an increase reasonably expected by way of inflation, or the CPI index, for the years 1872-1874 and from 1876 until present day;
- h) failing to provide an option to the Plaintiffs which allowed the Plaintiffs to choose to receive their annuity payment by way of the “basket of goods” at the current cost price in Montreal or in cash;
- i) actively depriving the Plaintiffs of a legal mechanism, or means by which the Plaintiffs could have historically retained Counsel and advanced their claims in a Court of law; and

- j) failing to provide an accurate accounting to the Plaintiffs with respect to the Treaty Benefits which the Plaintiffs have received and that the Plaintiffs continue to be entitled to.

VIII. Breach of the Crown's Fiduciary Duty

- 57. There is a fiduciary relationship which exists between the Crown and the Plaintiffs.
- 58. The Crown owes the Plaintiffs a fiduciary duty to faithfully and honorably implement the explicit and implied terms of the treaty which includes the augmentation of the amounts paid pursuant to the Treaty for the benefit of the Plaintiffs.
- 59. The Royal Proclamation of 1763 states that the lands of the First Nation signatories to the Treaty were inalienable except through the surrender of these lands to the Crown.
- 60. It is this interest, among the other obligations of the Crown such as the honour of the Crown and the solemn undertaking by the Crown to act in the best interests of the Plaintiffs, which gives rise to the fiduciary obligation on the part of the Crown to fulfill the explicit and implied terms of the Treaty.
- 61. The Plaintiffs who are particularly vulnerable to the Crown's control over the interpretation, timing and amount of the annuity payments.
- 62. The Plaintiffs have not been in a position to exert control over the crown with respect

to an increase in the annuity, which increase has not taken place since 1875.

63. The Plaintiffs are placed in the position of being particularly vulnerable to the discretion of the Crown with a view to the increase in the amount of annuity payments of which discretion the Crown has failed to exercise reasonably, honourably or appropriately with a view to the Crown's legal obligations to the Plaintiffs.
64. The increase in annuities which were promised in the Treaty has had real consequences upon the Plaintiffs.
65. At all material times the Defendant was in the position of a fiduciary and Defendant owed fiduciary duties to the Plaintiffs.
66. The Crown has breached the following fiduciary obligations to the Plaintiffs which include, but are not limited to:
 - a) failing to diligently implement the payments made to the Plaintiffs;
 - b) failing to provide the "basket of goods", at the current cost price in Montreal, for the years 1872-1874 and from 1876 until present day;
 - c) failing to provide an increase in the annuity payment, when said payment was made in cash, to reflect the price of the "basket of goods" current cost price in

Montreal for the years 1872-1874 and from 1876 until present day;

- d) failing to properly consider whether the substitution of cash, in lieu of the “basket of goods” at the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- e) failing to properly consider whether the substitution of cash, without any increase in nominal value, in lieu of the “basket of goods” for the current cost price in Montreal for the years 1872-1874 and from 1876 until present day, was in the interest of the Indians;
- f) failing to provide any increase in the annuity payment, to reflect the “in specie” conversion of banknotes to the price of gold for the years 1872-1874 and from 1876 until present day;
- g) failing to provide any increase in the annuity payment, to reflect an increase reasonably expected by way of inflation, or the CPI index, for the years 1872-1874 and from 1876 until present day;
- h) failing to provide an option to the Plaintiffs to choose to receive their annuity payment by way of the “basket of goods” at the current cost price in Montreal or in cash;

- i) actively depriving the Plaintiffs of a legal mechanism, or means by which the Plaintiffs could have historically retained Counsel and advanced their claims in a Court of law; and
 - j) failing to provide an accurate accounting to the Plaintiffs with respect to the Treaty Benefits which the Plaintiffs have received and that the Plaintiffs continue to be entitled to.
67. Such breach was calculated to unjustly favour the Crown's interests over those of its fiduciaries, the Indians of Treaty 1.

D. ADDITIONAL CONSIDERATIONS

IX. The United Nations Declaration on the Rights of Indigenous Peoples

68. In addition, the Plaintiffs plead and rely upon the application and interpretation of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") with a view to aiding in the interpretation of their rights pursuant to the Treaty.
69. The UNDRIP was adopted by the General Assembly of the United Nations on September 13th of 2007, was further endorsed by Canada on November 12th of 2010, and was further recognized and endorsed by Canada through the passage of *Bill C-15*, the *United Nations Declaration on the Rights of Indigenous Peoples Act* which

received Royal Assent from Canada on June 21, 2021.

70. As pursuant to the UNDRIP, Article 28:

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

71. And further, UNDRIP sets out, at the following paragraphs:

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

72. The UNDRIP has retroactive and ongoing legal effect in recognizing Treaty Rights such as obligations of the Defendant to the Indians of Treaty 1 and, accordingly, to the Plaintiffs.
73. The failure of the Defendant to honour its obligation of indexation toward the payment of Treaty monies pursuant to Treaty 1 constitutes a violation not only of s.35 of the *Constitution Act, 1982* but also of the UNDRIP.

X. **The Report of the Royal Commission on Aboriginal Peoples**

74. In addition, the Plaintiffs plead and rely upon the application of the principles espoused in the Report of the Royal Commission on Aboriginal Peoples ("RCAP") with a view to aiding in the interpretation of their rights pursuant to the Treaty.
75. The RCAP was established by Order in Council on August 26, 1991, and it submitted its report in October 1996.
76. At Page 72 of Volume II of the RCAP it sets out that:

“Treaty annuities

One example of economic rights in the historical treaties is the practice of paying annuities. The Robinson treaties of 1850 and the numbered treaties made after 1870 provide for annual annuities to be paid to each member of a treaty nation. Today, many treaty nation members travel great distances to collect their treaty annuity on treaty day because of the symbolic value of meeting with the Crown’s representatives to renew the treaty and affirm the continuing nature of the treaty relationship.

With the passage of time, the value of these annuities, typically \$4 or \$5 per year, has been severely eroded. The dollar amount specified in the original treaty is still distributed annually. The annuities established by the Robinson treaties, for example, represented between one-half and one-third of the annual wage of an unskilled labourer. Annuities could also increase if revenues derived from the territory affected by the treaty rose. Treaty 1 provided for the annuity to be “made in such articles as the Indians shall require of blankets, clothing, prints (assorted colours), twine, or traps, at the current cost price in Montreal, or otherwise, if Her Majesty shall deem the same desirable in the interests of Her Indian people, in cash”.

The growth of the modern social safety net eventually brought larger infusions of resources. The treaty nations insist that all transfers of resources to them are in fact being made pursuant to treaty. We agree that the treaty promises of wealth transfer should be reconsidered in treaty implementation and renewal processes.”

77. Treaty monies were, and continue to be paid, in consideration of the ceding of the use of territory and the payment of such monies was not intended by the Treaty 1 Indians to be merely symbolic, but was meant to cover real and continuing cost of goods such as those incorporated by reference within the text of Treaty 1.

XI. Truth and Reconciliation Commission Calls to Action

78. In addition, the Plaintiffs plead and rely upon the application of the principles and calls to action set out by the Truth and Reconciliation Commission of Canada (the

"TRC") with a view to aiding in the interpretation of their rights pursuant to the Treaty.

79. The TRC was officially established on June 2, 2008 with the purpose of documenting the history and lasting impacts of the Canadian Indian residential school system on Indigenous students and their families.
80. In June 2015, the TRC released an Executive Summary of its findings along with 94 "calls to action" regarding reconciliation between Canadians and Indigenous peoples.
81. The TRC Calls to action include:

The Royal Proclamation and Covenant of Reconciliation

45. We call upon the Government of Canada, on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown. The proclamation would build on the Royal Proclamation of 1763 and the Treaty of Niagara of 1764, and reaffirm the nation-to-nation relationship between Aboriginal peoples and the Crown. The proclamation would include, but not be limited to, the following commitments:
 - i. Repudiate concepts used to justify European sovereignty over Indigenous lands and peoples such as the Doctrine of Discovery and terra nullius.
 - ii. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples as the framework for reconciliation.
 - iii. Renew or establish Treaty relationships based on principles of mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future.
 - iv. Reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, including the recognition and integration of Indigenous laws and legal traditions in negotiation and

implementation processes involving Treaties, land claims, and other constructive agreements.

XII. The Principles respecting the Government of Canada's relationship with Indigenous peoples and the Attorney General of Canada's Directive on Civil Litigation Involving Indigenous Peoples

82. The Defendant, the Attorney General of Canada published a litigation directive which references, among other things, the Principles respecting the Government of Canada's relationship with Indigenous peoples (the "Principles") which reflects the position taken by the Defendant with respect to, in part, reconciliation.
83. In addition, the Plaintiffs plead and rely upon the application of the Principles and the Directive with a view to aiding in the interpretation of their rights pursuant to the Treaty.
84. The Principles, which are concessions and admissions on the part of the Defendant, state, in part:

"The Government of Canada recognizes that:

1. All relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.
2. Reconciliation is a fundamental purpose of section 35 of the *Constitution Act, 1982*.
3. The honour of the Crown guides the conduct of the

Crown in all of its dealings with Indigenous peoples.

4. Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.
5. Treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.
6. Meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights on their lands, territories, and resources.
7. Respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.
8. Reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development.
9. Reconciliation is an ongoing process that occurs in the context of evolving Indigenous-Crown relationships.
10. A distinctions-based approach is needed to ensure that

the unique rights, interests and circumstances of the First Nations, the Métis Nation and Inuit are acknowledged, affirmed, and implemented.”

85. In addition to the Principles, the litigation directive contains many additional concessions and admissions on the part of the Defendant whereby the Attorney General states, in part:

“Litigation is by its nature an adversarial process, and it cannot be the primary forum for achieving reconciliation and the renewal of the Crown-Indigenous relationship. This is why a core theme of this Directive is to advance an approach to litigation that promotes resolution and settlement, and seeks opportunities to narrow or avoid potential litigation. Our Government is committed to pursuing dialogue, co-operation, partnership and negotiation based on the recognition of rights.

I hope that I hope that, in time, this litigation Directive will be recognized to have brought about a significant shift in the Government of Canada’s positions and strategies. I hope, too, that litigation will be recognized as a dispute settlement forum of last resort, as trust and good faith allow collaborative processes, including facilitation, mediation and negotiations, to be the primary means of resolution.”

86. The litigation directive goes on further to state, among other things, that:

“Upholding the honour of the Crown

The honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples. The Attorney General and her counsel must act with honour, integrity, good faith, and fairness in all work that relates to Indigenous peoples. The overarching aim is to ensure that Indigenous peoples are treated with respect and as full partners in Confederation, with their rights, treaties, and agreements recognized and implemented.

The honour of the Crown is reflected not just in the substance of the positions taken, but in how those positions are expressed.”

87. The litigation directive further sets out Litigation Guidelines, and sets out that:

“The following 20 litigation guidelines instruct counsel as to how the Principles must be applied in civil litigation involving Indigenous peoples. The work of operationalizing these Guidelines is already taking place and will be on-going.

Litigation Guideline #1: Counsel must understand the Principles and apply them throughout a file's lifespan.

Litigation Guideline #2: Litigation strategy must reflect a whole-of-government approach.

Litigation Guideline #3: Early and continuous engagement with legal services counsel and client departments is necessary to seek to avoid litigation.

Litigation Guideline #4: Counsel should vigorously pursue all

appropriate forms of resolution throughout the litigation process.

Litigation Guideline #5: Recognizing Aboriginal rights advances reconciliation.

Litigation Guideline #6: Positions must be thoroughly vetted and counsel should not advise client departments and agencies to pursue weak legal positions.

Litigation Guideline #7: Counsel must seek to simplify and expedite the litigation as much as possible.

Litigation Guideline #8: All communication and submissions must be regarded as an important tool for pursuing reconciliation.

Litigation Guideline #9: Counsel must use respectful and clear language in their written work.

Litigation Guideline #10: Legal terminology must be consistent with constitutional and statutory language.

Litigation Guideline #11: Overviews must be used to concisely state Canada's position and narrow the issues.

Litigation Guideline #12: To narrow the scope of litigation, admissions ought to be made, where possible.

Litigation Guideline #13: Denials must be reviewed throughout the litigation process.

Litigation Guideline #14: Limitations and equitable defences should be pleaded only where there is a principled basis and evidence to support the defence.

Litigation Guideline #15: A large and liberal approach should be taken to the question of who is the proper rights holder.

Litigation Guideline #16: Where litigation involves Federal and Provincial jurisdiction, counsel should seek to ensure that the litigation focuses as much as possible on the substance of the complaint.

Litigation Guideline #17: Oral history evidence should be a matter of weight, not admissibility.

Litigation Guideline #18: Decisions on judicial reviews and appeals should be subject to full consultation within government and be limited to important questions.

Litigation Guideline #19: Intervention should be used to pursue important questions of principle.

Litigation Guideline #20: All files must be reviewed to determine what lessons can be learned about how the Principles can best be applied in litigation.”

E. Damages

88. The Plaintiffs have suffered real and substantial injury, economic loss, and damages arising from the aforesaid acts, omissions, wrong doings, and breaches of legal duties and obligations of the Defendant.
89. By reason of the acts, omissions, wrong doings, and breaches of the legal duties and obligations of the Defendant, the Plaintiffs have suffered injury, economic loss, and damages, the particulars of which include, *inter alia*, the following:
- a) Harm caused to the Plaintiffs which has been, and continues to be, occasioned by the Plaintiffs receiving inadequate Treaty payments which do not reflect the legal obligations of the Defendant;
 - b) Loss of inheritance; and
 - c) Loss of opportunity to invest.

XIII. Aggravated, Punitive, and Exemplary Damages

90. The Crown has demonstrated and taken a cavalier and arbitrary approach with respect to, *inter alia*, its legal obligations to the Plaintiffs and the methods by which the Defendant failed to meet the legal obligations which the Defendants owed, and continue to owe, to the Plaintiffs.
91. The Crown has shown a lack of good faith with respect to its obligations to the Plaintiffs with regard to, *inter alia*, the fair representation of the amount of payments owing under Treaty and the means by which the Crown distributed and calculated the Treaty payments to the Plaintiffs.
92. The conduct of the Crown as set forth above was negligent and reckless as toward the

Plaintiffs.

93. As a result of the aforesaid acts, omissions, wrong doings, and breaches of legal duties and obligations by the Crown, the Plaintiffs have sustained substantial injury, economic loss and damages, and are entitled to awards of aggravated, punitive, and exemplary damages.

F. General

94. If issue is taken with service of documents upon the Crown, the Plaintiff seeks leave to have service on any of the Crown's parent corporations, subsidiaries, affiliates, predecessors, associated or related companies and entities, be accepted as valid service against the Defendant.
95. The Plaintiff, as representative of a class of persons resident or situated in Manitoba, and a subclass of persons not resident or situated in the Province of Manitoba, but resident or situated in another Canadian province or territory or elsewhere, has suffered injury, economic loss, and damages as a result of the Crown's acts, omissions, wrong doings, and breaches of legal duties and obligations.

96. The Plaintiff brings this action on behalf of all persons as described in Paragraph 5 of the Statement of Claim.

Dated this 17th day of July, 2019.

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