

**FEDERAL COURT**

B E T W E E N :

**MINEGOZIIBE ANISHINABE FIRST NATION and CHIEF DEREK  
NEPINAK on his own behalf and behalf of all members of MINEGOZIIBE  
ANISHINABE FIRST NATION**

**and**

**ZAGIME ANISHINABEK FIRST NATION and CHIEF BONNY LYNN  
ACOOSE on her own behalf and on behalf of all members of ZAGIME  
ANISHINABEK FIRST NATION**

Plaintiffs

– and –

**HIS MAJESTY THE KING**

Defendant

Class Proceeding commenced under Part 5.1 of the *Federal Court Rules*, SOR/98-106

**FRESH AS FURTHER 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 solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

February 2, 2024

Issued by: \_\_\_\_\_

Address of Suite 200  
local office: 180 Queen Street West  
Toronto ON M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Prairie Regional Office  
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Lawyers for the Defendant

## CLAIM

1. The Plaintiffs, on behalf of the Class described herein, claim:
  - (a) an Order certifying this action as a class proceeding under Part 5.1 of the *Federal Courts Rules*, SOR/98-106, and appointing the Plaintiffs as the representative plaintiffs for the Class, as defined below;
  - (b) in the alternative, if the within action cannot be certified as a class proceeding, an Order authorizing a representative action pursuant to rule 114 of the *Federal Court Rules* SOR/98-106, and appointing the Plaintiffs as the representatives for Minegoziibe Anishinabe First Nation and its members and Zagime Anishinabek First Nation and its members (regardless of whether or not those members are registered under the *Indian Act*), together with all other Treaty 4 First Nations and their members (regardless of whether or not those members are registered under the *Indian Act*) upon receipt of a band council resolution from the First Nation consenting to the representation ~~the Class~~;
  - (c) a Declaration that Treaty 4 contains an augmentation or indexation provision, whether express or implied;
  - (d) a Declaration that the annuities paid under Treaty 4 to Class members must be augmented or indexed to adjust for losses in purchasing power that are associated with inflation, or such other method of economic indexation as is necessary to maintain the value of the annuities in real terms, or at all, to give effect to the intent of the parties;
  - (e) a Declaration that His Majesty the King in Right of Canada, as represented by the Defendant (“**Canada**” or the “**Crown**”), breached and continues to breach

its obligations under Treaty 4 by failing to increase the annuities paid thereunder to maintain their value in real terms, or such other method of economic indexation, or at all;

- (f) a Declaration that Canada breached its fiduciary duty to the Class members by failing to increase the annuities paid under Treaty 4 to maintain their value in real terms, such other method of economic indexation, or at all;
- (g) a Declaration that Canada failed to act in accordance with the Honour of the Crown by failing to increase the annuities paid under Treaty 4 to maintain their value in real terms, such other method of economic indexation, or at all;
- (h) a Declaration that Canada breached its duty to consult and accommodate the Class with respect to increased annuities paid under Treaty 4 to maintain purchasing power parity, the value of annuities in real terms, or such other method of economic indexation, or at all;
- (i) a Declaration that Treaty 4 requires Canada to increase the annuities paid under Treaty 4 to restore their value in real terms at the time of the formation of Treaty 4 and give effect to the intent of the parties;
- (j) an Order for an accounting and payment of the annuities under Treaty 4 that remain either unpaid or underpaid, and which are owed to Class members;
- (k) an Order condemning Canada to pay damages to Class members in an amount equal to the annuities that Canada should have paid Class members in order to maintain the purchasing power, real value of the annuities at the time Treaty 4 was formed, or such other method of economic indexation, less the annuities that were actually paid to the Class members, or such sum as the Court deems

appropriate;

- (l) an Order condemning the Crown to pay special damages to compensate Class members for their loss of opportunity and inability to invest Treaty 4 annuities that remain either unpaid or underpaid to the Class members;
- (m) in the alternative, an Order condemning Canada to make restitution to the Class for the savings that Canada realized by unjustly failing to increase the annuities paid under Treaty 4 to maintain the value of annuities in real terms, purchasing power parity, or such other method of economic indexation, or at all;
- (n) in the further alternative, an Order condemning Canada to pay equitable compensation for breaching its fiduciary duties and honour of the Crown in its performance of annuity payments under Treaty 4;
- (o) an Order condemning Canada to pay punitive damages in the amount of \$100 million, or such sum as the Court deems appropriate;
- (p) pre-judgment and post-judgment interest pursuant to the *Federal Court Act*, R.S.C., 1985, c. F-7;
- (q) costs on a substantial indemnity basis, plus applicable taxes, in the event that Canada engages in further frivolous or vexatious conduct in defending the within action;
- (r) costs of notice and administering the plan of distribution of the recovery in the within action, plus applicable taxes; and
- (s) such further and other relief as the Plaintiff may request and this Honourable Court deems just.

## OVERVIEW

2. In September 1874, the Crown and various Saulteaux, Cree, and other First Nations executed Treaty 4. Treaty 4 represents the solemn and sacred promises between Canada and First Nations, and it perpetuates nation-to-nation relationships.
3. Pursuant to the terms of Treaty 4, First Nations provided the Crown with the use and occupation of approximately 195,000 square kilometres of First Nations land. This land spans territory from southeast Alberta, through southern Saskatchewan and west-central Manitoba. The use and occupation of Treaty 4 territory was, and remains, of significant monetary and strategic value to the Crown.
4. Pursuant to the terms of Treaty 4, the Crown made several promises to First Nations to ensure that they were protected as development and settlement increased in the region. This protection was to take many forms, and included the annual payment of annuities to all of the members of the First Nations that signed or adhered to Treaty 4, and to their descendants, in perpetuity.
5. At the formation of Treaty 4 in 1874, annuities were initially set at five dollars per person per year for each member of a signatory First Nation. In 1874 the amount of five dollars commanded material purchasing power and was not merely a token or symbolic sum. The parties to Treaty 4 intended that the annuity payments would provide the beneficiaries with purchasing power to secure the necessities that they required to survive. Furthermore, with the advancement of the colonial project, the Crown expected that an increasingly monetized economy would require the Treaty 4 beneficiaries to rely on money, and specifically cash, to

furnish the necessities of life.

6. The Crown's expansion into the Treaty 4 area separated beneficiaries from their historical resource base, impeded their traditional and cultural practices, and deprived them of the ability to earn income from their lands. The Crown's efforts were often advanced by the actual or threatened use of force. Ultimately, the actions of the Crown rendered Treaty 4 First Nations and their members uniquely vulnerable to, and dependent on the Crown.
7. The parties to Treaty 4 understood that the Crown's promises thereto, including the annuities, were intended to compensate the members of the First Nations parties for the loss of their exclusive use and occupation of their traditional territory, and ensure their continued survival. In this context, the annuities under Treaty 4 were particularly important because they provided beneficiaries with the means to participate in the monetized economy, which was forced upon them by the Crown. The annuities provided by the Crown were thus integral to providing goods, services, and necessities of life to beneficiaries in this new and foreign economy.
8. Consistent with the parties' shared understanding that the annuity payments under Treaty 4 were to have real value and purchasing power, from time to time, Canada paid all or part of the annuities in kind, using goods such as clothing, sugar, and flour.
9. Despite the parties' shared understanding at the time Treaty 4 was formed, however, Canada failed to maintain the real value of the annuities as a proxy for goods and services. In so doing, Canada failed to increase the cash payment of the

annuities to reflect the effect of inflation on the cost of living, or such other method of economic indexation to preserve real value. Instead, Canada continued to pay five dollars a year to each beneficiary of Treaty 4, causing the purchasing power of the annuities to dwindle to the point where it became only a token or symbolic sum.

10. Canada has continued to enjoy the use and occupation of Treaty 4 territory despite Canada's ongoing breach of its obligation to increase the annuities under Treaty 4 to maintain their real value at the time of treaty formation. In so doing, Canada has failed to maintain the parties' original intention of a proxy for necessary goods and services.
11. The promise of annuities under Treaty 4 were critical to securing the agreement of the First Nations parties. The First Nations parties would not have concluded Treaty 4 without the promise of perpetual monetary compensation in an amount sufficient to purchase the necessities of life. This was an integral part of the bargain for First Nations. However, at the time of concluding Treaty 4, money was relatively novel in Treaty 4 territory and the First Nations parties understood it only in terms of the goods and services for which it could be exchanged.
12. The First Nations parties to Treaty 4 did not understand the corrosive power of inflation, which diminishes the purchasing power of fixed sums. However, the Crown did understand the effect of inflation at the time that Treaty 4 was formed. It was, and remains, incumbent upon the honour of the Crown to take all reasonable steps to maintain the purchasing power of the annuities by increasing the payments to maintain the real value of the annuities at the time of treaty

formation. Freezing the nominal cash value of the annuity payments under Treaty 4 was therefore a deliberate and intentional breach of the Crown's obligations thereunder, and it has deprived Class members of a substantial benefit.

13. That breach has continued for some 150 years. Throughout this period, Class members have been deprived of the full value of the annuities that they were due, as well as the opportunity to gainfully invest that amount in their First Nations or elsewhere. In the result, Class members have suffered losses that considerably exceed the value of the annuities that Canada has wrongfully withheld.

#### **THE PARTIES**

14. Minegoziibe Anishinabe First Nation is a Saulteaux First Nation located in present day southwest Manitoba. Minegoziibe is a modern day party to Treaty 4, and is recognized by Canada as Band #282.
15. Minegoziibe has approximately 3,200 members, all of whom are entitled to receive annuities under Treaty 4.
16. Chief Derek Nepinak is the Chief of Minegoziibe Anishinabe First Nation. He is a beneficiary of Treaty 4 and entitled to receive annuity payments thereunder. He has a Bachelor of Arts from the University of Alberta, and a Bachelor of Laws from the University of Saskatchewan. Chief Nepinak served as Chief of Minegoziibe Anishinabe from 2008 to 2012. He also served as the Grand Chief of the Assembly of Manitoba Chiefs from 2011 to 2017. Chief Nepinak has continued to be the Chief of Minegoziibe Anishinabe since 2021. He also serves as an Executive for the West Region Tribal Council and the Co-Chair of the Board of the First Nations Health and Social Secretariat of Manitoba.

17. Chief Nepinak is a 49-year-old father of four. He brings suit on his own behalf, and on behalf of all beneficiaries of Treaty 4, with due authorization of the Band Council to act in a representative capacity. The Band Council of Minegoziibe Anishinabe First Nation unanimously endorse this action and Chief Nepinak's role as plaintiff.
18. Zagime Anishinabek First Nation is a Saulteaux First Nation located in present day southeast Saskatchewan. Zagime is a modern day party to Treaty 4, and is recognized by Canada as Band #364.
19. Zagime has approximately 1,884 members, all of whom are entitled to receive annuities under Treaty 4.
20. Chief Bonny Lynn Acoose is the Chief of Zagime Anishinabek First Nation. Chief Acoose's paternal family is from Zagime Anishinabek First Nation, and her maternal family is from Cowessess First Nation. She is a beneficiary of Treaty 4 and entitled to receive annuity payments thereunder. Chief Acoose has served as Chief since 2009, and was previously a Band Councillor from 2007 to 2009. Since 2013, Chief Acoose has been the spokesperson of the Treaty 4 Chiefs Council.
21. Chief Acoose is a 60-year-old mother and grandmother. She brings suit on her own behalf and on behalf of all beneficiaries of Treaty 4, with due authorization of the Band Council to act in a representative capacity. The Band Council of Zagime Anishinabek First Nation unanimously endorse this action and Chief Acoose's role as plaintiff.
22. Chief Nepinak, Chief Acoose, and the beneficiaries of Treaty 4 are Aboriginal

peoples pursuant to s. 35 of the *Constitution Act, 1982*.

23. Chief Nepinak and Chief Acoose seek authority to represent all members of the Class in this class proceeding.
24. The Defendant, His Majesty the King in Right of Canada, is represented in this action by his designated Minister, the Attorney General of Canada.
25. Chief Nepinak and Chief Acoose bring this action pursuant to Part 5.1 of the *Federal Courts Rules*, SOR/98-106, on their own behalf, and on behalf of all other Class members, and pursuant to rule 114 of the *Federal Court Rules* SOR/98-106, as a representative of all other Class members.
26. The members of the Class are:
  - (a) All persons or the estates of persons who are members (regardless of whether or not those members are registered under the *Indian Act*) of a Represented First Nation, as defined below, or are descendants of members (regardless of whether or not those members are registered under the *Indian Act*) of a Represented First Nation;
    - i. ~~were or are entitled to receive annuity payments from Canada under the terms of Treaty 4; and~~
    - ii. ~~had not died more than two years prior to the commencement of this action;~~ and
  - (b) Minegoziibe Anishinabe First Nation and Zagime Anishinabek First Nation, together with any other First Nation that is a successor to the First Nations parties or adherents to Treaty 4 and elects to join in a representative capacity (each a “Represented First Nation”).

27. The following First Nations are successors to the First Nations parties or adherents to Treaty 4, and their members are entitled to receive annuity payments:

- (a) Carry The Kettle Nakoda Nation;
- (b) Cote First Nation #366;
- (c) Cowessess First Nation;
- (d) Day Star First Nation;
- (e) Fishing Lake First Nation;
- (f) Gambler First Nation;
- (g) George Gordon First Nation;
- (h) Kahkewistahaw First Nation;
- (i) Kawacatoose First Nation;
- (j) Keeseekoose First Nation;
- (k) Kinistin Saulteaux Nation;
- (l) Little Black Bear First Nation;
- (m) Minegoziibe Anishinabe First Nation;
- (n) Mosquito, Grizzly Bear's Head, Lean Man First Nations;
- (o) Muscowpetung First Nation;
- (p) Muskowekwan First Nation;
- (q) Nekaneet Cree Nation;
- (r) Ocean Man First Nation;
- (s) Ochapowace Nation;
- (t) Okanese First Nation;
- (u) Pasqua First Nation #79;

- (v) Peepeekisis Cree Nation #81;
- (w) Pheasant Rump Nakota First Nation;
- (x) Piapot First Nation;
- (y) Rolling River First Nation;
- (z) Sapotaweyak Cree Nation;
- (aa) Star Blanket Cree Nation;
- (bb) The Key First Nation;
- (cc) Tootinaowaziibeeng Treaty Reserve;
- (dd) Waywayseecappo First Nation;
- (ee) White Bear First Nation;
- (ff) Wuskwi Sipiik First Nation;
- (gg) Yellow Quill First Nation; and
- (hh) Zagime Anishinabek.

**CANADA BREACHES ITS TREATY OBLIGATIONS TO FIRST NATIONS BY FAILING TO INCREASE ANNUITY PAYMENTS**

28. On September 8, 1874, a delegation was sent to Fort Qu'Appelle to conduct negotiations on behalf of the Crown with First Nations. The Crown's delegation included Alexander Morris, Lieutenant-Governor of the North-West Territory, David Laird, Minister of the Interior, and William Christie, a retired Hudson's Bay Company factor. The Crown's delegation was accompanied by 105 militia. Over 2,000 persons gathered for these discussions, which spanned the course of several days.
29. The lead commissioner, Lieutenant Governor Morris, assured First Nations that the Crown's intentions and promises were sincere, and that the Crown was

concerned for the wellbeing of First Nations people in perpetuity. Lieutenant Governor Morris advised “I want ... you to take the Queen’s hand, through mine, and shake hands with her forever”. He informed First Nations that the “Queen cares for you and for your children, and she cares for the children that are yet to be born”. Lieutenant Governor Morris further conveyed that the Crown’s promises are “not only for you but for your children born and unborn, and the promises we make will be carried out as long as the sun shines and the water flows”.

30. Throughout negotiations, First Nations sought reassurance from the Crown that it was engaging with good intentions. First Nations leaders expressed that they did not want their children to be “troubled for what you are bringing him”. The Crown provided First Nations with the requested assurances, upon which they relied, and the parties concluded Treaty 4 on September 15, 1874. The written text of Treaty 4 expresses its aim to foster “peace and good will” between the Crown and First Nations.
31. Shortly thereafter, those First Nations that had been unable or unwilling to join the 1874 negotiations at Fort Qu’Appelle adhered to Treaty 4 and their members became entitled to receive annuities thereunder.
32. Treaty 4 stated that First Nations would allow the Crown to use and occupy their traditional territory, which is described as follows:

Commencing at a point on the United States frontier due south of the northwestern point of the Moose Mountains; thence due north to said point of said mountains; thence in a north-easterly course to a point two miles due west of Fort Ellice; thence in a line parallel with and two miles westward from the Assiniboine River to the mouth of the Shell River; thence parallel to the said river and two miles distant therefrom to its source; thence in a straight line to a

point on the western shore of Lake Winnipegosis, due west from the most northern extremity of Waterhen Lake; thence east to the centre of Lake Winnipegosis; thence northwardly, through the middle of the said lake (including Birch Island), to the mouth of Red Deer River; thence westwardly and southwestwardly along and including the said Red Deer River and its lakes, Red Deer and Etoimaini, to the source of its western branch; thence in a straight line to the source of the northern branch of the Qu'Appelle; thence along and including said stream to the forks near Long Lake; thence along and including the valley of the west branch of the Qu'Appelle to the South Saskatchewan; thence along and including said river to the mouth of Maple Creek; thence southwardly along said creek to a point opposite the western extremity of the Cypress Hills; thence due south to the international boundary; thence east along the said boundary to the place of commencement.

33. The Crown sought to develop Treaty 4 territory. The Crown's goals were express in the treaty, which diarized its intention to "open up ... settlement, immigration, [and] trade", among "other purposes".
34. To secure the use and occupation of Treaty 4 territory, the Crown made a variety of promises to the Treaty 4 First Nations. Treaty 4 provides, among other things, that the Crown will set aside land for reserves; pay \$750 each year in powder, shot, and twine; provide a school on reserve; provide various tools and supplies; and provide several one-time monetary payments and goods. Treaty 4 gave beneficiaries an initial annuity payment of twelve dollars. Additionally, the Crown promised to provide First Nations with annual annuity payments in perpetuity, which Treaty 4 describes as follows:

As soon as possible after the execution of this treaty Her Majesty shall cause a census to be taken of all the Indians inhabiting the tract hereinbefore described, and shall, next year, and annually afterwards forever, cause to be paid in cash at some suitable season to be duly notified to the Indians, and at a place or places to be appointed for that purpose, within the territory ceded ... to every other Indian man, woman and child, five dollars per head; such payment to be made to the heads of families for those belonging thereto, unless for some special reason it be found objectionable.

35. The annuities were described as five dollars at the time that Treaty 4 was formed.

This amount had material purchasing power in 1874, allowing families to secure food and supplies to survive in the changing economy. The parties to Treaty 4 understood that the term was to capture its intended effect – purchasing power to allow First Nations to secure the necessities that they required – at the time that the treaty was formed, and forever.

36. In the negotiations and discussions leading up to Treaty 4, the Crown repeatedly assured First Nations leaders that the terms of the treaty would provide for their children. Lieutenant Governor Morris advised First Nations that “the Queen ... has always cared for her red children as much as for her white ... she wants to do something for you, so that when the buffalo get scarcer, and they are scarce enough now, you may be able to do something for yourselves”. He further expressed that “when fish are scarce and the buffalo are not plentiful [the Queen] would like to help you to put something in the land; she would like that you should have some money every year to buy the things that you need”.
37. Treaty 4 expressly describes the Crown’s promises to First Nations as ensuring that “Indian people may know and be assured of what allowance they are to count upon and receive from Her Majesty’s bounty and benevolence”.
38. First Nations had always understood that annuities would reflect the same degree of purchasing power or real value as they did at the signing of Treaty 4, which would assure the wellbeing of present and future generations. The Crown promised to protect First Nations, and assist First Nations to develop and prosper. First Nations had intended, and understood, that the Crown’s promises under Treaty 4 would ensure that their children and future generations were forever

cared for and protected by the Crown, as their lands were transformed by colonial settlement and development. The annuities require augmentation or indexation to account for the substantially reduced real value of five dollars and to preserve the intention of the parties to Treaty 4.

39. In any event, the First Nations parties to Treaty 4 did not and could not have known that the real value of a cash payment of five dollars in 1874 would be drastically reduced in real terms with the passage of time. In keeping with intention and spirit of the parties at the time of treaty formation, it is necessary to adjust the nominal cash value of the annuities to reflect inflation or some other method of economic indexation to preserve real value. The parties to Treaty 4 never intended for the annuities to be frozen in time.
40. The Crown's promise to provide meaningful annuities is further described by a memorandum from Alexander Mackenzie dated October 29, 1874, which reports on the agreement crafted in Treaty 4. In the memorandum, Mr. Mckenzie describes the "principal conditions" of Treaty 4 as including "an annual payment, in perpetuity, of ... \$5 to every other man, woman and Child in the Band". The Crown understood the importance of this condition to its First Nations treaty partners.
41. Treaty-making between the Crown and First Nations further symbolized an economic partnership. While Canada has benefited from use and occupation of land across Treaty 4, the wealth derived from First Nations' lands has not been shared with First Nations. The 1996 Royal Commission on Aboriginal Peoples explained:

There was substantive agreement that the treaties established an economic partnership from which both parties would benefit. Compensation was offered in exchange for the agreement of First Nations to share. The principle of fair exchange and mutual benefit was an integral part of treaty making. First Nations were promised compensation in the form of annual payments or annuities, social and economic benefits, and the continued use of their lands and resources.

These principles, which were part and parcel of the treaty negotiations, were agreed upon throughout the oral negotiations for Treaties 1 through 11. They were not always discussed at length, and in many cases the written versions of the treaties are silent on them. In these circumstances, the parties based their negotiations and consent on their own understandings, assumptions and values, as well as on the oral discussions. First Nations were assured orally that their way of life would not change unless they wished it to ... They also assumed, and were assured, that the Crown would respect and honour the treaty agreements in perpetuity and that they would not suffer — but only benefit — from making treaties with the Crown.

42. The Royal Commission on Aboriginal Peoples emphasized the economic rights contained in the numbered treaties, and the importance of renewing these treaty promises:

One example of economic rights in the historical treaties is the practice of paying annuities ... the numbered treaties made after 1870 provide for annual annuities to be paid to each member of a treaty nation.

... With the passage of time, the value of these annuities, typically \$4 or \$5 per year, has been severely eroded.

... The growth of the modern social safety net eventually brought larger infusions of resources. The treaty nations insist that all transfers of resource 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.

43. Unfortunately, Canada has broken, and continues to break, its promise to beneficiaries of Treaty 4 by failing to increase annuities to maintain purchasing power parity or real value. Canada has turned its back on its First Nations treaty partners by fixing the nominal cash value of the annuities at five dollars, even as this amount has ceased to have real value, purchasing power, or such other

method of economic indexation. The Crown has wholly disregarded the intention and spirit of the annuities prescribed in Treaty 4, and has repeatedly breached the treaty rights of Class members.

**CANADA BREACHED ITS FIDUCIARY DUTIES AND THE HONOUR OF THE CROWN**

44. Treaty 4 is a constitutional relationship between Canada and First Nations, which is constitutionally entrenched under s. 35(1) of the *Constitution Act, 1982*. Under Treaty 4, Canada and First Nations are partners. In these circumstances, it is clear that Canada owes fiduciary duties to Class members and is bound to act in accordance with the honour of the Crown.
45. Canada promised to provide First Nations with annuities, but has allowed annuities to decline in real value or such other method of economic indexation, such that they have become effectively worthless. Class members have been denied augmented or indexed annuity payments, which hinders their ability to care for themselves and those around them.
46. The solemn promises made by Canada to First Nations under Treaty 4 give rise to Canada's fiduciary obligation to fulfil the express and implied terms of the treaty.
47. Canada has breached its fiduciary duties and acted contrary to the honour of the Crown by:
  - (a) failing to provide Class members with annuities that reflected the agreement in Treaty 4;
  - (b) failing to increase annuities from 1874 to present;
  - (c) failing to provide annuities that reflected inflation or some other method of economic indexation to preserve the real value of the annuity payments from

1874 to present;

- (d) historically depriving Class members from retaining counsel to advance their claims in respect of annuities; and
- (e) failing to provide Class members with an accounting on the annuities to which they are entitled.

#### **UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES INFORMS TREATY INTERPRETATION**

48. Canada's obligations to Class members are informed by the *United Nations Declaration on the Rights of Indigenous Peoples Act*, c. 14 (the "**UNDRIP Act**"). The *UNDRIP Act* confirms Canada's obligations to uphold the rights of Indigenous peoples pursuant to the United Nations Declaration on the Rights of Indigenous Peoples (the "**UNDRIP**").
49. Article 28 of the UNDRIP provides Class members with the right to redress or 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". Article 37 of the UNDRIP further provides Class members with the right to "recognition, observance and enforcement of treaties ... concluded with States or their successors and to have States honour and respect treaties, agreements, and other constructive agreements". Importantly, Article 43 of the UNDRIP makes clear that these are "minimum standards for the survival, dignity and well-being of Indigenous peoples".

#### **CANADA'S CIVIL LITIGATION DIRECTIVE RECOGNIZES THE IMPORTANCE OF RESPECTING TREATY PROMISES**

50. The Attorney General of Canada's Directive on Civil Litigation Involving

Indigenous People (“**Canada’s Directive**”) expressly recognizes various principles that are “rooted in section 35 of the *Constitution Act, 1982*” and “seek to fulfil the full promise of section 35 of the *Constitution Act, 1982*, through the recognition and implementation of Indigenous rights”. Section 35 of the *Constitution Act, 1982*, expressly preserves “[t]he existing aboriginal and treaty rights of the aboriginal peoples of Canada”.

51. Canada’s Directive acknowledges that “[r]econciliation is a fundamental purpose of section 35 of the *Constitution Act*’. Additionally, it underscores that the “honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples”, with the “overarching aim ... to ensure that Indigenous peoples are treated with respect and as full partners in Confederation, with their rights, treaties, and agreements recognized and implemented”.

## **RESTITUTIONARY RELIEF**

52. In addition, or in the alternative, Canada realized savings from the breaches of its duties described above (the “**Unjust Gains**”). Canada was unjustly enriched from the extent of Unjust Gains. The Unjust Gains resulted from expenditures that Canada was obligated to make in the form of increased annuities to Class members, and these cost savings were realized only through Canada’s unlawful conduct.
53. The Class members suffered a corresponding deprivation when they were denied adjusted annuities to reflect changes in purchasing power over time. There is no juristic reason that Canada should be entitled to retain the Unjust Gains, and they must be disgorged to the Class members. The Class members

are entitled to a constructive trust over these monies.

### **EQUITABLE DAMAGES**

54. In addition, or in the alternative, Canada's persistent breaches of its fiduciary duties and the honour of the Crown require equitable compensation to be paid to Class members pursuant to s. 35 of the *Constitution Act, 1982*.

### **CLASS MEMBERS SUFFERED DAMAGES**

55. As a result of Canada's breaches of the treaty rights of Class members, its duties to Class members, and its failure to uphold the honour of the Crown, the Plaintiffs and Class members have, and continue to suffer adverse effects, including:

- (a) higher rates of poverty;
- (b) higher rates of illness;
- (c) higher rates of targeted violence;
- (d) lower educational and economic outcomes;
- (e) shorter life expectancy and death; and
- (f) diminished pride in First Nations identity.

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

- (a) loss of income;
- (b) loss of advantage;
- (c) pain and suffering; and
- (d) physical, mental, emotional, and spiritual harm.

### **PUNITIVE AND EXEMPLARY DAMAGES**

57. Canada, including its ministers, senior officers, directors, and senior staff, had, or should have had, specific and complete knowledge of the widespread damage to the Class members that resulted from the breaches set out above. Despite this knowledge, Canada continued to, and continues to, breach its treaty obligations and duties to the Class members, who were and remain vulnerable to the consequences.
58. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada has conducted its affairs with blatant disregard for Class members' treaty rights, interests, and wellbeing.
59. Over a period spanning more than a century, Canada treated Class members in a manner that aggravated and increased suffering for an already vulnerable population. Moreover, for much of that period, Canada made it illegal for Class members to retain a lawyer to assert their rights. Canada's long course of grossly improper conduct cries out for special condemnation by this Honourable Court.

#### **MISCELLANEOUS**

60. Full particulars respecting Canada's breaches of the Treaty and its duties are within Canada's knowledge, control, and possession.
61. The Plaintiff pleads and relies upon the:
- (a) *Federal Court Rules*, SOR/98-106, including Part 5.1;
  - (b) *Federal Court Act*, R.S.C., 1985, c. F-7;
  - (c) *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
  - (d) *Department of Indigenous Services Act*, S.C. 2019, c. 29;

- (e) *Indian Act*, R.S.C. 1985, c. 1-5;
- (f) *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C., c. 14;
- (g) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.);
- (h) common law; and
- (i) such other statutes and instruments as counsel shall advise.

The plaintiff proposes that this action be tried at Winnipeg.

February 2, 2024

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**FEDERAL COURT**

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**CHIEF DEREK NEPINAK**

and

**CHIEF BONNY LYNN ACOOSE**

Plaintiffs

- and -

**HIS MAJESTY THE KING**

Defendant

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**FRESH AS FURTHER AMENDED STATEMENT OF  
CLAIM**

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