File No. CI 22-01-36804

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

AMBER LYNN FONTAINE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA and THE GOVERNMENT OF MANITOBA

Defendants

Proceeding under *the Class Proceedings Act*, CCSM c C130

STATEMENT OF CLAIM

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 File No. _____

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TO THE DEFENDANTS:

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 *Queen'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, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

_____ Issued _____

Date Deputy Registrar

To:

Prairie Regional Office - Winnipeg
Department of Justice Canada
400 St. Mary Avenue, Suite 601
Winnipeg, MB R3C 4K5
Tel: 431-489-8636
Fax: 204-983-3636
Email: AGC_PGC_WINNIPEG@JUSTICE.GC.CA

File No. _____

AND TO:

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Civil Reception
7th Floor - 405 Broadway
Winnipeg, MB R3C 3L6
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 File No. _____

CLAIM

RELIEF SOUGHT

1. The plaintiff claims as follows, on her own behalf and on behalf of other Class Members (defined below):

    a. an order certifying this action as a class proceeding and appointing representative plaintiffs for each of the Underfunding Class, the Essential Services Class, and the Family Class;

    b. general and aggregate damages for breach of the honour of the Crown, negligence, and under s. 24(1) of the *Charter*;

    c. a declaration that the defendants breached their common law and constitutional duties to the plaintiff and other Class Members;

    d. a declaration that the defendants breached the rights of the plaintiff and other Class Members under s. 15(1) of the *Charter*, without justification;

    e. a declaration that the defendants breached Jordan's Principle;

    f. a declaration that the defendants were unjustly enriched;

    g. special damages;

    h. punitive damages;

    i. restitution by the defendants of their wrongful gains;

    j. damages equal to the costs of administering notice and the plan of distribution;

    k. pre-judgment and post-judgment interest;

    l. costs; and

    m. such further and other relief as this Honourable Court may deem just.

STATEMENT OF FACTS

A. Overview

2. The Attorney General of Canada ("**Canada**") and Her Majesty the Queen in Right of the Province of Manitoba ("**Province**") have systemically discriminated against Indigenous children – in the provision of child and family services in Manitoba – because of their race, nationality, and ethnicity.

3. This systemic discrimination, which has occurred for decades and generations, has taken two forms: the underfunding and failure to equitably provide child and family services for Indigenous children who reside off-reserve in Manitoba; and the failure to implement and comply with Jordan's Principle.

4. Canada and the Province have knowingly underfunded child and family services for Indigenous children who reside off-reserve in Manitoba. Indeed, since the late 1980s or early 1990s, Canada has expressly chosen not to fund child and family services for Indigenous children and families residing off-reserve, having treated these children and families as already assimilated and, therefore, the responsibility of the Province.

5. The chronic underfunding has prevented child and family services agencies from providing adequate public services and products, including adequate preventative care, to Indigenous children and families. This has occurred despite the enhanced need for such services and products due to the cultural genocide and systemic patriarchal colonial structures that have been inflicted upon Canada's Indigenous peoples and the inter-generational trauma that they have caused.

6. Numerous independent reviews, parliamentary reports, and audits have identified the severe inadequacies of Canada's and Manitoba's funding formulas, policies, and practices *vis-à-vis* Indigenous children and families in Manitoba, and their devastating impacts and harms on these individuals.

7. The Province's funding formulas, policies, and practices mirror Canada's prior funding approach for First Nations children residing on-reserve, which the

Canadian Human Rights Tribunal has already found to be discriminatory. While underfunding the delivery of preventative services to Indigenous children who reside off-reserve in Manitoba, the Province has enacted and maintained legislation, regulations, policies and standards that support removing Indigenous children from their homes and placing them into out-of-home care. The net effect of this discriminatory approach is that Indigenous children who reside off-reserve often must be apprehended before they can access required services. This is the same "perverse incentive" that the Canadian Human Rights Tribunal ordered Canada to remedy in relation to First Nations children living on-reserve.

8. Removing a child from his or her home must only be used as a last resort, if at all, because of the severe and long-lasting trauma that such removal causes to that child, and his or her family and community. However, as a result of the "perverse incentive" that continues to persist, Indigenous children who reside off-reserve have been removed from their homes as a first resort, rather than a last resort. This accounts, in substantial part, for the egregious overrepresentation of Indigenous children in care in Manitoba. In September 2018, almost 90% of the approximately 10,000 children in care were Indigenous.

9. The incentivized removal of off-reserve Indigenous children from their homes, families, and communities has caused enduring trauma to those children, their families and caregivers, and their communities.

10. Second, despite Canada and the Province having declared their commitment to implement and comply with Jordan's Principle, both have failed to meet that commitment. Jordan's Principle is a legal requirement intended to safeguard Indigenous children's substantive equality rights that are guaranteed by the *Canadian Charter of Rights and Freedoms*. It requires that all Indigenous children receive the public services and/or products they need, when they need them, and in a manner that is consistent with substantive equality and reflective of their cultural needs.

11. Indeed, the genesis of Jordan's Principle – which is named in memory of Jordan River Anderson, a young boy from Norway House Cree Nation in Manitoba – arose from governmental practices of denying, delaying, or disrupting the

services and products to Indigenous children due to, among other reasons, disputes over jurisdiction and fiscal responsibility within government departments or as between Canada and the provinces or territories. Canada and the Province nonetheless continue to breach Jordan's Principle by denying crucial services and products to Indigenous children in Manitoba.

12. This action seeks individual compensation for: (i) Indigenous children who did not reside on a reserve in Manitoba and who were victims of this systemic discrimination between January 1, 1992 and the date of the certification of this action as a class proceeding ("**Class Period**"); and (ii) the parents, grandparents, and caregivers of those children.

B. The Representative Plaintiff

13. The plaintiff Amber Lynne Fontaine is an Ojibway person, and an "Indian" within the meaning of s. 91(24) of the *Constitution Act, 1867*. Amber is a status Indian registered with Saugeen First Nation in Ontario, though she was born, grew up, and still lives in Manitoba. Amber was born July 14, 1987 in Pine Falls, Manitoba.

14. In February 1994, when Amber was six years old, she was apprehended from her family by a provincial child welfare agency in Manitoba. Amber was in care for the period between February 11, 1994 and September 27, 1994, before being returned to her family. During this period Amber was placed in the care of three separate Caucasian families, none of whom included members of her Indigenous community. Amber experienced intense anti-Indigenous racism while in care as well as general maltreatment, including the following:

    a. Amber was forced to attend church with a foster family, and was provided no opportunity to connect with Ojibway practice or spiritual teachings, as she had been exposed to when living at home with her own family;

    b. As a child, Amber had naturally occurring strands of white hair. She was very proud of it, as in her Ojibway culture white hair is a sign of wisdom. When Amber shared this fact with a foster family, the foster mother sat Amber down and forcibly plucked the white hairs from her head, because

that worldview was incompatible with the Christian culture of the foster family;

c. At one point while in care, Amber was suspected to have head lice. As a first resort, her foster family immediately shaved her head rather than attempting to comb the lice out. She was sent to school with her shaved head and experienced bullying for that fact; and

d. Owing to her dark skin, a foster father pejoratively nicknamed Amber "Blackie" and addressed her as such.

15. Amber now lives in Winnipeg, Manitoba and has a daughter of her own. She is working hard to connect with her Indigenous roots after a difficult youth in which she faced many barriers related to the intergenerational effects of residential schools and colonialism, exacerbated by her experiences during her time in care.

C. The Defendants

16. The defendant, the Attorney General of 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*, RSC 1985, c C-50.

17. Canada asserts jurisdiction over "Indians and lands reserved for the Indians" pursuant to s. 91(24) of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 (UK). Canada's jurisdiction under s. 91(24) includes legislative authority respecting all Indigenous peoples, including status and non-status Indian, Inuit, and Métis persons.

18. The defendant, the Province, asserts general jurisdiction in relation to the delivery of child and family services pursuant to s. 92(13) of the *Constitution Act, 1867* and the common law doctrine of *parens patriae*.

D. Protection and Prevention Services

19. Governments and non-Indigenous social workers tend to define or divide child and family services into two main areas of concern: prevention and protection.

They further divide prevention services into three main categories: primary, secondary, and tertiary.

20. Primary prevention services are aimed at the community as a whole. They include the ongoing promotion of public awareness and education about a healthy family and how to prevent or respond to child maltreatment. Secondary prevention services are triggered when concerns begin to arise – and early intervention could help avoid a crisis. Tertiary prevention services target specific families when a crisis or risks to a child have been identified. Tertiary prevention services are designed to be “least disruptive measures” that try to mitigate the risks of separating a child from his or her family, rather than separating a child from his or her family.

21. Protection services are triggered when the safety or the well-being of a child is considered to be compromised. If the child cannot live safely in the family home while measures are taken with the family to remedy the situation, child and family service workers will make arrangements for temporary or permanent placement of the child in another home where he or she can be cared for. This is called placing the child “in care”.

22. Indigenous worldview perspectives on child and family services tend to reject the compartmentalization of “prevention” and “protection” services, and any arbitrary distinction between “levels” of prevention support. Mainstream CFS compartmentalizes and focuses child and family services only on physical safety, at the cost of relational, cultural, spiritual, and emotional safety.

23. When assessment of the well-being and safety of children is not considered through a holistic approach, it allows for continued harm to be perpetrated on Indigenous children and youth and their families. Indigenous child and family service providers have led the development of lifelong, needs-based, and culturally appropriate wraparound services that prevent poor outcomes (i.e., poverty, homelessness, family violence, mental illness, and drug abuse) and protect children and families from the ongoing harms associated with colonization.

E. Indigenous Child and Family Services in Manitoba

24. Starting in the 19th century, Indigenous children across Canada, including those residing in Manitoba, were systematically separated from their families and placed in Indian Residential Schools and Day Schools. Among other things, these schools were used as “care providers” for Indigenous children who, according to Indian Agents, were allegedly being neglected or otherwise in need of child and family services.

25. In 1951, the introduction of s. 88 to the *Indian Act* made “all laws of general application from time to time in force in any province applicable to and in respect of Indians in the province”. The Province asserted its authority, and began to apprehend children living on-reserve and off-reserve, which resulted in an increase in children placed in care. By 1979, 30% of all children placed in out-of-home care in Manitoba were Indigenous and by 1981 50% of children placed for adoption were Indigenous.

26. In the intervening years, various agreements and funding arrangements have been entered into and rescinded between Canada and the Province dealing with the delivery of child and family services. Until the late 1980s/early 1990s, funding for on- and off-reserve child and family services for Indigenous children and families was provided by Canada. Thereafter, Canada entered into agreements with each province, including the Province of Manitoba, under which each province would fund child and family services for off-reserve Indigenous children and families.

27. The Province now has its own child and family services legislation, *The Child and Family Services Act* CCSM c C80, intended to prevent and respond to child maltreatment and promote family wellness.

28. Starting in the early 1980s First Nations communities in Manitoba began providing on-reserve child welfare services. Canada, the Province, and First Nation governments signed the 1982 *Master Agreement*, a tripartite agreement that established guiding principles and obligations for Aboriginal child welfare services in Manitoba and specified governmental funding obligations. Between 1981 and 1991, 17 First Nations child and family services agencies were formed

("**CFS Agencies**"), with the Dakota Ojibway Child and Family Services being the first mandated/delegated First Nations CFS agency in Manitoba.

29. In 1988, the Aboriginal Justice Inquiry (**"AJI"**) was initiated by First Nations groups and the Province in order to examine the relationship between Aboriginal peoples in Manitoba and the administration of justice. The report criticized the inadequacy of child welfare services for Aboriginal children and families. It also highlighted important limits on the resources and supports provided to Aboriginal child welfare agencies and the provision of culturally appropriate services for Aboriginal children and families.

30. The AJI report made several recommendations for major changes in Manitoba's child welfare system. In response to the AJI, the Province – in partnership with Aboriginal leadership – established the Aboriginal Justice Inquiry – Child Welfare Initiative (**"AJI-CWI"**) in 2000. The AJI-CWI restructured Manitoba's Indigenous child welfare system into four child welfare authorities: two First Nations-specific child welfare authorities (First Nations Authority of Northern Manitoba and the Southern First Nations Network of Care), a Métis Authority (which serves the Métis Nation and Inuit Homelands population), and a General Authority. This process – described as "devolution" – was accomplished via amendments to *The Child and Family Services Act* and the creation of *The Child and Family Authorities Act*.

31. In Manitoba, the Child and Youth Services Division of the Department of Families (the **"Department"**) oversees family supports and protection services to children delivered under the mandate of *The Child and Family Services Act*. The four child welfare authorities have mandated 23 legally distinct agencies, of which 18 are First Nations CFS agencies (including the Child and Family All Nations Coordinated Response Network – "ANCR" – located in Winnipeg, which serves both Indigenous and non-Indigenous families). Beyond that, three are non-Aboriginal, private CFS agencies; two are Métis child CFS agencies; and one is administered by the Department itself.

32. Fourteen CFS agencies have also been named as Designated Intake Agencies which function as central intake services in various geographic regions of the

province. A unique feature of child and family services in Manitoba is that families may decide from which authority they wish to receive services, regardless of the region in which they reside.

33. Indigenous Services Canada allocates funding directly to Indigenous CFS Agencies for First Nations children who are status Indians living on-reserve. The Province funds the Indigenous CFS Authorities, which have oversight, responsibility and administer the funds to the Indigenous CFS Agencies to deliver services in Manitoba for children who are status Indians and living off-reserve, and non-status Indians, Métis, and Inuit children, irrespective of residence.

34. At all material times, the defendants were aware of the chronic problems that existed in the under-provision of child and family services – including the jurisdictional issues, lack of access to culturally appropriate services, and inequitable funding for /insufficient prevention and protection services – to Indigenous children, especially those who resided off-reserve. Over the course of the Class Period, numerous independent reviews, parliamentary reports, and audits identified certain of these deficiencies and described their devastating impact on Indigenous children and families.

35. The Royal Commission on Aboriginal Peoples (1996) and, subsequently, the Report of the Truth and Reconciliation Commission of Canada (2015) each called on the defendants to adequately fund child and family services and fully implement certain principles and equality protections, a concept which has become known as Jordan's Principle.

36. The Truth and Reconciliation Commission found, among other things, that:

    a. 3.6% of all First Nations children under the age of 14 were in out-of-home care, compared with 0.3% of non-Aboriginal children;

    b. the rate of investigations involving First Nations children was 4.2 times the rate of non-Aboriginal investigations, and maltreatment allegations were more likely to be substantiated in the cases of First Nations children;

c. investigations of First Nations families for neglect were substantiated at a rate eight times greater than for the non-Aboriginal population;

d. the child welfare system has simply continued the assimilation that the Residential Schools system started; and

e. First Nations children are still being removed from their parents because of their parents' socioeconomic circumstances and lack access to programming, services and resources appropriate for Indigenous families

37. In 2006, the Auditor General authored a report entitled *Audit of the CFS Division Pre-Devolution Child Care Process and Practices*, which dealt with the CFS funding model in place at that time. The Auditor General concluded, amongst other things, that the CFS funding model at that time did not ensure fair and equitable funding to CFS Agencies consistent with expected service.

38. On April 1, 2006, the Province ordered CFS Agencies to remit the Children's Special Allowances benefits ("**CSA Benefits**") that the CFS Agencies had applied for and received on behalf of Provincially-funded children in their care, pursuant to the *Children's Special Allowances Act*, SC 1992, c 48, Sch (the purpose of this special allowance is to provide children in care with the same benefit that all other children receive through the Canada Child Benefit and the Child Disability Benefit).

39. Some CFS Agencies complied with the Province's demand, but many did not. The Province took the position that it was owed a debt by the CFS Agencies that failed to comply with its demand to remit CSA Benefits, and the Province implemented a variety of punitive measures to recover the CSA Benefits that were not paid, including holding back funding to CFS Agencies. The Province later passed legislation to retroactively validate its actions and insulate itself against legal challenge. This was the subject of a number of court challenges, culminating in the recent decision *Flette et al v The Government of Manitoba et al*, 2022 MBQB 104 ("***Flette***").

40. In the *Flette* case, the plaintiffs alleged that off-reserve Indigenous children removed from their families had their constitutional rights and freedoms violated

by the Province by virtue of its policies and actions of requiring remittance of CSA Benefits from CFS Agencies into the Province's consolidated fund.

41. The Court agreed with the *Flette* plaintiffs, making numerous findings in support of the proposition that the Province's actions discriminated against Indigenous children taken into care off-reserve.

42. In January 2018, an emergency national meeting was hosted by then-Minister of Indigenous Services Canada, Jane Philpott, to discuss the child welfare crisis. At the outset of the meeting, Minister Philpott acknowledged, in her welcome speech:

> We are acutely aware that there are concerns about funding – that it is insufficient, inflexible and incentivizes apprehension. Many have talked to me about how current funding policies don't permit financial support for kinship care. Simply put, funding based on the number of children in care is apprehension-focused and not prevention-focused. The underfunding of prevention services while fully funding maintenance and apprehension expenses creates a perverse incentive.

43. On September 2018, the Legislative Review Committee published the results of the child welfare legislative review requested by Minister, entitled *Manitoba, Report of the Legislative Review Committee, Transforming Child Welfare Legislation in Manitoba: Opportunities to Improve Outcomes for Children and Youth*. The report outlines various recommendations with respect to Indigenous child welfare, noting:

> The current funding structure for child welfare services provides incentives in the wrong places by providing funding based on the number of open cases and children in care.

The committee goes on to recommend:

> a new funding structure that is focused on reunification [which] must be equitable (e.g., south versus north, reserve versus urban, Indigenous versus non-Indigenous, newcomer versus non-newcomer, and large versus small organizations). Equity in programming must be a core principle of service delivery.

44. In 2019, a report was prepared by the Auditor General entitled *Management of Foster Homes – Independent Audit Report*. One of the central conclusions in the

2019 Auditor General's report is that the basic maintenance rates in Manitoba are either the lowest, or the second lowest, in Canada. Department, CFS Authority and agency officials expressed concerns that the basic maintenance rates do not adequately compensate foster parents for the costs of caring for children. This was noted by some officials as one of the key risks or challenges facing Manitoba's foster care system.

45. In 2019, the Province introduced the approach of providing "single envelope" or block funding to Child and Family Services Authorities, rather than making per-child payments. This change was supposed to create autonomy and flexibility for Indigenous CFS Agencies. However, since its inception, the funding continues to be held by the Province, which has not yet carried out the necessary consultations with Indigenous stakeholders.

46. The Department annually participates in the estimates process with central finance authorities within the Province. Decisions are intentionally made to fund departments through a "siloed" approach. This approach only deepens the inequity of resources and services ultimately available to Indigenous children and families, and consequent underfunding.

F. The Canadian Human Rights Tribunal Complaint

47. In February 2007, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations filed a complaint with the Canadian Human Rights Commission, pursuant to s. 5 of the *Canadian Human Rights Act,* RSC 1985, c H-6 (the "**Complaint**").

48. The Complaint alleged that Canada discriminates in providing child and family services to First Nations children on-reserve and in the Yukon on the basis of race and national or ethnic origin by providing inequitable and insufficient funding. On October 14, 2008, the Commission referred the Complaint to the Canadian Human Rights Tribunal ("**CHRT**") for inquiry.

49. In January 2016, the CHRT found the Complaint to be substantiated and that Canada had engaged in systemic discrimination, contrary to s. 5 of the *Canadian Human Rights Act*, in denying equal child and family services to First Nations

children and families living on-reserve and in the Yukon, or in differentiating adversely in the provision of those child and family services.

50. The CHRT also found that First Nations children and families living on-reserve and in the Yukon suffered harm in Canada's provision of child and family services because of the children's and families' race or national or ethnic origin, and that this harm perpetuated the historical disadvantage and trauma suffered by Indigenous people, in particular as a result of the Residential School system.

51. The CHRT also found the practice of underfunding prevention and least disruptive measures, while fully reimbursing the cost of children when apprehended, created a perverse incentive to remove First Nations children from their homes as a first – not a last – resort, in order to ensure that a child received necessary services.

52. The CHRT concluded that human rights principles, both domestically and internationally, required Canada to consider the distinct needs and circumstances of First Nations children and families living on-reserve in order to ensure substantive equality in the provision of child and family services. Among other things, Canada was ordered to undertake a cost analysis of the First Nations Child and Family Services Program relating to on-reserve individuals, and to fund prevention/least disruptive measures based on actual costs.

G. Jordan's Principle

53. Jordan's Principle requires that all Indigenous children receive the public services and/or products they need, when they need them, and in a manner consistent with substantive equality and reflective of their cultural needs. The need for Jordan's Principle arose from governmental practices of denying, delaying or disrupting the services of Indigenous children due to, among other reasons, jurisdictional payment disputes within the federal government or between the federal government and provinces or territories.

54. Jordan's Principle is a child-first legal rule that guides the provision of public services and products to Indigenous children. It incorporates the Crown's longstanding obligations to treat Indigenous children without discrimination, and

with a view to safeguarding their substantive equality. In 2017 CHRT 35, the CHRT confirmed that Jordan's Principle applies equally to First Nations children who reside on- and off-reserve.

55. Yet Canada and the Province continue to violate Jordan's Principle by playing jurisdictional football – at the expense of Indigenous children and youth – who are denied timely access to the services and products to which they are entitled.

H. The Class Members

56. The plaintiff brings this action on behalf of three proposed classes who were harmed by Canada and the Province during the Class Period:

a. all status Indians residing off-reserve and all non-status Indians, Inuit, and Métis persons (irrespective of residency on- or off-reserve) who were taken into care in Manitoba (the "**Underfunding Class**" or "**Underfunding Class Members**", to be further defined in the plaintiff's application for certification);

b. all status Indians residing off-reserve and all non-status Indians, Inuit, and Métis persons (irrespective of residency on- or off-reserve) who were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, in Manitoba, on grounds including but not limited to: lack of funding or lack of jurisdiction, or a jurisdictional dispute with another level or government or governmental department (the "**Essential Services Class**" or "**Essential Services Class Members**", to be further defined in the plaintiff's application for certification), except as recognized under 2020 CHRT 20; and

c. the parents, grandparents, and caregivers of members of the above classes (the "**Family Class**" or "**Family Class Members**", to be further defined in the plaintiff's application for certification).

57. The classes defined above are collectively referred to as the "**Class**" or "**Class Members**". The plaintiff and other Class Members are members of "Aboriginal peoples of Canada" within the meaning of s. 35(1) of the *Constitution Act, 1982.*

The Indigenous peoples of which the plaintiff and other Class Members are members have exercised laws, customs, and traditions integral to their distinctive societies – including in relation to child and family services, such as parenting, childcare, and customary adoption – since time immemorial. These inherent Aboriginal and treaty rights are recognized and affirmed by s. 35(1) of the *Constitution Act, 1982.*

LEGAL BASIS

A. The Defendants' duties to Class Members

58. Canada was, at all material times, responsible for the management, operation, administration, and funding of Indigenous Services Canada and all predecessor departments responsible for the development of policies, procedures, programs, operations, and management relating to the provision of Indigenous child and family services, including the funding arrangements reached with the Department and all predecessor departments.

59. The Province was, at all material times, responsible for the estimates process and the management, operation, administration, and funding of the Department, and all predecessor departments responsible for the development of policies, procedures, programs, operations, and management relating to the provision of Indigenous child and family services in the Province of Manitoba, including the inequitable funding arrangements for the CFS authorities reached with Indigenous Services Canada and all predecessor departments.

60. Canada and the Province each owed a special duty of care, honesty, loyalty and good faith to status and non-Indians, Inuit and Métis children and youth, including a duty to act in their best interests in relation to the delivery of child and family services. Canada and the Province also had a duty to act in the best interests of the parents, grandparents, and caregivers of those children and youth.

61. In all of their dealings with Indigenous peoples, Canada and the Province are required to act honourably, in accordance with their historical and future fiduciary relationship with Indigenous peoples.

B. Common Law Duty and Systemic Negligence

62. At all material times during the Class Period, the defendants owed a common law duty of care to the plaintiffs and the other Class Members to take steps to: (i) sufficiently fund Indigenous child and family services and the operational and other costs of child and family service agencies, including by ensuring that reasonable and appropriate levels preventative care and other child and family services, were made available and provided to Class Members; and (ii) comply with Jordan's Principle. These duties went unmet.

63. The policies (including Single Envelope Funding and Agreements with Young Adults) and funding formulas (including lack of funding or inequitable funding) employed by the defendants during the Class Period operated to systematically deny Indigenous children in Manitoba from accessing the public services and products they needed when they needed them, in a manner consistent with substantive equality and reflective of their cultural needs.

64. The defendants breached these duties and caused corresponding harm to the plaintiffs and other Class Members.

C. Breach of the *Charter of Rights and Freedoms*

65. Section 15(1) of the *Charter* states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

66. The plaintiff and the other Class Members have been discriminated against solely because of their status as Indigenous children who do not reside on-reserve, or alternatively their residence on-reserve but lack of Indian status. During the Class Period, the defendants breached the s. 15(1) rights of the plaintiff and the other Class Members under the *Charter* as set out in the whole of this claim by, *inter alia*:

a. failing to fund or failing to sufficiently fund Indigenous child and family services, including the operational and other costs of child and family service agencies, to ensure that reasonable and appropriate preventative and other child and family services were made available and provided to the plaintiffs and the other Class Members; and

b. breaching Jordan's Principle.

67. The defendants' breaches of the plaintiff's and the other Class Members' s. 15(1) *Charter* rights, as set out above and in the whole of this claim, were not "prescribed by law" and cannot be justified in a free and democratic society.

68. This ongoing discrimination is now taking place against the backdrop of Canada and the Province's respective adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* into legislation, their public commitments to the Truth and Reconciliation Commission's *Calls to Action*, and and Canada's Principles Respecting the Government of Canada's Relationship with Indigenous Peoples.

69. The defendants' misconduct, and the impact of their breaches of the s. 15(1) rights of the plaintiff and other Class Members warrant an award of damages under s. 24(1) of the *Charter*. Such damages would, in these circumstances, serve to compensate the plaintiff and other Class Members for their losses, vindicate their rights, and deter future misconduct by the defendants.

D. Restitution

70. At all material times during the Class Period, Canada failed to fund child and family services in Manitoba for status Indians residing off-reserve and for all non-status Indians, Inuit, and Métis persons – irrespective of residency on- or off-reserve. And, at all material times during the Class Period, the Province failed to sufficiently fund child and family services in Manitoba – including preventative and protection services – for Indigenous children, youth, and families.

71. At all material times during the Class Period, the defendants also failed to comply with Jordan's Principle in Manitoba, on grounds including but not limited to lack of

funding or lack of jurisdiction, or a jurisdictional dispute with another level or government or governmental department.

72. As a consequence of the defendants' discriminatory conduct and the discriminatory conduct of their respective servants as set out in the whole of this claim, the defendants were enriched and received financial benefit and gain by spending less on the provision of child and family services – including preventative services – and by spending less on the provision of essential products and services than they would have spent had they not engaged in the discriminatory conduct. And the plaintiff and other Class Members suffered a corresponding deprivation by not receiving sufficiently funded preventative and other child welfare services and by not receiving the products and services to which they were entitled.

73. There was no juristic reason for the defendants' enrichment or the corresponding deprivation to the plaintiff and other Class Members. The defendants have been unjustly enriched at the expense of the plaintiff and other Class Members and are required to make restitution to them for their wrongful gains.

E. Damages

74. As a result of the defendants' breaches, acts, and omissions – including breaches of the honour of the Crown, constitutional duties, common law duties, and the *Canadian Charter of Rights and Freedoms* – the plaintiff and other Class Members suffered injuries and damages, including:

a. Class Members were denied non-discriminatory child and family services;

b. the Underfunding Class Members were removed from their homes and communities to be placed in care, with resulting, foreseeable harms and losses;

c. the Underfunding Class Members and the Essential Services Class Members suffered physical, emotional, spiritual, and mental pain and disabilities;

d. the Underfunding Class Members and the Essential Services Class Members suffered sexual, physical, and emotional abuse while in out-of-home care;

e. the Underfunding Class Members and the Essential Services Class Members lost the opportunity to access essential public services and products in a timely manner;

f. the Essential Services Class Members had to fund out of pocket substitutes, where available, for public services and products delayed or improperly denied by the defendants; and

g. Family Class Members suffered loss of guidance, care and companionship, family bonds, language, culture, community ties, and resultant psychological trauma.

75. The high-handed way that the defendants have conducted their affairs warrants the condemnation of this Court. The defendants, including their agents, had knowledge of the fact and effects of their negligent and discriminatory conduct with respect to the provision of child and family services to Class Members. They proceeded with callous indifference to the foreseeable injuries that Class Members would, and did, suffer. The defendants knew, or ought to have known, that their conduct would perpetuate and exacerbate the harm and suffering caused by Indian Residential Schools, Day Schools, and the Sixties Scoop.

F. Legislation

76. The plaintiff pleads and relies on various statutes, regulations, and international instruments, including:

a. *An Act Respecting First Nations, Inuit and Métis children, youth and families,* SC 2019, c 24;

b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;

c. *The Child and Family Services Act*, CCSM c C80;

d. *The Child and Family Services Authorities Act*, SM 2002, c 35;

e. *Class Proceedings Act*, CCSM c C130;

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

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

h. *Convention on the Rights of the Child,* 20 November 1989, 1577 UNTS 3;

i. *The Court of Queen's Bench Act*, CCSM c C280;

j. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

k. *Proceedings Against the Crown Act*, CCSM c P140;

l. *The Path to Reconciliation Act,* CCSM c R30.5;

m. *Department of Indigenous Services Act,* SC 2019, c 29, s 336;

n. *Indian Act,* RSC 1985, c I-5;

o. *International Convention on the Elimination of All Forms of Racial Discrimination*, 26 October 1966, 660 UNTS 195;

p. *The Limitation of Actions Act,* CCSM c L150;

q. *United Nations Declaration on the Rights of Indigenous Peoples Act,* SC 2021, c 14; and

r. all other comparable and relevant acts and regulations and their predecessors and successors.

The plaintiff and Class request that this action to be tried in Winnipeg, Manitoba.

August 17, 2022

Date of issue

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