

**THE KING'S BENCH**  
**Winnipeg Centre (Proceedings under *The Class Proceedings Act*)**

BETWEEN:

**RENE LAFONTAINE, MARY DERENDORF, 4501712 MANITOBA ASSOCIATION INC.  
O/A METIS CHILD AND FAMILY SERVICES AUTHORITY, METIS CHILD, FAMILY  
AND COMMUNITY SERVICES AGENCY INC., AND MICHIF CHILD & FAMILY  
SERVICES INC.**

Plaintiffs,

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant.

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**SETTLEMENT AGREEMENT**

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**WHEREAS** Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority, Metis Child, Family and Community Services Agency Inc., and Michif Child & Family Services Inc. (collectively, the “Lafontaine Plaintiffs”) have advanced a class action under *The Class Proceedings Act*, C.C.S.M. c. 130 (the “Act”) with respect to the actions and policies of Manitoba (as defined herein) relating to the administration of CSA Benefits (as defined herein), as described in the Statement of Claim in Court of King’s Bench File No. CI 23-01-41054 (the “Action”);

**AND WHEREAS** Elsie Flette, as litigation guardian on behalf of minor children, E.F. and I.F. and Lee Malcolm-Baptiste (collectively, the “Flette Plaintiffs”) and Trudy Lavallee, as litigation guardian on behalf of the minor child, A.L. and Joshua Camplin (collectively, the “Lavallee Plaintiffs”) have also advanced class actions under the Act with respect to Manitoba’s actions and policies relating to the administration of Children’s Special Allowance benefits, as described in the Statements of Claim in Court of King’s Bench File Nos. CI 18-01-18438 and CI 23-01-41219;

**AND WHEREAS** the Flette Plaintiffs, Lavallee Plaintiffs and Lafontaine Plaintiffs all assert standing in their respective claims to advance claims on behalf of children who were impacted by Manitoba’s actions and policies relating to the administration of CSA Benefits;

**AND WHEREAS** the Lafontaine Action (as defined herein) was certified to proceed as a class proceeding on December 13, 2023;

**AND WHEREAS** counsel for the Parties (as defined herein) to this Settlement Agreement (as defined herein) have conducted a thorough analysis of the claims, and they have taken into account the extensive burdens and expense of litigation, including the risks of going to trial;

**AND WHEREAS** in consideration of all the circumstances and after extensive arm's length negotiations, both directly and with the assistance of Judicially Assisted Dispute Resolution sessions, the Parties to this Settlement Agreement wish to settle any and all issues among themselves in any way relating to the Actions;

**AND WHEREAS** the Parties executed an agreement in principle on March 19, 2024 setting out the main terms of agreement between the parties subject to the execution of this Settlement Agreement;

**AND WHEREAS** after their investigation, the Lafontaine Plaintiffs and Class Counsel (as defined herein) have concluded that this Settlement Agreement provides substantial benefits to the Class Members (as defined herein) and is fair, reasonable and in the best interests of the Class Members;

**NOW THEREFORE** the Parties to this Settlement Agreement agree to settle all matters related to the Actions on the following terms and conditions:

### **Part I - Definitions**

1. For the purposes of this Settlement Agreement and attached Schedules, the following definitions apply:
  - (a) **“Administration and Distribution Protocol”** means the process by which the Payments are made to Class Members set out in **Schedule “A”** hereto;
  - (b) **“Administrative Costs”** means all costs associated with the administration of the Distribution Fund, including Class Counsel fees, up to \$7,500,000 (or agreed to by the Parties and/or approved by the Court, as required);
  - (c) **“Administrator”** means the Authority;
  - (d) **“Agencies”** means the Plaintiffs, Metis Child, Family and Community Services Agency Inc. and Michif Child & Family Services Inc.;
  - (e) **“Amount held by the Agencies”** means CSA Benefit amounts held by the Agencies that were received by the Agencies during the Class Period in respect of Class Members but were not remitted to Manitoba, that total amount being \$6,928,582;
  - (f) **“Approval Hearing”** or **“Settlement Approval Hearing”** means the Court hearing to approve this Settlement Agreement;

- (g) **“Approval Order”** means the Order of the Court approving this Settlement Agreement;
- (h) **“Authority”** means the Plaintiff, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority and such Métis Child and Family Services Authority that is established pursuant to Red River Métis Law;
- (i) **“Certification Order”** means the certification order of Justice Huberdeau pronounced December 13, 2023 in Court File No. CI 23-01-41054;
- (j) **“Class”, “Class Member” or “Class Members”** is defined as per the Certification Order of Justice Huberdeau pronounced on December 13, 2023, being “all Indigenous and non-Indigenous persons who were in the care of Métis Child, Family and Community Services Agency Inc. and Michif Child & Family Services Inc. (together, the “Métis Agencies”) at any time between January 1, 2005, and March 31, 2019, and for whom the Métis Agencies received Children’s Special Allowances and other applicable benefits pursuant to the Children’s Special Allowances Act that were directly or indirectly taken by Manitoba, including through claw backs of provincial funding”;
- (k) **“Class Counsel”** means Lax O’Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation;
- (l) **“Class Counsel Fees”** means the legal fees and disbursements (including all applicable taxes) that have been incurred and that will be incurred by Class Counsel in respect of, related to or arising from the prosecution and settlement of the Lafontaine Action, including the administration of the settlement of the Lafontaine Action as determined and approved by the Court at the Approval Hearing and pursuant to s 38 of the Act;
- (m) **“Class Period”** means January 1, 2005 to March 31, 2019;

- (n) **“Court”** means the Court of King's Bench of Manitoba;
- (o) **“Court Approval Date”** means the later of:
- (i) 31 days after the date on which the Approval Order is signed and entered with the Court; and
  - (ii) The disposition of any appeals from the Approval Order;
- (p) **“CSA Benefits”** means the Children’s Special Allowance, which is a federal statutory, monthly payment that was payable in respect of each Class Member pursuant to the *Children’s Special Allowances Act*, SC 1992, c. 48. It is comprised of the:
- (i) Child Benefit, which means the portion of the CSA Benefit equivalent to the Canada Child Benefit; and the
  - (ii) Disability Benefit, which means the portion of the CSA Benefit equivalent to the Child Disability Benefit.
- (q) **“Cy Près Recipient”** means the Agencies;
- (r) **“Draft Notice Approval Order”** means the plan to disseminate the Notice to the Class approved by the Court based on the plan agreed to by the Parties, a draft of which is attached as **Schedule “D”**;
- (s) **“Distribution Fund”** means the amount of money that is available for distribution among the Class and totals \$84,228,552, which is the Settlement Fund and the Amounts held by the Agencies, less the Administrative Costs;
- (t) **“Epiq”** means Epiq Class Action Services Inc., being the entity contracted by the Authority to assist the Authority with the administration of the Settlement Agreement and the

Administration and Distribution Protocol as approved by the Court, and any of Epiq's employees;

(u) **"Honorarium"** means an honorarium, if any, to be paid to the Plaintiffs Rene Lafontaine and Mary Derendorf, in amounts to be approved by the Court at the Approval Hearing or thereafter;

(v) **"Lafontaine Action"** means the class proceeding, including all amendments thereto, commenced by Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority, Metis Child, Family and Community Services Agency Inc., and Michif Child & Family Services Inc. in the Court of King's Bench of Manitoba against Manitoba, having Court File No. CI 23-01-41054, and certified as a class proceeding by Order of the Court on December 13, 2023;

(w) **"Long Form Notice of Certification and Settlement Approval"** means long-form notice to the Class Members providing notice of certification of the Lafontaine Action and notice of the Approval Hearing, to be approved by the Court, a draft of which is attached as **Schedule "E"**;

(x) **"Manitoba"** means the Defendant, the Government of Manitoba;

(y) **"Manitoba's Counsel"** means Thompson Dorfman Sweatman LLP and Legal Services Branch;

(z) **"Notice"** means the Long Form Notice of Certification and Settlement Approval and the Short Form Notice of Certification and Settlement Approval;

(aa) **"Objection"** means the delivery of a valid Objection Form (attached as Schedule "B" to the Long Form Notice of Certification and Settlement Approval) describing an objection to the Settlement, which is received by the Administrator prior to August 26, 2024;

(bb) “**Opt-Out**” means the delivery of a valid Opt-Out Form (attached as Schedule “A” to the Long Form Notice of Certification and Settlement Approval), which is received by the Administrator prior to August 26, 2024;

(cc) “**Parties**” means together the Lafontaine Plaintiffs and the Defendant;

(dd) “**Payment**” means any amounts paid to Class Members pursuant to the Administration and Distribution Protocol. The Payment will include the following:

(i) “**Reconciliation Fund Payment**”, which means each Class Member’s *pro rata* payment from the Reconciliation Fund; and

(ii) “**CSA Payment**”, which means the sum of the Child Benefit Payment and the Disability Payment. “**Child Benefit Payment**” means each Class Member’s payment calculated in relation to the Child Benefit in respect of each Class Member. “**Disability Payment**” means each Class Member’s payment calculated in relation to the Disability Benefit each Class Member would have been eligible for while in the care of the Agencies (if applicable);

(ee) “**Released Claims**” means any claim arising during the Class Period by any Releasor relating to the subject matter of the Lafontaine Action and the further application proceedings referenced in **Schedule “B” hereto**, regardless of cause of action, type of loss or damage, or relief sought, and including, without limitation, any and all past, present, demands, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defences, debts, sums of money, assertions of rights, accounts, reckoning, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, whether

statutory, in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability, which have been asserted in the Lafontaine Action;

(ff) **“Releasees”** means individually and collectively Manitoba, and each of its past, present and future officers, employees, representatives, administrators, insurers, volunteers, agents and their respective heirs, successors, executors and assigns;

(gg) **“Releasers”** means the Plaintiffs, and each Class Member and deceased Class Member, and any person who may be entitled to make any subrogated, derivative or other claim pursuant to any contract, law or statute based upon any relationship with the Class Members, any person, entity or organization deemed to be a Releaser by operation of this Agreement, and the respective successors, heirs, beneficiaries, transferees, grantees, next of kin, executors, administrators and assigns of any of the foregoing;

(hh) **“Settlement”** or **“Settlement Agreement”** means this Agreement, as executed by the Parties or their representatives, including the attached Schedules;

(ii) **“Settlement Fund”** means the sum of \$84,800,000.00 which Manitoba has agreed to pay to settle the Lafontaine Action, inclusive of compensation for Payments, Honorarium, interest, legal costs and disbursements, Class Counsel Fees, and Administrative Costs, including costs incurred in the administration of this Settlement;

(jj) **“Short Form Notice of Certification and Settlement Approval”** means the notice to the Class Members of the Lafontaine Certification Order and the Approval Hearing, to be approved by the Court, a draft of which is attached as **Schedule “F”**.

## **Part II – Approval and Implementation**

2. The following Schedules to this Settlement Agreement are incorporated into and form part of it by this reference as fully as if contained in the body of this Settlement Agreement:

- (a) **Schedule “A”: Administration and Distribution Protocol;**
  - (b) **Schedule “B”: Notices of Application in Court of King’s Bench File Nos. CI 18-01-14043, CI 20-01-29002 & CI 20-01-29221;**
  - (c) **Schedule “C”: Statement of Claim in Court of King’s Bench File No. CI 23-01-41054;**
  - (d) **Schedule “D”: Draft Notice Approval Order;**
  - (e) **Schedule “E”: Long Form of Notice of Certification and Settlement Approval;**
  - (f) **Schedule “F”: Short Form Notice of Certification and Settlement Approval;**
  - (g) **Schedule “G”: Form Letter to Other Governments.**
3. However, in the event of a contradiction between the content of the body of this Settlement Agreement and the content of the body of any of the above Schedules, the language of the body of the Settlement Agreement will govern.

### **Part III – Notice Program**

4. Class Counsel shall seek Court approval of the forms of Notice attached hereto as **Schedules “E” and “F”**, in the manner provided in the draft Notice Approval Order at **Schedule “D”**, and shall implement the Notice using the forms of Notice approved by the Court. The Notice shall include, among other information: a description of the material terms of this Settlement; a date by which Class Members may object to this Settlement; the date upon which the Approval Hearing shall occur; and the address of the website at which Class Members may access this Settlement Agreement and other related documents and information.
5. No party will appeal the Court’s decision on Notice.
6. The Notice shall explain the procedure for Class Members who wish to object to the Settlement by submitting written objections to the Administrator prior to August 26, 2024. The Notice must set forth the time and place of the Approval Hearing (subject to change) and state that any Class Member who does not file a timely and adequate objection in accordance with this paragraph waives the right to object or to be heard at the Approval Hearing and shall be barred from making any objection to the Settlement. Class Counsel shall deliver all Objections to the Defendant by September 3, 2024.

### **Part IV - Settlement Fund**



7. As defined herein, the Distribution Fund will be used to pay the Payments, Honorarium, interest, legal costs and disbursements, Class Counsel Fees, and Administrative Costs, in accordance with this Settlement Agreement in full and final settlement of the Lafontaine Action.
8. For clarity, all Administrative Costs shall be paid from the Settlement Fund and no additional contributions to such Administrative Costs or any other costs shall be paid by Manitoba.
9. Manitoba shall pay the total of the Settlement Fund to Class Counsel in trust within five (5) business days after the Court Approval Date.
10. Funds shall be held by the Authority in an interest-bearing or investment account. The Authority, with the assistance of Epiq, shall provide a detailed accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Settlement Agreement, upon request of any of the Parties. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or as otherwise specified in this Settlement Agreement.
11. The Distribution Fund is the amount of money that is available for distribution among the Class and totals \$84,228,552. It is the Settlement Fund and the Amounts held by the Agencies less the Administrative Costs. The Distribution Fund shall be paid out to the Class in accordance with the Administration and Distribution Protocol. No amounts may be withdrawn from the Distribution Fund unless expressly authorized by this Settlement Agreement or the Court.
12. After April 1, 2037, the Administrator shall pay any remaining Amounts to the *Cy Près* recipient(s).

#### **Part V – Administration and Distribution Protocol**

13. The Administration and Distribution Protocol is described in **Schedule “A”**.

14. Subject to Court Approval, it is agreed the Authority will be the Administrator for administering the settlement in accordance with this Settlement Agreement and the Administration and Distribution Protocol.
15. Class Counsel shall take all reasonable measures to cause the Administrator to diligently carry out its responsibilities as described in this Agreement.
16. The Parties, Class Counsel, and Manitoba's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Authority or Epiq, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) any breach of confidentiality by the Authority or Epiq. The Authority shall indemnify and hold harmless the Parties (other than the Authority), Class Counsel, and Manitoba's Counsel for losses arising from: (i) any act or omission or determination of the Authority, or any of the Authority's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) any breach of confidentiality by the Authority. However, for the Authority's indemnity obligations to apply, a court of competent jurisdiction must find that a loss has been suffered and that such loss was caused by acts of the Authority that were in breach of the Settlement Agreement or that were grossly negligent.
17. Within five (5) calendar days of the end of each calendar month, or as may be otherwise agreed by the Parties, the Authority, with the assistance of Epiq, shall submit a report to the Parties certifying the following:
  - (a) The total number of all Class Members who have received Payments;
  - (b) A summary of the total payments from the Settlement Fund to the Class Members;and

- (c) Any other reporting information as required by the Administration and Distribution Protocol.
18. The Parties agree that when commenting publicly on the Actions or this Settlement, they shall:
- (a) Inform the inquirer that the Actions have been settled to the satisfaction of all parties;
  - (b) Inform the inquirer that it is the view of the Parties that the settlement of the Actions is fair, reasonable and in the best interests of the Class; and
  - (c) Not reveal anything said during the settlement negotiations.

### **Part VI – Apology and Commitments**

19. At some point reasonably soon after the Court Approval Date, the Minister responsible for Child and Family Services for Manitoba will at a public sitting of the Legislature issue a public apology to all Class Members on behalf of Manitoba with respect to Manitoba’s actions and policies relating to the administration of CSA Benefits during the Class Period. Manitoba agreed to provide Class Counsel with a minimum of five (5) business days notice with respect to the date upon which the said public apology will be made.
20. The Parties agree, and Manitoba confirms that, subject to operation of applicable provincial law, it is intended that there be no deduction or claw back from social or income assistance programs as a result of Payments to Class Members or their estates. Manitoba confirms that receipt of Payments will be deemed not to be a form of income replacement, or compensation for loss of income. Manitoba will take reasonable steps to confirm that Payments pursuant to the Administration and Distribution Protocol will not affect the eligibility for or duration of social assistance or other benefits available to Class Members. Manitoba shall, within ten (10) days of the Court Approval Date, send a letter to the federal government and other provincial governments to request their agreement that any social assistance benefits available to Class Members from those other governments will not be affected by any settlement funds received by individual Class Members or their estates, which letter shall be substantially in the form attached as **Schedule “G”**.

### **Part VII – Court Approval**

21. With the exception of steps relating to the approval of the Notice, the Parties agree to adjourn all steps in the Actions pending a determination by the Court on whether to approve the Settlement.
22. It is understood and agreed that Court Approval of this Settlement Agreement and the Administration and Distribution Protocol is required. The Parties will arrange for the Settlement Approval Hearing to be heard as soon as possible following the execution of this Settlement Agreement. Prior to the Approval Hearing, the Notice of Approval Hearing is to be ordered and directed by the Court.
23. The Parties agree to file motion materials, as necessary, with respect to the motion to approve the Settlement and counsel shall act reasonably and in good faith on the content of such motion materials.
24. Class Counsel shall bring a motion for approval of their requested Class Counsel Fees by the Court at the time of the Settlement Approval Hearing. The Defendant shall take no position on Class Counsel's motion to approve their requested Class Counsel Fees.

#### **Part VIII - Termination**

25. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement. In the event of termination, this Settlement Agreement shall be deemed to be a without prejudice settlement discussion and shall have no further force or effect, save and except for this section, which shall survive termination.

#### **Part IX – Privacy and Confidentiality**

26. Any information provided, created or obtained in the course of developing or administering this Settlement, whether written or oral, will be kept confidential by the Parties, Parties' counsel, and the Administrator and will not be shared or used for any purpose other than this settlement unless otherwise agreed by the Parties in writing or as otherwise provided for or required by law. Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to this Settlement Agreement continues in force and in perpetuity, notwithstanding the termination or voiding of this Settlement Agreement.

27. The Administrator shall retain all Class Member information in strict confidence. The Administrator shall also retain in strict confidence the information of all individuals who communicate with the Administrator in any way with respect to the Lafontaine Action. The Administrator must assert and protect the privacy rights of Class Members, including by maintaining the confidentiality and security of and preventing the unauthorized access or acquisition of any financial or personal information submitted in connection with any claim for benefits pursuant to this Settlement Agreement. In the event of any unauthorized access to or acquisition of personal information concerning any Class Member as a direct result of the intentional or negligent acts or omissions of the Administrator, the Administrator shall be responsible for complying with any privacy, data security, or breach notification obligations under local, provincial or federal law, and will be solely responsible for directly providing notice to local, provincial, or federal agencies, affected Class Members, and/or other persons or entities.
28. Class Counsel and Manitoba's Counsel shall apply to the Court for an order or orders authorizing the release to the Administrator, including Epiq, of information that may be necessary to assist in the implementation of this Settlement Agreement pursuant to section 76 of *The Child and Family Services Act*, C.C.S.M. c. C80.
29. Two (2) years after completing the Second Distribution (as described in the Administration and Distribution Protocol), Class Counsel will direct Epiq to destroy all Class Member information and documentation in its possession, unless a Class Member specifically requests the return of such information within the two (2) year period. Upon receipt of such request, the Administrator shall forward the Class Member information as directed. The Authority will maintain Class Member's information and documentation in its possession in accordance with its statutory and legal obligations.

#### **Part X - No Admission of Liability**

30. This Settlement Agreement, whether or not approved by the Court, and anything contained herein, and any and all negotiations, documents, discussion and proceedings associated with this Settlement, and any action taken to carry out this Settlement Agreement shall not be relied on as an admission of liability in any current or future action or proceeding against Manitoba.

31. Whether or not this Settlement Agreement is approved, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek Court approval of the Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

### **Part XI - Releases**

32. The Releasors fully and forever release, remise, acquit and discharge the Releasees from the Released Claims, regardless of whether any Releasor executes and delivers a written release. By executing this Settlement Agreement, the Parties acknowledge that the Lafontaine Action shall be discontinued with prejudice as against the Defendant, without costs, pursuant to the terms of the Approval Order, and all Released Claims shall thereby be conclusively settled, compromised, satisfied and released as to the Releasees. The Approval Order shall provide for and effect the full and final release by the Releasors of all Released Claims.
33. If any Releasor brings an action or asserts a claim against any Releasee contrary to the terms of this Settlement Agreement, the counsel of record for such Releasor shall be provided with a copy of this Settlement Agreement and the Approval Order. If the Releasor does not within 20 days thereafter dismiss their action and the action or claim is subsequently dismissed or decided in favour of the Releasees, the Releasor who brought such action or claim shall pay Releasees' reasonable counsel fees and disbursements incurred by Releasees in the defense of such action or claim.
34. Notwithstanding the above, the Court shall retain jurisdiction over the Parties and the Settlement Agreement and with respect to the future performance of the terms of the Settlement Agreement, and to ensure that all payments and other actions required of any of the Parties by the Settlement and this Settlement Agreement are properly made or taken.

### **Part XII - General**

35. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Manitoba.
36. This Settlement Agreement constitutes the entire agreement between the Parties and may not be modified or amended except in writing, on consent of the Parties, and with Court approval.

37. This Settlement Agreement may be signed (including electronic signatures) by the Parties in counterpart, and delivered electronically, which shall have the same effect and enforceability as a single executed document.

**Remainder of the Page Left Intentionally Blank**

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of June 19, 2024.

LAX O'SULLIVAN LISUS GOTTLIEB LLP

June 19, 2024



Date

Counsel for the Lafontaine Plaintiffs and the Class

MN TRACHTENBERG LAW CORPORATION

Date

Counsel for the Lafontaine Plaintiffs and the Class

4501712 MANITOBA ASSOCIATION INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY

Date

(I have authority to bind the corporation)

GOVERNMENT OF MANITOBA

Date

Deputy Minister responsible for Child and Family Services on behalf of the Government of Manitoba



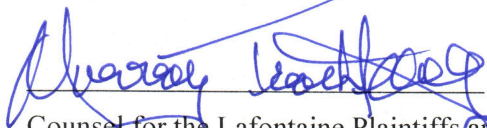
IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of

\_\_\_\_\_.

LAX O'SULLIVAN LISUS GOTTLIEB LLP

\_\_\_\_\_  
Date Counsel for the Lafontaine Plaintiffs and the Class

MN TRACHTENBERG LAW CORPORATION

June 19, 2024   
Date Counsel for the Lafontaine Plaintiffs and the Class

4501712 MANITOBA ASSOCIATION INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY

\_\_\_\_\_  
Date (I have authority to bind the corporation)

GOVERNMENT OF MANITOBA

\_\_\_\_\_  
Date Deputy Minister responsible for Child and Family Services on behalf of the Government of Manitoba

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of \_\_\_\_\_.


LAX O’SULLIVAN LISUS GOTTLIEB LLP

\_\_\_\_\_  
Date Counsel for the Lafontaine Plaintiffs and the Class

MN TRACHTENBERG LAW CORPORATION

\_\_\_\_\_  
Date Counsel for the Lafontaine Plaintiffs and the Class

4501712 MANITOBA ASSOCIATION INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY

June 19, 2024   
Date (I have authority to bind the corporation)

GOVERNMENT OF MANITOBA

\_\_\_\_\_  
Date Deputy Minister responsible for Child and Family Services on behalf of the Government of Manitoba

IN WITNESS WHEREOF, each of the Parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of \_\_\_\_\_.

LAX O’SULLIVAN LISUS GOTTLIEB LLP

\_\_\_\_\_  
Date Counsel for the Lafontaine Plaintiffs and the Class

MN TRACHTENBERG LAW CORPORATION

\_\_\_\_\_  
Date Counsel for the Lafontaine Plaintiffs and the Class

4501712 MANITOBA ASSOCIATION INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY

\_\_\_\_\_  
Date (I have authority to bind the corporation)

GOVERNMENT OF MANITOBA

June 19, 2024



\_\_\_\_\_  
Date Deputy Minister responsible for Child and Family Services on behalf of the Government of Manitoba

**SCHEDULE "A" –**

**Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc o/a Metis  
Child and Family Services Authority, Metis Child, Family and Community Services  
Agency Inc, and Michif Child & Family Services Inc v The Government of  
Manitoba**

**Administration and Distribution Protocol for *Lafontaine* Class Action**

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## A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol ("**Protocol**"), the following definitions will apply:

- (a) **Administration Process** means the process by which the Payments are made to Class Members, as set out in Section H.
- (b) **Administrator** means the Authority.
- (c) **Administrative Costs** means all costs associated with the administration of the Distribution Fund, including Class Counsel fees, up to \$7,500,000 (or agreed to by the parties and/or approved by the Court, as required).
- (d) **Agencies** means the Plaintiffs, Metis Child, Family and Community Services Agency Inc. and Michif Child & Family Services Inc.
- (e) **Amount held by the Agencies** means CSA Benefit amounts held by the Agencies that were received by the Agencies during the Class Period in respect of Class Members but were not remitted to Manitoba, that total amount being \$6,928,582.
- (f) **Authority** means the Plaintiff, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority and such Métis Child and Family Services Authority that is established pursuant to Red River Métis Law.

- (g) **Class** means all Indigenous and non-Indigenous persons who were in the care of the Agencies at any time between January 1, 2005 and March 31, 2019, and for whom the Agencies received CSA Benefits that were directly or indirectly taken by Manitoba, including through claw backs of provincial funding.
- (h) **Class Counsel** means Lax O’Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation.
- (i) **Class Counsel Fees** means the legal fees and disbursements (including all applicable taxes) that have been incurred and that will be incurred by Class Counsel in respect of, related to or arising from the prosecution and settlement of the Lafontaine Action, including the administration of the settlement of the Lafontaine Action.
- (j) **Class Member** means any individual who is a part of the Class, and includes the following:
- (i) **Adult Class Member**, which means Class Members who have reached the age of majority, as stated in *The Age of Majority Act*, RSM 1987, c A7.
  - (ii) **Deceased Class Member**, which means Class Members who have died prior to identifying themselves through the Identification Process.



- (iii) **Underage Class Member in the care of the Agencies**, which means Class Members who are under the age of majority and are in the care of the Agencies.
- (iv) **Underage Class Member not in the care of the Agencies**, which means Class Members who are under the age of majority and are not in the care of the Agencies.
- (k) **Class Period** means January 1, 2005 to March 31, 2019.
- (l) **Court** means the Court of King's Bench of Manitoba.
- (m) **CSA Benefit** means the Children's Special Allowance, which is a federal statutory, monthly payment that was payable in respect of each Class Member pursuant to the *Children's Special Allowances Act*, SC 1992, c. 48. It is comprised of the:
  - (i) **Child Benefit**, which means the portion of the CSA Benefit equivalent to the Canada Child Benefit; and the
  - (ii) **Disability Benefit**, which means the portion of the CSA Benefit equivalent to the Child Disability Benefit.
- (n) **Distribution Fund** means the amount of money that is available for distribution among the Class and totals \$84,228,552, which is the Settlement Fund and the Amounts held by the Agencies, less the Administrative Costs.

- (o) **Epiq** means Epiq Class Action Services Inc., being the entity contracted by the Authority to assist the Authority with the administration of the Settlement Agreement and the Protocol as approved by the Court, and any of Epiq's employees.
- (p) **First Distribution** means the distribution of the CSA Payments.
- (q) **Flette Action** means the class proceeding, including all amendments thereto, commenced by Elsie Flette, as litigation guardian on behalf of minor children, E.F. and I.F. and Lee Malcom-Baptiste in the Court of King's Bench of Manitoba against Manitoba, having file number CI 18-01-18438, and certified as a class proceeding by Order of the Court on December 13, 2023.
- (r) **Honorarium** means an honorarium, if any, to be paid to the Plaintiffs Rene Lafontaine and Mary Derendorf, in amounts to be approved by the Court;
- (s) **Identification Process** means the process by which Class Members (with the exception of Underage Class Members in the care of the Agencies) or the administrator of a Class Member's estate must identify themselves to receive Payments under this Protocol.
  - (i) **Identification Meeting** means the meeting in which the Class Member or the administrator of a Class Member's estate will identify themselves to receive Payments under this Protocol.

- (ii) **Identifier** means the individual from the Authority, Agencies, or Manitoba Métis Federation who attends an Identification Meeting to identify the Class Member or the administrator of a Class Member's estate.
  
- (t) **Lafontaine Action** means the class proceeding, including all amendments thereto, commenced by Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority, Metis Child, Family and Community Services Agency Inc., and Michif Child & Family Services Inc. in the Court of King's Bench of Manitoba against Manitoba, having Court File No. CI 23-01-41054, and certified as a class proceeding by Order of the Court on December 13, 2023.
  
- (u) **Lavallee Action** means the class proceeding, including all amendments thereto, commenced by Trudy Lavallee, as litigation guardian on behalf of the minor child, A.L. and Joshua Camplin in the Court of King's Bench of Manitoba against Manitoba, having file number CI 23-01-41219, and certified as a class proceeding by Order of the Court on December 13, 2023.
  
- (v) **Manitoba** means the Defendant, the Government of Manitoba.
  
- (w) **Notice** means communications sent as part of the court-approved Notice Order.

- (x) **Notification Letters** means letters sent to each Class Member describing the dates for which the Class Member was in the care of the Agencies, whether the Class Member would have been eligible for Disability Benefits while in the care of the Agencies, the CSA Payment that each Class Member is estimated to be entitled to receive, the fact that a Second Distribution will be made, the Identification Process, and the Review Process.
- (y) **Objection** means the delivery of a valid Objection form describing an objection to the Settlement, which is received by the Administrator prior to August 26, 2024;
- (z) **Opt-Out** means the delivery of a valid Opt-Out form, which is received by the Administrator prior to August 26, 2024;
- (aa) **Payment** means any amounts paid to Class Members or the administrator of a Class Member's estate pursuant to this Protocol. The Payment will include the following:
  - (i) **CSA Payment**, which means the sum of the Child Benefit Payment and the Disability Payment, including interest. **Child Benefit Payment** means each Class Member's payment calculated in relation to the Child Benefit in respect of each Class Member. **Disability Payment** means, if applicable, each Class Member's payment calculated in relation to the Disability Benefit each Class

Member would have been eligible for while in the care of the Agencies.

- (ii) **Reconciliation Payment**, which means each Class Member's *pro rata* payment from the Reconciliation Fund.
  
- (bb) **Reconciliation Fund** means the amount left over in the Distribution Fund after the First Distribution, excluding Undistributed Class Member CSA Payments.
  
- (cc) **Release** means the release in the form attached as Schedule A releasing the Manitoba Métis Federation, the Authority, the Agencies and Class Counsel for any and all claims related to this Class Action, including this Protocol.
  
- (dd) **Review Form** means the form a Class Member or the administrator of a Class Member's estate must fill out to request (i) a review of the dates for which a Class Member is stated in the Notification Letter to have been in the care of the Agencies as part of the Review Process, or (ii) in the case of persons who did not receive a Notification Letter, that they are nevertheless a Class member and therefore entitled to Payment.
  
- (ee) **Review Process** means the process by which Class Members or the administrator of a Class Member's estate will be able to dispute the dates in care that were used to compute a Class Member's CSA Payment. It further means the process by which a person who did not receive a

Notification Letter may attempt to prove that they are a Class Member and therefore entitled to Payment.

- (ff) **Second Distribution** means the distribution of the Reconciliation Payments.
- (gg) **Settlement Agreement** means the settlement agreement for the Lafontaine Action as approved by the Court.
- (hh) **Settlement Approval** means the later of: (a) 31 days after the Order approving the Settlement Agreement is signed and entered with the Court; and (b) the final disposition of any appeals from the Order approving the Settlement Agreement.
- (ii) **Settlement Fund** means the sum of \$84,800,000.00 which Manitoba has agreed to pay to settle the Lafontaine Action, inclusive of Payments, Honorarium, interest, legal costs and disbursements, Class Counsel Fees, and Administrative Costs.
- (jj) **Undistributed Class Member** means Class Members who do not receive a Payment during the First Distribution Period.

## **B. GENERAL PRINCIPLES OF THE ADMINISTRATION**

2. This Protocol is intended to govern the Administration Process to distribute the Distribution Funds. This Protocol is designed and intended to result in payment to the highest possible proportion of Class Members. To this end, the Authority, Epiq, and Class Counsel will make reasonable efforts to provide Notice and Notification Letters

directly to Class Members. The Authority, Epiq, and Class Counsel will also make reasonable efforts to make the Identification Process accessible for Class Members.

3. This Protocol is also intended to provide for the calculation, as accurately as possible with reasonable efforts, given the available records, the amount of CSA Benefits paid in respect of each Class Member, taking into consideration:

- (a) the amount of time each Class Member spent in the care of the Agencies;  
and
- (b) when each Class Member was in the care of the Agencies.

4. In determining the CSA Payment, this Protocol is intended to provide for the determination, as accurately as possible given the available records, of:

- (a) whether a Class Member would have been eligible for Disability Benefits while in the care of the Agencies; and
- (b) if the Class Member would have been eligible for Disability Benefits while in the care of the Agencies,
  - (i) the amount of the Disability Benefit; and
  - (ii) whether the Class Member and/or Agency has not otherwise previously received the Disability Benefits.

### **C. CATEGORIES OF CLASS MEMBERS**

5. There are four categories of Class Members for the purposes of this Protocol: Adult Class Members; Underage Class Members in the care of the Agencies; Underage

Class Members who are not in the care of the Agencies; and Deceased Class Members. The category a Class Member belongs to will determine the process by which the Payment is made, as follows:

(a) **Distribution by Epiq:**

- (i) **Adult Class Members:** Adult Class Members will receive their Payments directly. Epiq will make distributions to the Adult Class Members on behalf of the Authority.

(b) **Distribution by the Authority:**

- (i) **Underage Class Members in the care of the Agencies:** Payments for Underage Class Members who are in the care of the Agencies will be paid to the Agencies. The Authority will make distributions to the Agencies on behalf of Underage Class Members who are in the care of the Agencies.
- (ii) **Underage Class Members who are not in the care of the Agencies:** Payments for Underage Class Members who are not in the care of the Agencies will be held in trust by the Authority in an interest-bearing or investment account, subject to any further order from the Court. The Authority will make distributions to Underage Class Members who are not in the care of the Agencies after they turn the age of majority.



- (iii) **Deceased Class Members:** Payments for Deceased Class Members will be paid to the administrator of the Deceased Class Member's estate. To be recognized as the administrator of the Deceased Class Member's estate, a person must provide either: (1) a probated will; or (2) a court order appointing them as the administrator of the Deceased Class Member's estate. If the Deceased Class Member's estate does not have an administrator and the Authority is not advised of the intention of an individual to apply to Court to be appointed as an administrator, at the Authority's sole discretion, acting reasonably, and at any time, the Authority will advise the Public Guardian and Trustee of Manitoba of the absence of an administrator for the Deceased Class Member's estate. In the event that the Public Guardian and Trustee of Manitoba does not seek court appointment as the administrator of the Deceased Class Member's estate, the Deceased Class Member's Payment will be part of the *cy près* Order described in Section H, Subsection 5, subject to the discretion of the Authority.

**D. THE ADMINISTRATORS' DUTIES AND RESPONSIBILITIES**

6. The Authority shall be the Administrator, with assistance from Epiq.
7. The Authority, with the assistance of Epiq, shall administer this Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, and the ongoing authority and supervision of the Court.

8. The Authority's duties and responsibilities shall include the following:
- (a) Creating and maintaining a list of Class Members, which shall include the following information:
    - (i) Full names;
    - (ii) Contact information, including email addresses, phone numbers, and mailing addresses (where possible); and
    - (iii) The dates for which each Class Member was in the care of the Agencies;
  - (b) Developing the algorithm(s)/formula(s)/etc. for calculating Class Members' Payments pursuant to this Protocol;
  - (c) Making timely calculations of Class Members' Payments;
  - (d) Distributing the Payments for Underage, Deceased and Undistributed Class Members in a timely fashion pursuant to this Protocol;
  - (e) Reporting the results of the Administration Process and the intended distributions to Class Counsel in a timely fashion;
  - (f) Performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Court;
  - (g) Dedicating sufficient personnel to respond to Class Members' inquiries that cannot be addressed by Epiq;

- (h) Arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Court;
  - (i) Reporting to Class Counsel on the distribution process and administration expenses;
  - (j) Holding the Distribution Fund in an interest-bearing or investment account in Canada and making all payments from the net proceeds from that account as authorized;
  - (k) Cash management and audit control;
  - (l) Preparing and submitting reports and records as directed by Class Counsel or the Court; and
  - (m) Reporting on the results of the administration and distribution process from time to time to the Manitoba Métis Federation Cabinet.
9. Epiq's duties and responsibilities shall include the following:
- (a) Due to the confidential and sensitive nature of certain Class Member information, only Brenda Weiss (Senior Director of Client Services) and Sarah-Jade Pauley (Project Manager) from Epiq will be permitted to access that information, and only if and when necessary to fulfil Epiq's role with respect to this Protocol and the Lafontaine Action. If a need arises for other Epiq employees to have access to Class Member information, the Authority or Class Counsel must request consent from Manitoba in writing

and explain the reasons or circumstances as to why the request is being made, and Manitoba shall not withhold its consent unreasonably;

- (b) Developing, implementing, and operating the Administration Process including a bilingual administration website in both English and French;
- (c) Providing Notice(s) to the Class Members pursuant to the Notice Order;
- (d) Receiving information from the Authority relating to Class Members to assist in the distribution of Notice and the Class Members' Payments;
- (e) Notifying Class Members of their Payments, and the dates in which they were in the care of the Agencies;
- (f) Receiving any Opt-Outs and Objections from the Class Members;
- (g) Creating and maintaining a list of all Class Members who have submitted an Opt-Out form or an Objection form;
- (h) Providing a list of all Class Members who have submitted an Opt-Out form or an Objection form to Class Counsel by August 30, 2024;
- (i) Distributing the Payments for Adult Class Members in a timely fashion pursuant to this Protocol;
- (j) Reporting the results of the Administration Process and the intended distributions to Class Counsel and the Authority in a timely fashion;

- (k) Maintaining the information necessary so as to permit Class Counsel and the Authority to audit the administration of the settlement of the Lafontaine Action, at the discretion of Class Counsel or the Authority or if ordered by the Court;
- (l) Dedicating sufficient personnel to respond to Class Members' inquiries in English or French, as the Class Member elects;
- (m) Arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Court;
- (n) Reporting to Class Counsel and the Authority on the distribution process and administration expenses;
- (o) Cash management and audit control; and
- (p) Preparing and submitting reports and records as directed by Class Counsel, the Authority or the Court.

10. The Authority and Epiq will reasonably cooperate with the claims administrator for the *Flette* and *Lavallee* Actions by directing individuals who may be class members in the *Flette* and *Lavallee* Actions to the relevant claims administrator for those actions or assisting potential class members in the *Flette* and *Lavallee* Actions in making a claim under those class actions.

11. The Authority, the Agencies, Epiq, the Manitoba Métis Federation and Class Counsel will be entitled to communicate with Class Members about the Settlement and this Protocol.

#### **E. DIVISION OF DISTRIBUTION FUND**

12. The Distribution Fund is the amount of money that is available for distribution among the Class and totals \$84,228,552. It is the Settlement Fund and the Amounts held by the Agencies less the Administrative Costs. The Settlement Fund represents, in part, the CSA Benefits amounts clawed back by Manitoba. The Amounts held by the Agencies represent amounts held by the Agencies that were received by the Agencies during the Class Period in respect of Class Members but were not remitted to Manitoba. Both the Settlement Fund and the Amounts held by the Agencies are available for distribution to the Class. The Distribution Fund is broken down into the following categories:

| <b>Category</b>  | <b>Amount</b>       |
|--|---------------------|
| Amounts of CSA Benefits clawed back by Manitoba        | \$45,625,900        |
| Disability Benefits                                    | \$5,000,000         |
| Interest on CSA Benefits clawed back (2.25%, compound) | \$11,006,512        |
| Reconciliation   | \$15,667,588        |
| <b>Settlement Fund Total</b>                           | <b>\$77,300,000</b> |

|  |                     |
|--|---------------------|
| CSA Benefits currently held by Agencies        | \$6,313,586         |
| Disability Benefits currently held by Agencies | \$614,966           |
| <b>Amounts held by Agencies Total</b>          | <b>\$6,928,582</b>  |
| <b>DISTRIBUTION FUND TOTAL</b>                 | <b>\$84,228,552</b> |

13. The amount of the Distribution Fund does not include interest income earned after payment of the Settlement Fund is made by Manitoba. This investment income will be part of the Reconciliation Payments, subject to any additional Administrative Costs that may be required.

## **F. CALCULATION OF CLASS MEMBERS' CSA PAYMENT**

### **i. Child Benefit Payment**

14. To calculate the Child Benefit Payment for each Class Member, the Authority will first determine the dates for which the Class Member was in the care of the Agencies. For each year the Class Member was in the care of the Agencies, the Authority will multiply the number of months the Class Member was in the care of the Agencies by the monthly Child Benefit for that year which aligns with the age of the Class Member for the given year. These yearly amounts will be added to determine the Class Member's total Child Benefit Payment. If an individual was in the care of the Agencies for less than 30 days, they are not a Class Member and are not entitled to a Child Benefit Payment.

**ii. Disability Payment**

15. To calculate the Disability Payment for each Class Member that would have been eligible for Disability Benefits, the Authority will first determine the dates for which the Class Member would have been eligible for Disability Benefits and was in the care of the Agencies. For each year the Class Member would have been eligible for Disability Benefits and was in the care of the Agencies, the Authority will multiply the number of months the Class Member was eligible for Disability Benefits and was in the care of the Agencies by the monthly Disability Benefit for that year which aligns with the age of the Class Member for the given year. These yearly amounts will be added to determine the Class Member's total Disability Payment.

16. If the Authority determines the total Disability Payments for the Class exceed \$5,000,000, the Disability Payments will be determined for eligible Class Members on a *pro rata* basis. Each eligible Class Member's disability percentage will be determined by dividing the Class Member's Disability Payment by the total Disability Payments across the Class. This disability percentage will then be multiplied by \$5,000,000 to determine each eligible Class Member's Disability Payment. The Plaintiffs reserve the right to modify this \$5,000,000 cap at the Settlement Approval hearing, to be held September 5-6, 2024.

**iii. Total CSA Payment and Interest**

17. Each Class Member's CSA Payment amount will be calculated by adding the Class Member's Child Benefit Payment and (if applicable) the Class Member's Disability Payment. Interest will be calculated for each Class Member's CSA Payment at a rate of



2.25%. Interest will be calculated until the date of Settlement Approval, considering the dates for which the Class Member would have received the CSA Benefits.

#### **G. CALCULATION OF CLASS MEMBERS' RECONCILIATION PAYMENT**

18. The Reconciliation Fund will comprise of those amounts left over in the Distribution Fund after the payment of the Honorarium and First Distribution, and after any adjustments made as a result of the Review Process.

19. The Reconciliation Payment will be determined for each Class Member on a *pro rata* basis. Each Class Member's Reconciliation percentage will be determined by dividing the Class Member's CSA Payments by the total CSA Payments across the Class. This Reconciliation percentage will then be multiplied by the total Reconciliation Fund to determine each Class Member's Reconciliation Payment.

#### **H. THE ADMINISTRATION PROCESS**

##### **i. Notification Letters**

20. Epiq will prepare Notification Letters individualized for each Class Member describing:

- (a) The dates for which the Class Member was in the care of the Agencies;
- (b) Whether the Class Member would have been eligible for Disability Benefits while in the care of the Agencies;
- (c) The estimated CSA Payment that each Class Member is entitled to receive;
- (d) The Trigger Criteria (defined below);

- (e) The Identification Process (detailed below) by which each Class Member must identify themselves, before receiving their CSA Payment; and
- (f) The Review Process (detailed below) by which Class Members may dispute their CSA Payment.

The Administrator will also cause a template Notification Letter to be posted on the website accessible to the general public with respect to the Class Action, at <http://metisclassaction.ca>.

## ii. First Distribution

21. The First Distribution Period will begin on Settlement Approval and conclude either (A) two years from Settlement Approval or (B) if ten or fewer Class Members have presented themselves for identification in a month for two consecutive months, the last day of the month in the second month, whichever comes first (the “**Trigger Criteria**”).

22. All Undistributed Class Member CSA Payments remaining at the end of the First Distribution Period will continue to be held by the Authority in trust for the Undistributed Class Members pursuant to the terms of this Protocol (detailed below). For clarity, Undistributed Class Member CSA Payments will not be part of the Reconciliation Fund.

### 1. Honorarium

23. Within thirty days of the Authority receiving the Settlement Fund from Manitoba, the Authority will transfer the Honorarium, if any, to be paid to the Plaintiffs, Rene Lafontaine and Mary Derendorf.

## 2. Underage Class Members in the Care of the Agencies

24. Within thirty days of the Authority receiving the Settlement Fund from Manitoba, the Authority will transfer the CSA Payments in respect of Underage Class Members in the Care of the Agencies to the appropriate Agency for each Underage Class Member. For example, if Class Member A is underage and currently in the care of Michif Child & Family Services Inc, the Authority would transfer the CSA Payment in respect of Class Member A to Michif Child & Family Services Inc.

## 3. Underage Class Members not in the Care of the Agencies

25. The Authority will hold the Payments for Underage Class Members who are not in the care of the Agencies in trust in an interest-bearing or investment account, subject to any further order from the Court. The Authority will make distributions to Underage Class Members who are not in the care of the Agencies after the Underage Class Member achieves the age of majority.

26. At the Authority's sole discretion, acting reasonably, and at any time, the Authority may provide a list of Underage Class Members who are not in the care of the Agencies to the Public Guardian and Trustee of Manitoba for the Public Guardian and Trustee of Manitoba to complete the Identification Process as the Class Member's Representative and take over responsibility of the Settlement Funds in Trust.

## 4. Identification Process

27. The Identification Process will be conducted by the Authority, with the assistance of staff from the Agencies and the Manitoba Métis Federation.

28. Class Members or the administrator of a Class Member's estate will have to identify themselves before receiving their CSA Payment through the Identification Process. Class Members and the administrators of a Class Member's estate will be able to identify themselves either in-person (by presenting themselves to the office of the Authority or the Agencies) or virtually using Zoom or similar video teleconference technologies.

29. To certify their identity, Class Members or the administrators of a Class Member's estate will have to present a government-issued photo ID such as:

- Manitoba Métis Federation Citizenship Card;
- Provincial or Territorial Driver's License;
- Provincial or Territorial Identification Card;
- Passport;
- Secure Certificate of Indian Status Card;
- Permanent Resident Card;
- Canadian Forces Photo Identification Card; or
- Any other government identification with a photo and name.

30. The Authority will have an electronic file for each Class Member. The Authority will retain, for a reasonable amount of time, a copy of the government-issued photo ID in its electronic file.

31. If a Class Member does not have a government-issued photo ID, the Authority will make reasonable efforts to assist the Class Member in getting a government-issued photo ID.

32. If a Class Member or the administrator of a Class Member's estate requires accommodations or supports to complete the Identification Process, the Authority will make reasonable efforts to provide those accommodations and/or supports to the Class Member or the administrator of a Class Member's estate.

33. Underage Class Members who are in the care of the Agencies will not need to complete the Identification Process.

34. Underage Class Members who are not in the care of the Agencies will need to complete the Identification Process.

#### 5. Deceased Class Members

35. Persons seeking Payment in respect of a Deceased Class Member must present the following documentation:

- (a) Proof of death of the Class Member; and
- (b) Either (1) a probated will or (2) a court order appointing them the administrator of the Deceased Class Member's estate.

#### 6. Release

36. When the Class Member or the administrator of a Class Member's estate identifies themselves, the Class Member or the administrator of a Class Member's

estate will be obliged to sign a release in the form attached as Schedule A releasing the Authority, the Agencies, the Manitoba Métis Federation and Class Counsel for any and all claims related to this Protocol before receiving their CSA Payments. If Class Members dispute the information used to calculate their CSA Payments, their recourse will be through the Review Process (outlined below). The Authority will retain a copy of the Release in the Class Member's file.

#### 7. Review Process

37. Class Members or the administrator of a Class Member's estate will be able to request a review of their CSA Payment during the First Distribution Period. Class Members or the administrator of a Class Member's estate will be able to request a review of the dates for which the Class Member was in the care of the Agencies. For Underage Class Members not in the care of the Agencies, parent(s) or legal guardian(s) may complete the Review Process on behalf of the Class Member.

38. If a review relates to a Class Member's transfer from the Agencies to another Manitoba child and family services agency or from another Manitoba child and family services agency to the Agencies, the Authority will coordinate with the claims administrator in the *Flette* and *Lavallee* Actions to review the dates of transfer to ensure that for a given time period, a potential class member is receiving a payment for only one class action, and from the correct class action.

39. Class Members can review their CSA Payments by:

(a) Filling out and mailing in a Review Form; or

(b) Filling out the Review Form online, as made available through the class action website.

Class Members may also request a review of their CSA Payments during the Identification Meeting, in which case the Identifier can assist the Class Member in filling out a Review Form.

40. To request a review of their CSA Payments, the Review Form will require disputing Class Members to:

(a) Identify the grounds for their review, i.e., the dates they were in care; and

(b) Submit any relevant documentation the Class Member may have in support of their review.

41. The Review Process will be administered through the Authority, and all decisions of the Authority in relation to the Review Process will be final.

42. The Review Process will also allow individuals who did not receive Notification Letters, but believe themselves to be Class Members, to request a Payment upon providing the Authority with sufficient evidence establishing that they are a Class Member.

#### 8. Distribution of Payments

43. During the Identification Process, the Class Member or the administrator of a Class Member's estate will confirm:

- (a) Whether they would prefer to receive their CSA Payment by way of cheque or direct deposit;
- (b) The date they would like to receive their CSA Payment;
- (c) Their mailing address (and their details for Direct Deposit, if they so choose);
- (d) Their email address;
- (e) That they understand there will be a Second Distribution, the Administrator will rely on their contact details to distribute the Second Distribution, and they should advise the Administrator if their contact details change; and
- (f) That they understand financial planning support and services are available to them and confirm whether their contact details can be shared with financial planning support and services.

44. The Class Member or the administrator of a Class Member's estate will confirm the above information in writing (see Schedule A). The Authority will retain a copy of Schedule A in the Class Member's file.

45. For Adult Class Members, Epiq will then provide the Class Member with their CSA Payment (if applicable), by way of cheque or Direct Deposit. CSA Payments for Adult Class Members will be made by Epiq on a monthly basis, on the first day of each month, or another date if selected by the Class Member.

46. For Deceased Class Members, the Authority will then provide the administrator of a Class Member's estate with the CSA Payment (if applicable), by way of cheque or



Direct Deposit. For Deceased Class Members, CSA Payments will be made by the Authority on a monthly basis, on the first day of each month, or another date if selected by the administrator of a Class Member's estate.

47. Cheques will stale date within six months of distribution. Class Members and the administrator of a Class Member's Estate will be able to request fresh cheques if their cheque goes stale before they are able to cash the cheque. The Authority shall make reasonable efforts to deposit the Distribution Fund with a bank that is willing to cash cheques associated with this Protocol, even if a Class Member or the administrator of a Class Member's estate does not have a bank account.

**iii. Second Distribution**

48. The Second Distribution process will begin thirty days after the First Distribution Period concludes.

49. The Authority will calculate each Class Member's Reconciliation Payment in accordance with the process outlined above in Section G.

50. For Adult Class Members, Epiq will provide the Class Member with their Reconciliation Payment, by way of cheque or Direct Deposit in accordance with the Class Member's previously identified preference. For Deceased Class Members, the Authority will provide the Reconciliation Payment, by way of cheque or Direct Deposit in accordance with the previously identified preference of the administrator of the Deceased Class Member's estate. For Underage Class Members in the care of the Agencies, the Authority will provide the Reconciliation Payments to the relevant Agency. For Underage Class Members not in the care of the Agencies, the Authority will hold the

Reconciliation Payments in trust in an interest-bearing or investment account, subject to any further order from the Court.

**iv. Report**

51. Epiq will provide a report on the results of the First and Second Distribution to the Authority, Manitoba's Counsel, and Class Counsel, who will report to the Court.

**v. Undistributed Class Member Payments**

52. Where a Class Member has not received their Payment by the end of the First Distribution Period, that Class Member is an Undistributed Class Member. Undistributed Class Member Payments will continue to be held by the Authority.

53. The Authority shall calculate a Reconciliation Payment for Undistributed Class Members as if they had received the CSA Payment in the First Distribution and will hold the funds in trust for Undistributed Class Members.

54. The Authority will make Undistributed Class Member Payments to Class Members who come forward after the First Distribution. Class Members who did not receive their CSA Payment during the First Distribution will be able to identify themselves to the Authority (using the same Identification Process outlined above) and receive their Payment. An Undistributed Class Member who identifies themselves after the First Distribution Period will not be able to request a review of their Payment through the Review Process.

55. The Authority will hold the Undistributed Class Member Payments until February 21, 2037, being the date the youngest Class Member turns 18. After this date, no Undistributed Class Members will be able to receive their Payments.

56. The Manitoba Métis Federation intends to hold community consultations to investigate whether alternative methods for distribution of Payments for Deceased Class Members are preferable or appropriate in light of Métis cultural practices. The Plaintiffs may seek direction from the Court to amend this Protocol to reflect the findings from the Manitoba Métis Federation's community consultations, and Manitoba agrees that nothing in the Settlement Agreement or this Protocol prohibits the Plaintiffs from seeking such relief.

57. By April 1, 2037, the Authority will distribute the remaining amounts held on behalf of the Undistributed Class Members to the Agencies as a *cy près* distribution.

58. The Agencies will exclusively apply the *cy près* distribution toward the care, maintenance, education, training or advancement of individuals in their care or programming and services for the care, maintenance, education, training or advancement of individuals formerly in the care of the Agencies.

**vi. Final Report**

59. By May 1, 2037, the Authority will provide a final report on the results of the Administration and Distribution to Class Counsel, who will report to the Court.

**I. CLASS COUNSEL**

60. Class Counsel shall oversee the process and provide advice and assistance regarding this Protocol.

**J. RESIDUAL DISCRETION**

61. Notwithstanding the foregoing, if, during the Administration Process, Class Counsel, the Authority or Manitoba have reasonable and material concerns that the Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall request from the Court approval of a reasonable modification to this Protocol or for further directions with respect to the distribution of the Distribution Fund.

62. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel or the Authority shall seek comments or input from Epiq.

**K. CONFIDENTIALITY**

63. All information received from Manitoba or the Class Members is collected, used and retained by the Authority and Epiq pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5; *The Freedom of Information & Protection of Privacy Act*, CCSM c F175 and *The Personal Health Information Act*, CCSM. c. P33.5, for the purposes of administering this Protocol.

**Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc o/a Metis Child and Family Services Authority, Metis Child, Family and Community Services Agency Inc, and Michif Child & Family Services Inc v The Government of Manitoba**

**SCHEDULE A**

Personal Information of the Class Member

|  |                                     |
|--|-------------------------------------|
| <b>Full legal name that appears on current government-issued photo ID</b>                          |                                     |
| Last Name  | Legal First and Other Given Name(s) |
| <b>Legal name(s) while in the care of the Métis Agencies, if different from current legal name</b> |                                     |
| Last Name  | Legal First and Other Given Name(s) |
| Date of Birth (MM/DD/YY)   | Social Insurance Number             |
| <b>Current Address and Contact Information</b>   |                                     |
| Current Address  |                                     |
| City/Town/Community  |                                     |
| Province   | Postal Code                         |
| Telephone number   | Alternate telephone number          |
| Email address  | Alternate email address             |

**Class Member Identification (to be completed by the Identifier)**

To confirm the identity of the Class Member, we require a copy of one of the following government-issued photo IDs for the Class Member. The identification must include a photo and is current (not expired). The identification must display the individual's name and date of birth.

Select the type of identification used to identify the Class Member:

- Manitoba Métis Federation Citizenship Card
- Provincial or Territorial Driver's License
- Provincial or Territorial Identification Card
- Passport
- Secure Certificate of Indian Status Card
- Permanent Resident Card
- Canadian Forces Photo Identification Card
- Other: \_\_\_\_\_

Personal Information of the Administrator of the Class Member's Estate (only fill out if Class Member is deceased)

| <b>Class Member Information</b>  |                                   |
|--|-----------------------------------|
| <b>Full legal name that appears on current government-issued photo ID</b>  |                                   |
| Last Name  | Legal First and Other Given Names |
| <b>Legal name(s) of Class Member while in the care of the Métis Agencies, if different from current legal name</b> |                                   |
| Last Name  | Legal First and Other Given Names |
| Date of Birth (MM/DD/YY)   | Social Insurance Number           |
| <b>Administrator of Class Member's Estate Information</b>  |                                   |
| Last Name  | Legal First and Other Given Names |
| Date of Birth (MM/DD/YY)   | Social Insurance Number           |
| <b>Current Address and Contact Information</b>   |                                   |
| Current Address  |                                   |
| City/Town/Community  |                                   |
| Province   | Postal Code                       |
| Telephone number   | Alternate telephone number        |

|   |                         |
|---|-------------------------|
| Email address   | Alternate email address |
| <p>Administrator of Class Member's Estate Identification (to be completed by the Identifier)</p> <p>To confirm the identity of the administrator of the Class Member's estate, we require a copy of one of the following government-issued photo IDs for the Class Member. The identification must include a photo and is current (not expired). The identification must display the individual's name and date of birth.</p> <p>Select the type of identification used to identify the administrator of the Class Member's estate:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Manitoba Métis Federation Citizenship Card</li> <li><input type="checkbox"/> Provincial or Territorial Driver's License</li> <li><input type="checkbox"/> Provincial or Territorial Identification Card</li> <li><input type="checkbox"/> Passport</li> <li><input type="checkbox"/> Secure Certificate of Indian Status Card</li> <li><input type="checkbox"/> Permanent Resident Card</li> <li><input type="checkbox"/> Canadian Forces Photo Identification Card</li> <li><input type="checkbox"/> Other: _____</li> </ul> |                         |
| <p>Confirmation of Administrator of Class Member's Estate (to be completed by the Identifier)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Proof of death</li> <li><input type="checkbox"/> Either (select one) <ul style="list-style-type: none"> <li><input type="checkbox"/> Probated will</li> <li><input type="checkbox"/> Court order appointing administrator of Class Member's estate</li> </ul> </li> </ul>   |                         |



**Payment Information and Options**

Select the method of distribution for the Payment (select one):

- Cheque sent to the Class Member or the Administrator of the Class Member's Estate's mailing address
- Direct Deposit (please provide a Direct Deposit Form or Void Cheque)

Select the date of distribution for the Payment (select one):

- As soon as possible;
- Other: \_\_\_\_\_

There will be a Second Distribution of Payments to Class Members. I understand the Administrator will rely on the information provided in this form to distribute the Second Distribution of Payments. If my contact information or Payment preferences should change, it is my responsibility to inform the Administrator of these changes.

---

Date

---

Signature

The Manitoba Métis Authority, Métis Authority and Métis Agencies have made financial planning supports and services available to Class Members. I understand those financial planning supports and services are available to me.

- I consent to sharing my contact information with financial planning supports and services.

---

Date

---

Signature

### **Acknowledgement, Authorization and Declaration**

As a Class Member or the Administrator of a Class Member's Estate, I acknowledge that:

1. By making this claim, I am subject to the terms of the Settlement Approval Order which limits my recovery to the amount that the Administrator shall determine, having regard to the eligibility and compensation criteria that the Administrator shall apply.
2. Any recovery is limited to the Administration Process and any claims for payment, compensation or damages of any kind against the Government of Manitoba, the Administrator or Class Counsel other than recovery under the Administration Process are prohibited by terms of the Settlement.
3. I hereby release any and all claims against the Manitoba Métis Federation, the Métis Authority, the Métis Agencies and Class Counsel arising during the Class Period relating to the subject matter of the Lafontaine Action, including in relation to the Administration Process, regardless of cause of action, type of loss or damage, or relief sought, and including, without limitation, any and all past, present, demands, suits, proceedings, payment of obligations, adjustments, executions, offsets, actions, causes of action, costs, defences, debts, sums of money, assertions of rights, accounts, reckoning, bills, bonds, covenants, contracts, controversies, agreements, promises, expenses (including without limitation court costs, legal fees and disbursements), requests for relief of any kind, statutory or regulatory obligations, judgments or any liabilities of any nature whatsoever, whether statutory, in law, equity, civil or criminal, whether sounding in tort, contract, equity, nuisance, trespass, negligence or strict liability, which have been asserted in the Lafontaine Action, save and except for any gross negligence or wilful misconduct.
4. I declare under penalty of the laws of the Province of Manitoba that the foregoing information given on this form is true and correct.

---

Date

---

Class Member Name

---

Witness Signature

---

Signature of Class Member or  
Administrator of Class Member  
Estate

**SCHEDULE "B" –**

File No. CI 18-01- 14043**THE QUEEN'S BENCH  
Winnipeg Centre****BETWEEN:****PEGUIS CHILD AND FAMILY SERVICES, ANIMIKII OZOSON CHILD AND FAMILY SERVICES, SOUTHEAST CHILD AND FAMILY SERVICES, SANDY BAY CHILD AND FAMILY SERVICES, MICHIF CHILD AND FAMILY SERVICES and METIS CHILD, FAMILY AND COMMUNITY SERVICES**

Applicants,

- and -

**THE GOVERNMENT OF MANITOBA**

Respondent.

---

**NOTICE OF APPLICATION  
UNCONTESTED CIVIL MOTIONS LIST  
HEARING DATE: Tuesday, the 15<sup>th</sup> day of May, 2018, at 10:00 a.m.**

---

**COCHRANE SAXBERG**  
Barristers and Solicitors  
2200 - One Lombard Place  
Winnipeg, Manitoba R3B 0X7  
**HAROLD COCHRANE/SHAWN C. SCARCELLO**  
Telephone: 204-594-6688  
Facsimile: 204-808-0987**APR 26 2018**

File No. CI 18-01- 14043

**THE QUEEN'S BENCH  
Winnipeg Centre**

**BETWEEN:**

**PEGUIS CHILD AND FAMILY SERVICES, ANIMIKII OZOSON CHILD AND FAMILY SERVICES, SOUTHEAST CHILD AND FAMILY SERVICES, SANDY BAY CHILD AND FAMILY SERVICES, MICHIF CHILD AND FAMILY SERVICES and METIS CHILD, FAMILY AND COMMUNITY SERVICES**

Applicants,

- and -

**THE GOVERNMENT OF MANITOBA**

Respondent.

**NOTICE OF APPLICATION**

**TO THE RESPONDENT**

**AN APPLICATION HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before the presiding judge on Tuesday, May 15, 2018, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, in the City of Winnipeg, in Manitoba.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or a Manitoba lawyer acting for you must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES**

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**ON THE APPLICATION**, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the Court office where the application is to be heard as soon as possible, but not later than 4 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

April 26, 2018

**P. SUNSTRUM**  
**DEPUTY REGISTRAR**  
**COURT OF QUEENS BENCH**  
**FOR MANITOBA**  
Issued by \_\_\_\_\_  
Deputy Registrar  
204 - 408 York Avenue  
Winnipeg, MB R3C 0P9

**TO:           The Government of Manitoba**  
**Manitoba Justice**  
**Civil Legal Services**  
**730—405 Broadway**  
**Winnipeg MB R3C 3L6**

**APPLICATION**

- 1) **THE APPLICANT MAKES APPLICATION** for:
- a) A declaration that the Respondent, Government of Manitoba ("Manitoba") is and was not entitled to make use of, convert to its own use, or apply a set off with respect to funds received by the Applicants pursuant to the *Children's Special Allowance Act S.C. 1992, c. 48* (the "CSA Act") and the regulations thereunder.
  - b) A declaration that the Applicants are solely entitled to maintain and make proper use of the CSA Act funds that the Applicants and those Agencies successfully apply for and receive from the Government of Canada through the Minister of National Revenue or his or her designate.
  - c) A declaration that Manitoba has misused the CSA funds by failing and/or refusing to apply those funds exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom the funds were paid to the Applicants in the first instance.
  - d) A declaration that Manitoba is not entitled to deposit CSA funds into its general treasury or to exercise any dominion or control over the CSA funds.
  - e) A declaration that Manitoba has acted in excess of or without jurisdiction, dishonestly and in bad faith by:
    - i. Unilaterally determining and deciding that the specific children in respect of whom CSA funds have been paid to the Applicants depend on Manitoba for their care, maintenance, education, training and advancement to a greater extent than they do the Applicants, who successfully applied for and received the CSA funds from the Government of Canada.
    - ii. Overturning and/or knowingly and wilfully disregarding the Government of Canada's decision that the specific children in respect of whom CSA funds have been paid to the Applicants are maintained by the Applicants in accordance with s. 9 of the *Children's Special Allowance Regulations* in that

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those children depend on the Applicants for their care, maintenance, education, training and advancement to a greater extent than on any other department, agency or institution or on any person, including Manitoba.

- f) A declaration that Manitoba has breached its duties, including fiduciary duties, to the Applicants by reason of both the events described in this Application and based on the honour of the Crown.
- g) A declaration that Manitoba's actions, policies and procedures as described in this Application are discriminatory.
- h) Solicitor and client costs.
- i) Such further and other relief as this Honourable Court may order.

**2) THE GROUNDS FOR THE APPLICATION are:**

- a) Manitoba has forcibly and illegally obtained and misused \$266 million and counting in CSA funds from First Nation and Metis child and family services agencies in Manitoba, including from the Applicants, since 2010.
- b) Manitoba continues to forcibly and illegally obtain and misuse over \$25 million in CSA funds from First Nation and Metis child and family services agencies in Manitoba, including from the Applicants.
- c) The Applicants are each corporations without share capital mandated as child and family services agencies whose purpose is to provide child and family services under *The Child and Family Services Act* C.C.S.M. c. C80 and/or *The Adoption Act* C.C.S.M. c. A2.
- d) The Applicants are each considered to be First Nation and/or Metis child and family services agencies and are delegated by Child and Family Services Authorities to



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provide culturally appropriate child protection and prevention services in accordance with *The Child and Family Services Act*.

- e) The Applicants each have duties imposed upon them by s. 7(1) of *The Child and Family Services Act*, which duties include, but are not limited, to:
  - a. Protecting children;
  - b. Providing care for children in their care;
  - c. Developing permanency plans for all children in their care with a view to establishing normal family life for these children; and
  - d. Developing and maintaining child care resources.
- f) In carrying out their statutory duties, the Applicants must, at times, apprehend children who are in need of protection and place those children into agency care on either a temporary or sometimes permanent basis.
- g) The Applicants are legally responsible for the care, maintenance, education and well being of the children they have apprehended for the time period for which they are under apprehension and/or for the time period that each Applicant is appointed as the legal guardian of any such children on a temporary or permanent basis pursuant to sections 25(1) and 48 of *The Child and Family Services Act*.
- h) The Applicants have two main sources of funding, those sources being the Government of Canada (the "Federal Funding") and Manitoba (the "Provincial Funding").
- i) Federal Funding is paid and payable to First Nation and Metis agencies in Manitoba by both the Government of Canada's Indigenous and Northern Affairs Canada ("INAC") governmental department and also by the Canada Revenue Agency through what are referred to as 'Children's Special Allowances' pursuant to the CSA Act (collectively referred to as the "Federal Funding Framework").
- j) Manitoba provides funding to both First Nation and Metis agencies and to non-First Nation and non-Metis child and family services agencies ("non-First Nation/Metis agencies") through the Child and Family Services Division of Manitoba's Department of Family Services.

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- k) Manitoba allows the non-First Nation/Metis agencies that it funds to run deficits in any given fiscal year. Manitoba provides funding for those deficits.
- l) Manitoba does not fund for or allow First Nation or Metis agencies in Manitoba, which includes the Applicants, to have a deficit in any fiscal year.
- m) Manitoba does not provide any funding to the Applicants with respect to children who are in the care of, and who are thereby maintained by, the Applicants, who are and were residents of a First Nation 'reserve' as that term is defined in section 2(1) of the *Indian Act*, R.S.C., 1985, c. 1-5. The Applicants only receive Federal Funding with respect to children who are and were residents of a First Nation reserve and who have come into the care of and are thereby maintained by the Applicants.
- n) As part of the Federal Funding Framework, and pursuant to the *CSA Act*, Children's Special Allowances ("CSA funds") are non-taxable amounts paid monthly to agencies that maintain children in care who are under 18 years of age and who reside in Canada.
- o) CSA funds are payable out of the Government of Canada's Consolidated Revenue Fund.
- p) CSA funds are not automatically paid for each child who comes into the care of a child and family services agency. Pursuant to section 3 of the *Children's Special Allowance Regulations* ("*CSA Regulations*"), applications for CSA funds must be made to and approved by the Government of Canada's Minister of National Revenue.
- q) Pursuant to sections 3 and 4 of the *CSA Regulations*, applications for CSA funding can only be approved when they are made in the prescribed manner by the department, agency or institution that 'maintains' the child.
- r) Pursuant to section 3(1) of the *CSA Act*, and section 9 of the *CSA Regulations*, a child is considered to be 'maintained' by an agency if, at the end of a given month, the child is dependant on the agency for his or her care, maintenance, education, training, and advancement to a greater extent than any other agency or individual.
- s) In order to approve an application for CSA funding, the Minister of National Revenue's office must determine and decide that the applicant maintains the

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specific child with respect to whom the application is made to a greater extent than any other department, agency or institution or any person in accordance with sections 3(1) of the *CSA Act*, and section 9 of the *CSA Regulations*.

- t) Once approval for the CSA funding application is granted by the Minister of National Revenue's office, CSA funding payments begin to be made by the Canada Revenue Agency the month after the initial month that the child at issue started to be maintained by the applicant agency and all of the eligibility conditions have been met.
- u) The monetary value of the CSA funds paid by the Canada Revenue Agency to successful applicant agencies with respect to a given child amounts to the equivalent of the Canada Child Tax Benefit, the National Child Benefit Supplement, the Universal Child Care Benefit and the Disability Benefit for which the subject child is eligible.
- v) Pursuant to section 3(2) of the *CSA Act*, CSA funds must only be applied exclusively toward the care, maintenance, education, training or advancement of the specific child in respect of whom they are paid.
- w) The Applicants 'maintain' each child that is brought into their care in accordance with the definition of the term 'maintenance' as is set out in section 9 of the *CSA Regulation*.
- x) The Applicants have applied for, and do apply to, the Minister of National Revenue's office for CSA funding for each child that is brought into their care.
- y) The Minister of National Revenue's office has granted each and every application for CSA funding that has been filed by the Applicants.
- z) CSA funding payments have thereafter been made by the Canada Revenue Agency to the Applicants for each of the successful CSA funding applications made by the Applicants. Those payments all began in or around the month after any given CSA funding application was approved by the Minister of National Revenue's office.
- aa) In or around the years of 2006-2007, Manitoba took the position and thereafter demanded from all child and family services agencies in Manitoba, including the Applicants, that all CSA funds received by the child and family services agencies

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with respect to provincially funded children in their care must be remitted to Manitoba.

- bb) The Applicants, along with all other First Nation agencies in Manitoba, refused to remit to Manitoba the CSA funds that they had successfully applied for and received from the Government of Canada.
- cc) Beginning in 2010, Manitoba began a process of unilaterally holding back 20% of funding from First Nation and Metis child and family services agencies in Manitoba, including from the Applicants, as a means of forcibly and wrongfully applying a set-off as against the Applicants for their refusal to remit the CSA funds to Manitoba since Manitoba's initial illegal demand in 2006-2007 (the "Illegal Clawback").
- dd) Manitoba also, at this time, required and demanded that all First Nation and Metis child and family services agencies in Manitoba, including the Applicants, remit any current and future CSA funds they received as a 'flow-through' to them (the "Forced Remittance") at the threat of Manitoba unilaterally imposing a second illegal Clawback against any agencies, including the Applicants, as a set-off.
- ee) All First Nation and Metis child and family services agencies in Manitoba, including the Applicants, continue to apply for CSA funds with respect to each child that comes into their care.
- ff) The previous, current and future CSA funds successfully applied for and received by the Applicants are the legal property of the Applicants to be used in accordance with the CSA Act.
- gg) Manitoba has deposited all of the CSA funds it has received, including those CSA funds received from the Applicants, into Manitoba's General Treasury.
- hh) Manitoba has not applied the CSA funds that it has received and continues to receive from the Applicants and/or other child and family services agencies through the Illegal Clawbacks and Forced Remittances exclusively towards the care, maintenance, education, training or advancement of the specific children for whom those funds were paid.
- ii) Manitoba's actions were and are illegal.

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- jj) Manitoba knows that its actions were and are illegal.
- kk) Manitoba wrongfully identifies CSA funds as a source of 'revenue'.
- ll) Manitoba does not have the legal or jurisdictional authority to require the Applicant's CSA funds, that have been successfully applied for and paid to the plaintiff by the Canada Revenue Agency through the approval of the Federal Minister of National Revenue, to be diverted, payable, or remitted to Manitoba by the Applicants or to be used as a set-off as against the Applicants for a debt that does not exist at law.
- mm) It is only the office of the Federal Minister of National Revenue, and thereafter the Federal Court of Canada by way of judicial review, who has the jurisdictional authority to determine which agency or governmental department is entitled to be paid and make use of the CSA funds.
- nn) The Government of Canada does not require any clawbacks or remittances from First Nations agencies, including the Applicants, with respect to children who are in their care and with respect of whom the First Nations agencies, including the Applicants, are provided with solely Federal Funding.
- oo) As such, Manitoba's interrelated actions, policies and procedures with respect to the Illegal Clawbacks and Forced Remittances have resulted in the Applicants maintaining the ownership and beneficial use of CSA funds they have received and continue to receive for children in their care who have solely Federal Funding due to their ancestry and/or national and ethnic origin in that they are both First Nations and were apprehended from the care of their biological family or legal guardians while resident on a First Nation Reserve, but the Applicants are not allowed to maintain and use those same CSA funds with respect to affected First Nations children who are or were apprehended by the Applicants 'off-reserve'.
- pp) Furthermore, the Clawbacks and Remittances have and continue to result in greater financial hardships to First Nation and Metis agencies, including the Applicants, as compared to the financial hardships felt by non-First Nations and non-Metis agencies in the same regard, in that First Nation and Metis agencies have limited funding and are not able to run deficits, while Manitoba does allow and provide funding for non-First Nation and non-Metis agencies to run a deficit in any given fiscal year.

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- qq) These interrelated actions, policies and procedures amount to discrimination, including discrimination on its face, adverse affect discrimination and systemic discrimination, in accordance with both the common law and sections 9(2) and 9(3) of *The Human Rights Code*, C.C.S.M. c. H175.
  - rr) Manitoba's actions and conduct described herein are arbitrary, deliberate, callous, highhanded and reckless.
  - ss) *The Children's Special Allowance Act* and Regulations.
  - tt) Section 10 of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140.
  - uu) Rule 14.05(2)(b) of the *Queen's Bench Rules*; and
  - vv) Such other and further grounds as the Applicant may advise and this Honourable Court may accept.
- 3) **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:
- a) The Affidavits of Clemene Hornbrook, Richard De La Ronde, Bonnie Kocsis, Rhonda Kelly, Greg Besant and Margaret Marin, to be sworn;
  - b) Such further and other material as the Applicant may adduce and this Honourable Court may accept.

April 26, 2018

COCHRANE SAXBERG  
Barristers and Solicitors  
2200 - One Lombard Place  
Winnipeg, Manitoba R3B 0X7  
**HAROLD COCHRANE/  
SHAWN C. SCARCELLO**  
Telephone: 204-594-6688  
Facsimile: 204-808-0987

File No. C120.01.79002

THE QUEEN'S BENCH  
Winnipeg Centre

IN THE MATTER OF: *The Budget Implementation and Tax Statutes  
 Amendment Act, 2020, Part 10, (Families),  
 Division 4, (Child and Family Services), s. 231 and  
 s. 96 of the Constitution Act, 1867*

BETWEEN:

ASSEMBLY OF MANITOBA CHIEFS,

Applicant,

- and -

ATTORNEY GENERAL OF MANITOBA,

Respondent.

FILED NOV 06 2020

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**NOTICE OF APPLICATION**

Hearing Date: December 16, 2020 at 10:00AM

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**PUBLIC INTEREST LAW CENTRE**

200 – 393 Portage Avenue  
 Winnipeg, MB R3C 0B9

Telephone: 204-985-8533  
 Facsimile: 204-985-8544

**BYRON WILLIAMS  
 CHRIS KLASSEN  
 JOËLLE PASTORA SALA**

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**FILLMORE RILEY LLP**

Barristers and Solicitors  
 1700 – 360 Main Street  
 Winnipeg, MB R3C 3Z3

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 Facsimile: 204-954-0321

**DAYNA M. STEINFELD**

dsteinfeld@fillmoreriley.com

File No.

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

**IN THE MATTER OF:**     *The Budget Implementation and Tax Statutes  
Amendment Act, 2020, Part 10, (Families),  
Division 4, (Child and Family Services), s. 231 and  
s. 96 of the Constitution Act, 1867*

**BETWEEN:**

**ASSEMBLY OF MANITOBA CHIEFS,**

Applicant,

- and -

**ATTORNEY GENERAL OF MANITOBA,**

Respondent.

---

**NOTICE OF APPLICATION**

**Hearing Date:** \_\_\_\_\_ **at** \_\_\_\_\_

---

**PUBLIC INTEREST LAW CENTRE**

200 – 393 Portage Avenue  
Winnipeg, MB R3C 0B9

Telephone: 204-985-8533  
Facsimile: 204-985-8544

**BYRON WILLIAMS**  
**CHRIS KLASSEN**  
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Winnipeg, MB R3C 3Z3

Telephone: 204-957-8321  
Facsimile: 204-954-0321

**DAYNA M. STEINFELD**

dstiefeld@fillmoreriley.com



File No. *C120-01-29002*

THE QUEEN'S BENCH  
Winnipeg Centre

IN THE MATTER OF: *The Budget Implementation and Tax Statutes  
 Amendment Act, 2020, Part 10, (Families),  
 Division 4, (Child and Family Services), s. 231 and  
 s. 96 of the Constitution Act, 1867*

BETWEEN:

ASSEMBLY OF MANITOBA CHIEFS,

Applicant,

- and -

ATTORNEY GENERAL OF MANITOBA,

Respondent.

FILED NOV 06 2020

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NOTICE OF APPLICATION

Hearing Date: *December 14/20* at *10:00 AM*

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File No.

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

**IN THE MATTER OF:**     *The Budget Implementation and Tax Statutes  
Amendment Act, 2020, Part 10 (Families), Division 4  
(Child and Family Services), s. 231 and s. 96 of the  
Constitution Act, 1867*

**BETWEEN:**

**ASSEMBLY OF MANITOBA CHIEFS,**

Applicant,

- and -

**ATTORNEY GENERAL OF MANITOBA,**

Respondent.

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a judge on December 18/2020 at 10:00am at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

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IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

*Number 6/2020*

Issued:

J. WIGGETT  
DEPUTY REGISTRAR  
COURT OF QUEEN'S BENCH  
FOR MANITOBA

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

TO: ATTORNEY GENERAL OF MANITOBA  
Department of the Attorney General  
1205 – 405 Broadway  
Winnipeg, MB R3C 0V8

**APPLICATION**

1. The applicant seeks an order:
  - (a) Determining the rights of any child or former child in the care of an agency under *The Child and Family Services Act* at any time between January 1, 2005 and March 31, 2019 (“children in care”) or those acting on their behalf, under *The Proceedings Against the Crown Act*, *The Queen’s Bench Rules*, the *Constitution Act, 1982*, the *Constitution Act, 1867* and the common law, to proceed with an action or proceeding related to the clawback, remittance, denial or failure to provide their special allowance under the *Children’s Special Allowances Act* (“CSA”) and to seek remedy from Her Majesty the Queen in right of the Province of Manitoba (the “Crown” or “Manitoba”) or any agency or authority within the meaning of subsection 1(1) of *The Child and Family Services Act* (“agency” or “authority”);
  - (b) Determining the rights of children in care under *The Proceedings Against the Crown Act*, *The Queen’s Bench Rules*, the *Constitution Act, 1982*, the *Constitution Act, 1867* and the common law, to proceed with an action or proceeding related to the failure to apply the CSA exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it was paid and to seek remedy from the Crown or any agency or authority;

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- (c) Declaring that s. 231, of Part 10 (Families), Division 4 (Child and Family Services) of *The Budget Implementation and Tax Statutes Amendment Act, 2020* (“s. 231”) invalidly infringes the core jurisdiction of the superior courts under s. 96 of the *Constitution Act, 1867* by denying children in care the right to access the Manitoba Court of Queen’s Bench and is therefore of no force and effect;
- (d) Declaring that s. 231 by purporting to bar actions or proceedings under the *Canadian Charter of Rights and Freedoms* (the “Charter”), s. 35 of the *Constitution Act, 1982* or remedies under s. 24 of the Charter or s. 52 of the *Constitution Act, 1982*, is beyond the constitutional competence of the Crown and is therefore of no force and effect;
- (e) A determination that Manitoba owes fiduciary obligations to First Nations children involved in the child and family services system;
- (f) A declaration that Manitoba’s fiduciary obligations to First Nations children in care requires,
  - (i) that the provision of funding to agencies and authorities be conducted in a manner that is responsive to the best interests of First Nations children,
  - (ii) a balancing between the conflicting interests of First Nations children and Manitoba taxpayers that reflects First Nations children’s particular vulnerabilities, First Nations historic

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disadvantage, and the comparative positive and negative impacts of the remittance of CSA funds on these two groups,

- (iii) a generous and liberal interpretation of the *Children's Special Allowances Act* and of the purpose and intended treatment of CSA funds, and
  - (iv) the government to refrain from undermining the beneficiaries' abilities to seek recourse for breaches of this duty;
- (g) A declaration that Manitoba breached its fiduciary duty owed to First Nations children in its care;
- (h) A declaration that Manitoba has violated the honour of the Crown;
- (i) A declaration that s. 231 unjustifiably denies substantive equality and equal benefit of the law under s. 15 of the *Charter* to First Nations children in care on the intersecting grounds of race and family status and is therefore of no force and effect within the meaning of s. 52 of the *Constitution Act, 1982*;
- (j) Such further and other relief as the Applicant may advise and this Honourable Court may permit; and
- (k) Costs.

The grounds for the application are:

### **First Nations Children and the Failures of the Colonial Child Welfare System**

#### Children, First Nations Laws and the Treaty Promises

2. First Nations children are sacred. They are a gift from the Creator and hold a special place in First Nations communities, cultures and laws. The future of First Nations communities and nations lies with their children.

3. First Nations have their own laws and teachings about caring for children. First Nations laws are the original instructions provided by the Creator on living in harmony and balance with all creation. The Creator's laws are passed down from grandparents to parents to young children.

4. First Nations laws about children and families are rooted in the Seven Sacred Teachings – respect, love, courage, honesty, wisdom, humility, and truth. Customary ways, ceremonies and protocols must be followed from the birth of the child and throughout each stage of their life. Through these ways of life and by relationships with their community, children are taught how to live a good life.

5. First Nations women have been gifted with the responsibility to care for, love and teach their children and grandchildren. First Nations people have a special obligation to future generations to guide their children in First Nations ways of being and knowing including protecting and enriching their distinctive cultures, identity, languages and laws.

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6. The responsibilities of First Nations to their children were not ceded, surrendered, extinguished or relinquished at treaty.
7. The treaties set out the responsibilities of the Crown and First Nations toward each other. The treaty relationship entails obligations of kindness and caring between the Crown and First Nations. The intent of treaties was that First Nations and newcomer laws would be respected as equals for the mutual promise of building a better future together through nation-to-nation relationships.
8. Honouring the original treaties includes supporting First Nations children, respecting First Nations laws and recognizing the rights of First Nation to self determination. Self determination means reviving and creating First Nations' own systems. It involves reviving, creating and nourishing laws relating to caring for children. It requires achieving basic human rights for children and their families.

#### Children in Care and the Shattered Treaty Promise

9. Contrary to the spirit and intent of treaty and the Honour of the Crown, Manitoba has imposed foreign laws on First Nations families and children. It has arrogated exclusive authority to itself to make decisions regarding the "best interest" of First Nations children. Without the authority of First Nations, the Crown exercises a high degree of discretionary control over First Nations children found to be "in need of protection", leaving them vulnerable to its indifference, misconduct, ineptitude and neglect.



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10. Contrary to the spirit and intent of treaty and the Honour of the Crown, First Nations children in care are placed in a foreign system that fails to value their inherent worth as children, as youth and as First Nations people.

11. Children and youth who have been removed from their parents, communities and nations have been subjected to grief and loss rather than love and care. They have been denied opportunities to learn and grow.

12. As a result, First Nations children and youth in care are hurting; they are lost and they are vulnerable. In addition to being taken from their families and communities, First Nations children in care do not have a sense of who they are. The child welfare system has interrupted the transfer of First Nations teachings and laws to First Nations children.

13. Under *The Child and Family Services Act* and *The Adoption Act*, child and family services authorities mandate child and family services agencies to provide culturally appropriate child protection and protection services in accordance with the legislation. The statutory duties of the agencies include protecting children, providing care for children apprehended on a temporary or permanent basis, developing permanency plans for all children in their care and developing and maintaining child-care resources. One aspect of these duties is ensuring that children have access to opportunities for sports, leisure, recreation, arts and music.

14. The agencies are legally responsible for the care, maintenance, education, and well-being of the children they have apprehended while they are in government

care. Whether on a temporary or permanent basis, agencies are the legal guardians of the children in their care and are responsible for their well-being.

15. The imposition of colonial laws has caused significant damage to First Nations children, youth, families and communities. It has ripped families apart and stripped children and youth of their identities. It has increased the vulnerability of First Nations children and youth and disproportionately left them vulnerable to poverty, homelessness, involvement in the criminal justice system and multi-generational cycles of involvement in state supervised care.

16. Despite the Crown's fiduciary obligation to First Nations children and youth in its care, it has failed to support them to grow safely into adulthood. First Nations children in care are tragically overrepresented in the child welfare system. Today, over 11,000 children and youth are in the care of agencies and authorities in Manitoba. Ninety percent are Indigenous. An estimated 9,000 are First Nations children or youth. Many have been removed from their community and placed at further risk. Between 2008/09 and 2018/19, 739 children or youth died in care in Manitoba.

17. For decades, the Manitoba child welfare system has failed First Nations families. It has apprehended their children and separated them from their families and homes. It has denied them meaningful opportunities to maintain cultural connectivity with their home nations for their families and communities to share teachings, language, culture and identity. It has failed to provide the love and

stability or the support and funding necessary for children in care and aging out of care to live a good life.

18. First Nations children have been denied their opportunity to contribute their gifts as they do not know who they are. Children and youth in care are not given the tools they need to succeed. The CFS system deprives children and youth of their sense of belonging and of being loved which in turn deprives them of confidence and their ability to fulfil their dreams.

19. The Manitoba child welfare system fails to provide First Nation children and youth meaningful life-affirming opportunities in sports, leisure, recreation, arts and music. Children and youth transitioning back to their families or aging out of care are denied the financial support necessary to nurture their path to a good life.

#### The Children's Special Allowance

20. The *Children's Special Allowances Act* ("CSA Act") was enacted by Canada in 1992 as part of a larger reform of the provision of child benefits. It was introduced in response to Canada's ratification of the international *Convention on the Rights of the Child* and in recognition of the vulnerabilities faced by children at heightened risks of poor life outcomes.

21. The United Nations *Convention on the Rights of the Child* recognizes that children who are deprived of their family environment are entitled to special protection and assistance from the State and to a standard of living adequate for their physical, mental, spiritual, moral, and social development. It recognizes the

right of these children to equal opportunities for cultural, artistic, recreational, and leisure activity.

22. The CSA was intended as a parallel support extended to children in care to ensure that the exclusion of these children from eligibility for the Canada Child Benefit was not discriminatory and did not violate Canada's international human rights obligations. Its ongoing intent is to provide children in government care with the same level of federal government benefits as children who are not in the child welfare system.

23. On application by a department, agency, or institution that maintains a child, the CSA is payable monthly out of the federal consolidated revenue fund. A child is "maintained" within the meaning of the legislation where the child is in the care of a department or agency of the federal or provincial government or by an agency appointed by a province for the protection and care of children, and where the child resides in an institution, group foster home, the home of foster parents or a guardian, or tutor, or other individual due to a court order.

24. Subsection 3(2) of the *CSA Act* provides that, following successful application, a CSA shall be applied exclusively toward the care, maintenance, education, training, or advancement of the child in respect of whom it is paid. Pursuant to section 7 of the *CSA Act*, a CSA shall not be assigned, charged, attached, anticipated, or given as security.

25. The CSA offered First Nations children and youth in care living off reserve a chance at a better, healthier future. It played an important role in supporting them to

overcome the barriers imposed by inadequate funding and by the system's failure to provide children and youth with the safety, security and supports they need to be healthy and to succeed.

26. The CSA has been used to support and enhance opportunities for children in care and to support the transition of children returning to their families or aging out of care. It supplemented the child welfare system's inadequate funding for gifts, extra-curricular activities and sports. It helped to fill the vacuum in funding support for transitions out of the system whether back to family or to independence.

27. But for First Nations children and youth in care living off reserve, actions taken by the Manitoba Crown have undermined Canada's intent - in fulfilment of its international human rights commitments, that the CSA be used exclusively toward the care, maintenance, education, training, or advancement of the child in respect of whom it was paid.

#### Devolution and the CSA Clawback

28. First Nations have never given up their responsibilities to care for the well-being of children and families to the provincial or federal governments. This reality has animated the spirit and intent of efforts to reform the child welfare system in Manitoba. This right was affirmed in the findings and recommendations of the Report of the Aboriginal Justice Inquiry of Manitoba which led to the devolution of authority in Manitoba's child welfare system from the government to First Nations' agencies and authorities in the early 2000s.

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29. The purpose, spirit and intent of the devolution of child welfare was to implement progress toward the restoration of First Nations' authority over child welfare in Manitoba, consistent with First Nations' continuing responsibilities for the well-being of children and families and the right to self-government.

30. Since devolution, First Nations child welfare agencies and authorities have been undermined by provincial government activities that impede First Nations' ability to effectively govern in this area. Several agencies have been subjected to processes ("section 4 reviews") which had the effect of transferring all decision-making authority from First Nations to a government-appointed administrator. All First Nations child welfare agencies were negatively impacted by Crown efforts to appropriate CSA funds. First Nations children who were under the care of those agencies suffered the most.

31. Within a few years of the existence of First Nations agencies and authorities, Manitoba declared itself entitled to CSA funds which were provided to agencies by the federal government to be used exclusively for the care and maintenance of children.

32. Beginning on or about January 1, 2005, contrary to subsection 3(2) and section 7 of the *CSA Act*, Manitoba took the position that all CSA funds received by provincial child and family services agencies for provincially-funded children in the care of those agencies must be remitted to Manitoba. The remittance encompassed CSA funds for First Nations children and youth in care living off reserve.

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33. In 2010, the Manitoba government introduced a new funding model for agencies. The agencies that did not remit the CSA were denied access to the extra funding that was available under this new model.

34. Beginning in or around 2012, and following refusal by certain First Nations child and family services agencies to remit the CSA funds received by those agencies for children in their care, Manitoba began unilaterally holding back 20% of provincial funding to those agencies as a means to “clawback” the CSA funds. Manitoba also required that all current and future CSA funds be remitted to Manitoba as a “flow-through”, failing which Manitoba would impose a second clawback.

35. As a result of the clawback and forced remittances by Manitoba, the CSA was no longer applied exclusively toward the care, maintenance, education, training, or advancement of First Nation children in care living off reserve.

36. Manitoba and British Columbia are the only provinces to clawback CSA for children who are wards of the province.

37. It is estimated that \$338 million intended to be used exclusively for children in care has been clawed back or remitted to the general revenues of Manitoba.

#### Effects of the Clawback and Remittances

38. The CSA clawback and remittances compound the ongoing trauma imposed on First Nations children and youth by generations of failed colonial policies, childhoods filled with loss and neglect and the child welfare system’s failure to

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provide children and youth with the safety, security or supports they need to be healthy and to succeed.

39. In the face of chronic underfunding, CSA funds enabled supports that were essential to the healthy development of children including the fostering of their confidence, ambition and dreams for good futures.

40. Prior to the clawback and remittances, the CSA allowed First Nations children in care off reserve to enjoy opportunities otherwise denied them due to a lack of resources. It helped them to overcome some of the barriers imposed by the system on their ability to lead healthy and purposeful lives. CSA funds provided children and youth returning to their families or aging out of care with transition supports that were not otherwise available to them.

41. First Nations children and youth in care living off reserve are no longer receiving the money to which they are entitled. By denying them funds essential to their health and development, the CSA clawback and remittances serve to deny First Nations children and youth a chance at a better, healthier and more secure future.

42. The CSA clawback and remittances compound the vulnerability of children and youth at key times of transition such as when they return to their family or age out of care. The denial of CSA funds leaves First Nation youth aging out of care acutely vulnerable to endemic poverty and further risks of victimization, violence and involvement with government systems.



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43. There are at least two ongoing litigation matters in this Honourable Court that relate to Manitoba's clawback of the CSA funds. In or around April of 2018, a group of First Nations and Metis child and family services agencies initiated an application (Court of Queen's Bench File CI18-01-14043) against Manitoba seeking various declarations in respect of the CSA clawback and requiring remittance of the CSA amounts. In or around December of 2018, a class action lawsuit was commenced (Court of Queen's Bench File CI18-01-18438) on behalf of children who were, or are, in care to recoup the CSA amounts.

Denying First Nations Children in Care Access to the Courts

44. Bill 34, *The Budget Implementation and Tax Statutes Amendment Act, 2020* ("Bill 34") was introduced in the Manitoba legislature, received 1<sup>st</sup> Reading on March 19, 2020, and died on the order paper when a new legislative session commenced on October 7, 2020.

45. The legislation was reintroduced as Bill 2, *The Budget Implementation and Tax Statutes Amendment Act, 2020* ("BITSA") and received first reading on October 9, 2020. While primarily a budget bill that includes budget-related tax statute amendments, BITSA includes additional amendments that are purported to relate to the 2020 Manitoba budget. Included in these additional amendments is s. 231, contained in Part 10 – Families, Division 4, which is titled "Child and Family Services".

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46. *BITSA* received its Third Reading on November 6, 2020. It was given Royal Assent on the same day, and as indicated by section 315(22) of the same *Act*, is deemed to have been in force as of April 1, 2019.

47. First Nations and Metis CFS agencies in Manitoba primarily receive funding from Manitoba and the federal government.

48. As stated in *BITSA*, the purpose of s. 231 is to address Manitoba's actions concerning special allowances that agencies received or were eligible to receive for children in their care during the period of January 1, 2005 to March 31, 2019. S. 231 retroactively sets the rates for services to be paid by Manitoba to agencies for that period, deems that agencies and authorities received notice of these rates at the commencement of that period, deems excess amounts received by agencies to be overpayment, and deems any government action taken to withhold or require the remittance of CSA amounts to be lawful attempts to recover this overpayment.

49. Specifically, s. 231 is aimed at the federal CSA monies under the *CSA Act*.

50. Section 231 operates to extinguish current and future claims against Manitoba over CSA funds received by, or eligible to be received by, child welfare agencies, including the current Courts of Queen's Bench litigation detailed in paragraph 43 of this Notice of Application.

### **Section 231 of *BITSA***

51. Section 231 has three interrelated components:

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- (a) It treats the CSA as a contribution, rather than an addition, to provincial child and family services funding, and deems the CSA amounts received by child and family services agencies during the “funding period” of January 1, 2005 to March 31, 2019 to be an “overpayment” thereby retroactively creating a debt owed to Manitoba,
- (b) It deems the clawback by Manitoba, the amounts remitted by child and family services agencies to Manitoba for the CSA, whether before or after the coming into force of the legislation, to be recovery of the “overpayment” referred to in paragraph 9(a) above,
- (c) It extinguishes claims against Manitoba and immunizes Manitoba from legal action by:
  - (i) retroactively establishing the rates for services to be paid by the provincial government to agencies and deeming excess amounts received to be an overpayment, thereby purporting to create a debt owing to Manitoba in an effort to retroactively make the remittances and clawbacks lawful, and to remove a cause of action against Manitoba’s unlawful actions,
  - (ii) providing that there is no cause of action as a result of s. 231,
  - (iii) providing that there is no remedy or damages available to any person in connection with the application of s. 231, including but

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not limited to remedies in contract, restitution, tort, misfeasance, bad faith or trust, or for breach of fiduciary duty,

- (iv) barring any action or proceeding directly or indirectly based on or related to s. 231 from being brought or maintained against any person, including the Crown in right of Manitoba as well as agencies and authorities, and
- (v) dismissing any proceedings commenced before the legislation comes into force, including expressly the litigation in Court of Queen's Bench File No. CI18-01-14042 and File No. CI18-01-18438, described in paragraph 43.

52. In summary, s. 231 unlawfully establishes a debt owing to Manitoba based on a legislative deemed "overpayment" of child and family services funds to agencies in the amount of any CSA funds received between January 1, 2005 and March 31, 2019, thereby purporting to make the clawback and required remittance of the CSA funds a legitimate repayment of a debt owing. S. 231 further operates to extinguish all causes of action, proceedings, and/or remedies in relation to the clawback of CSA amounts by Manitoba and the required remittance of the federal CSA funds to Manitoba, thereby immunizing Manitoba from all claims, applications, and lawsuits, including litigation that has already been commenced as well as any future litigation.

53. Section 231 is complete Crown immunity legislation that prevents litigants from accessing the provincial superior court to seek recourse and redress over the CSA clawback and required remittance of the CSA amounts. Specifically, s. 231

prevents First Nations children who are or were formerly in care, or those acting on their behalf, from accessing this Honourable Court to recover funding to which they are entitled under the *CSA Act* and from holding Manitoba accountable for its unlawful interference with the best interests of First Nations children in care in Manitoba.

### ***UNDRIP and Access to the Courts for First Nations***

54. The right of First Nations to self determination is recognized in the United Nations Declaration on the Rights of Indigenous Peoples (“UNDRIP”) which has been ratified by Canada. Under the *Path to Reconciliation Act*, the Government of Manitoba has committed itself to reconciliation and to be guided by the principles set out in UNDRIP.

55. UNDRIP recognizes the right of access of First Nations peoples to just and fair procedures for the resolution of conflicts and disputes with States as well as to effective remedies for all infringements of their individual and collective rights with due consideration to their customs, traditions, rules, and legal systems and to international human rights.

56. UNDRIP also recognizes the right of First Nations families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children.

57. The nature of the child welfare system is to interrupt the connection between children, their families and communities. The removal of children from their families

and communities is an act of violence that causes trauma to First Nations children. It disrupts necessary teachings and cultural knowledge at crucial stages of a child's life. It is contrary to First Nations' rights to self-government and self-determination.

58. The failure to provide adequate funding and resources for children in care perpetuates the trauma caused by the act of removal, which trauma is irremediably cemented by a legislative bar to any remedy for Manitoba's breaches in respect of its unlawful interference with the rights of First Nation children in care to benefit from funds promised by the Government of Canada for their exclusive use and benefit.

**Section 231 is Invalid Under Section 96 of the *Constitution Act, 1867***

59. Section 231 bars access to the courts for one of the most vulnerable groups in society – First Nations children and youth in care seeking to validate Canada's promise that the CSA funds would be used exclusively toward their care, maintenance, education, training, or advancement.

60. Section 96 of the *Constitution Act, 1867* protects the right of Canadians to access provincial superior courts.

61. Contrary to section 96, s. 231 prevents litigants from challenging Manitoba's actions in court. Manitoba does not have power under its authority over the administration of justice to enact legislation that prevents litigants from accessing the provincial superior court in Manitoba.

62. Manitoba's legislative competence is constrained by the constitutional requirement that the core jurisdiction of superior courts be maintained. The content

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of that core jurisdiction is informed by the principle of access to justice, substantive equality, the rule of law, and the rights of First Nations people under international law, including pursuant to the United Nations Declaration on the Rights of Indigenous Peoples, to access to just and fair procedures for the resolution of disputes with the state and to effective remedies for all infringements of their individual and collective rights.

63. The whole of s. 231 is a colourable attempt to bar access to the courts over Manitoba's clawback and required remittances of CSA amounts by purporting to make this action a lawful recovery of a debt created through a retroactively deemed overpayment. In retroactively establishing the rates payable by the government to CFS agencies in a manner that explicitly creates an overpayment in the amount of CSA funds received, s. 231 prevents access to the courts by nullifying the existence of a cause of action.

64. Section 231 further specifically bars access to the courts in establishing a Crown immunity that operates retrospectively and prospectively to prevent any cause of action and extinguish all actions, claims, proceedings – including existing proceedings, and remedies over Manitoba's clawback of CSA amounts and requirement to remit the CSA funds to Manitoba.

65. Section 231 is a complete bar to access to justice, in violation of the section 96 requirement that people and litigants must have access to the courts so that the courts may resolve disputes and decide questions of private and public law.

66. Specifically, s. 231 strikes at the core of the jurisdiction of the superior court, which core jurisdiction includes access to those courts, by denying existing and prospective litigants the ability to access this Honourable Court for the determination of disputes over the CSA clawback and remittances.

67. In particular, the existing and prospective litigants barred by s. 231 from seeking recourse are First Nations children and/or entities or persons acting on behalf of First Nations children or in respect of their care, in breach of the section 96 constitutional imperative to protect access to justice for First Nation claimants. In preventing access to any potential remedy for the diminishment of financial resources for First Nation children in care in Manitoba, s. 231 violates that constitutional imperative, thereby exacerbating the pre-existing vulnerability of First Nations children and youth in care.

68. Further, the core jurisdiction of provincial superior Courts includes the duty to ensure that legislatures do not transgress the limits of their constitutional authority or engage in illegal exercise of power. S. 231 prevents all causes of action, bars all proceedings, and prohibits the granting of any remedy, without exception. Absent valid invocation of the section 33 notwithstanding clause, the Crown cannot immunize itself from judicial review or the ordering of remedies in respect of alleged constitutionally invalid acts. Such an infringement is void and of not force and effect within the meaning of s. 52 of the *Constitution Act of 1982*.

69. In addition, the provincial superior Courts possess broad *parens patriae* jurisdiction, which jurisdiction has existed for centuries and is vested in the Manitoba



Court of Queen's Bench under *The Court of Queen's Bench Act*. The *parens patriae* jurisdiction is inherent jurisdiction of the Court and part of its core function of protecting children. As such, section 96 of the *Constitution Act, 1867* preserves for the Court a role to ensure the best interests of children. As no alternative access to recourse for First Nations children is provided for the CSA clawback and remittance requirement, Manitoba is constitutionally prevented from barring access to the Court and to the Court's powers under its *parens patriae* jurisdiction.

70. Section 231 is an impermissible infringement on the core jurisdiction of this Honourable Court and is therefore constitutionally invalid.

### **Manitoba is in Breach of its Fiduciary Obligations to First Nations Children in Care**

71. Rooted in the principle of the Honour of the Crown, the Crown owes a fiduciary duty to First Nations to protect the physical, emotional, cultural, and spiritual well-being of their children. First Nations' responsibilities to their children were never ceded, surrendered, extinguished or relinquished through the treaties under which the Crown assumed an obligation of kindness and caring toward First Nations. The Crown's fiduciary duty concerning these aboriginal and treaty interests, rights and responsibilities arises as a result of their ongoing affirmation under section 35 of the *Constitution Act, 1982* and the Crown's unilateral assumption of discretionary control over these interests.

72. The fiduciary duty owed by Manitoba to First Nations people with respect to First Nations children in care requires Manitoba to act diligently to further the best

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interests of First Nations children in activities over which it possesses control. Manitoba exercises significant control over the provision of funding to child and family services agencies and must conduct itself in a manner that reflects these obligations. Although this duty necessarily invites conflict between Manitoba's obligations to First Nations children and the general population of Manitobans, this conflict does not invite Manitoba to shirk its responsibilities.

73. Further, Manitoba must also be guided by an interpretation of relevant legislation, including but not limited to the *CSA Act*, that is both liberal and generous to the beneficiaries of its fiduciary duty.

74. Finally, the Crown's fiduciary obligations require it to refrain from undermining the abilities of the beneficiaries of its fiduciary duty to realize the benefits owed to them as a result of this duty, or to access recourse in the event of a breach of this duty.

75. Section 231 of BITSA constitutes a breach of Manitoba's fiduciary duty owed to First Nations. By deeming amounts received by CFS agencies to be "overpayment", Manitoba has failed to act diligently in the best interests of First Nations children with respect to the provision of funding for their care, and has failed to rely on a generous and liberal interpretation of the *CSA Act*.

76. In immunizing itself from existing and prospective actions and claims for remedies, Manitoba is acting in a manner not in keeping with its fiduciary obligation to not undermine the ability of those to whom the duty is owed to access justice.

77. The legislative bar to recourse for the reduction of the available financial resources for First Nations children in care entrenches and exacerbates the particular and acute vulnerabilities experienced by First Nations children while in care and at the time of transitioning out of care. This is inconsistent with both the Crown's fiduciary duty owed to First Nations and to the Honour of the Crown.

78. Section 231 of BITSA does not expressly remove Manitoba's fiduciary obligation to First Nations children and any implied removal is unlawful. Manitoba cannot legislatively extinguish a fiduciary duty that arises from a constitutionally protected responsibility to ensure the physical, emotional, cultural, and spiritual well-being of First Nations children. Such an infringement is void and of no force and effect within the meaning of s. 52 of the *Constitution Act of 1982*.

### **The Denial of Substantive Equality to First Nation Children in Care**

79. Section 15 of the *Charter* reflects a profound commitment to promote equality and prevent discrimination against disadvantaged groups. The Province of Manitoba has a duty to be particularly vigilant about the effects of its own laws and policies on members of disadvantaged groups.

80. Substantive equality is the animating norm of s. 15. Honouring the right to equal benefit of the law requires attention to the full context of a claimant group's situation, to the actual impact of the law on that situation and to the persistent systemic disadvantages that have operated to limit the opportunities available to that group's members.

81. Race is a protected characteristic under s. 15. Family status constitutes an analogous ground equally worthy of the *Charter's* protection. A legislative consensus exists among all provinces and territories that discrimination against people on the basis of family status requires legislative remediation through inclusion in human rights legislation.

82. First Nations people in Canada are historically disadvantaged due to their dispossession by actions, policies and laws of the federal and provincial governments which have taken their lands and children, interfered with their way of life, undermined their right to self determination, ignored sacred treaty promises and failed to respect the reality of First Nation laws.

83. Colonization is not a thing of the past. First Nations families and children have been left disproportionately vulnerable to state interference in their lives and to social and economic exclusion. They continue to face endemic barriers to access to justice, social and economic opportunity and basic public services.

84. First Nations children in care are tragically overrepresented in the Manitoba child welfare system. They have lost their families as well as connections to their language, community, culture and identity. The system's failure to nurture and protect them has cost them meaningful opportunities to grow healthily and safely into adulthood. Its failure to support and adequately fund their needs and aspirations while in care and in transitioning out of care leaves them disproportionately vulnerable to poverty, homelessness, involvement in the criminal justice system and multi-generational cycles of involvement in state supervised care.

85. The unlawful clawback and remittance of CSA funds for the general revenues of the Crown denies First Nations children and youth in care the resources needed to flourish and dream.

86. Section 231 denies equal benefit of the law to First Nations children and youth in care on the intersecting grounds of race and family status. The effect of s. 231 is to deny access to the Courts to one of the most highly vulnerable groups in Canadian society – children and youth in the care of the state rather than their family. This impact is disproportionately felt by First Nations children and youth in care who are materially overrepresented in the child welfare system in Manitoba.

87. By denying them funds promised by the Government of Canada for their exclusive use and benefit and then, their right to challenge the unlawful clawbacks and remittances in court, s. 231 reinforces, perpetuates and exacerbates the long standing exclusion of First Nations children and youth in care from access to justice, social and economic opportunity and the right to participate in fundamental Canadian institutions such as the courts and legal system.

88. The denial of equal benefit of the law by s. 231 cannot be reasonably and demonstrably justified in a free and democratic society. As such, it is invalid and of no force and effect within the meaning of s. 52 of the *Constitution Act of 1982*.

### **Standing of the Applicant**

89. The Assembly of Manitoba Chiefs (“AMC”) was formed in 1988 as the collective voice of First Nations in Manitoba. The AMC represents a diversity of

language and legal traditions. The AMC member nations include Anishinaabe (Ojibwe), Nehetho/Ininew (Cree), Anishinew (Ojibwe-Cree), Denesuline (Dene), and Dakota Oyate (Dakota) and include signatories to Treaties 1-6 and 10 with the Crown (Her Majesty in right of Canada). AMC represents 62 of 63 First Nations in Manitoba.

90. The First Nations Family Advocate Office of the Assembly of Manitoba Chiefs (the “FNFAO-AMC”) opened on June 1, 2015. The First Nations Family Advocate provides advocacy and support to families, assistance with the development of care plans, and leads research projects, as well as providing referrals to service providers and legal counsel.

91. The FNFAO-AMC is intended to assist the AMC in implementing its *Bringing Our Children Home* report, which examined the child welfare system in Manitoba from the perspective of the people who must deal with the system directly and to ensure that in doing so, support is offered directly to children and families. In Anishinaabemowin, the name that was gifted to the office is “Abinoojiyak Bigiwewag” meaning “our children are coming home”.

92. Since opening, the FNFAO-AMC has provided services to over 1500 families.

93. Both AMC and the FNFAO-AMC have been recognized as having a direct and genuine interest in matters pertaining to the rights, laws, and wellbeing of First Nations people. Courts – both regional and national, including the Supreme Court of Canada, administrative proceedings, and inquiries have recognized that AMC and the FNFAO-AMC are, through their special expertise and broad membership base,

able to make useful contributions to legal proceedings, including those related to child welfare.

94. Children in care are uniquely vulnerable. This vulnerability is only compounded when the Crown, in breach of its fiduciary duty, seeks to deny them recourse to this Honourable Court. Consistent with its interest in matters pertaining to the rights, laws and wellbeing of First Nations people and the role of FNFAO – AMC in directly supporting children and families, AMC initiates this Notice of Application to preserve, protect and enhance access to justice for First Nations children in care.

**Statutory Provisions, International Instruments and Rules to be relied on:**

1. *Court of Queen's Bench Rules*, Man Reg 553/88, r 14.05(2)(c)(iv), (d).
2. *The Proceedings Against the Crown Act*, CCSM c P140, s 3, 4, 5, 7.
3. *The Court of Queen's Bench Act*, CCSM c C280, s 32.
4. *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5, s 96.
5. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, ss 35, 52.
6. *The Child and Family Services Act*, CCSM c C80.
7. *The Adoption Act*, CCSM c A2.
8. *Children's Special Allowances Act*, S.C. 1992, c. 48, Sch.
9. Bill 2, *Budget Implementation and Tax Statutes Amendment Act, 2020*, 3<sup>rd</sup> Sess, 42<sup>nd</sup> Leg, Manitoba, 2020 (assented to 6 November 2020).

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10. *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, UNGAOR, 2007, Supp No 49.
11. *United Nations Convention on the Rights of the Child*, E/CN.4/RES/1990/74, UNCHR, 1990.

The following documentary evidence will be used at the hearing of the application:

1. Affidavit of Cora Morgan, to be filed;
2. Affidavit of Elder Florence Paynter, to be filed;
3. Affidavit of Grand Chief Arlen Dumas, to be filed;
4. Affidavit of Chief David Monias, to be filed;
5. Affidavit of Chief Sheldon Kent, to be filed;
6. Affidavit of Alvin Henderson, to be filed;
7. Affidavit of Samantha Chief, to be filed; and
8. Such further and other evidence as counsel may advise and this court may allow.

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Date of issue

**PUBLIC INTEREST LAW CENTRE**

200 – 393 Portage Avenue  
Winnipeg, MB R3C 0B9

**Byron Williams, Chris Klassen, Joëlle  
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Solicitors for the Applicants.



FILED NOV 27 2020

File No. CI 20-01-

29271

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

BETWEEN:

**ANIMIKII OZOSON CHILD AND FAMILY SERVICES, WEST REGION CHILD AND FAMILY SERVICES, INTERTRIBAL CHILD AND FAMILY SERVICES, PEGUIS CHILD AND FAMILY SERVICES, SANDY BAY CHILD AND FAMILY SERVICES, SAGKEENG CHILD AND FAMILY SERVICES, SOUTHEAST CHILD AND FAMILY SERVICES, AWASIS AGENCY OF NORTHERN MANITOBA, CREE NATION CHILD & FAMILY CARING AGENCY, ISLAND LAKE FIRST NATION FAMILY SERVICES, KINOSAO SIPI MINISOWIN AGENCY, NIKAN AWASISAK AGENCY INC., OPASKWAYAK CREE NATION CHILD & FAMILY SERVICES, SOUTHERN CHIEF'S ORGANIZATION INC., SOUTHERN FIRST NATIONS NETWORK OF CARE, FIRST NATIONS OF NORTHERN MANITOBA CHILD & FAMILY SERVICES AUTHORITY, METIS CHILD AND FAMILY SERVICES AUTHORITY, MICHIF CHILD AND FAMILY SERVICES and METIS CHILD FAMILY, AND COMMUNITY SERVICES**

Applicants,

- and -

**THE GOVERNMENT OF MANITOBA**

Respondent.

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**NOTICE OF APPLICATION**  
**CIVIL UNCONTESTED LIST**

**HEARING DATE:** Monday, the 14<sup>th</sup> day of December, 2020, at 10:00 a.m.

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**COCHRANE SAXBERG LLP**

Barristers and Solicitors

201 – 211 Bannatyne Avenue

Winnipeg, Manitoba, R3B 3P2

**HAROLD COCHRANE, Q.C./SHAWN C. SCARCELLO/KRIS M. SAXBERG**

Telephone: 204-594-6688

Facsimile: 204-808-0987

File No. CI 20-01-\_\_\_\_\_

**THE QUEEN'S BENCH**  
**Winnipeg Centre**

BETWEEN:

**ANIMIKII OZOSON CHILD AND FAMILY SERVICES, WEST REGION CHILD AND FAMILY SERVICES, INTERTRIBAL CHILD AND FAMILY SERVICES, PEGUIS CHILD AND FAMILY SERVICES, SANDY BAY CHILD AND FAMILY SERVICES, SAGKEENG CHILD AND FAMILY SERVICES, SOUTHEAST CHILD AND FAMILY SERVICES, AWASIS AGENCY OF NORTHERN MANITOBA, CREE NATION CHILD & FAMILY CARING AGENCY, ISLAND LAKE FIRST NATION FAMILY SERVICES, KINOSAO SIPI MINISOWIN AGENCY, NIKAN AWASISAK AGENCY INC., OPASKWAYAK CREE NATION CHILD & FAMILY SERVICES, SOUTHERN CHIEF'S ORGANIZATION INC., SOUTHERN FIRST NATIONS NETWORK OF CARE, FIRST NATIONS OF NORTHERN MANITOBA CHILD & FAMILY SERVICES AUTHORITY, METIS CHILD AND FAMILY SERVICES AUTHORITY, MICHIF CHILD AND FAMILY SERVICES and METIS CHILD FAMILY, AND COMMUNITY SERVICES**

Applicants,

- and -

**THE GOVERNMENT OF MANITOBA**

Respondent.

**NOTICE OF APPLICATION****TO THE RESPONDENT:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicants. The claim made by the Applicants appears on the following page.

**THIS APPLICATION** will come on for a hearing before the presiding judge on Monday, December 14, 2020, at 10:00 a.m., at the Law Courts Complex, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, you or a Manitoba lawyer acting for you must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the Court office where the Application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

November 27, 2020

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

J. WIGGETT  
DEPUTY REGISTRAR  
COURT OF QUEEN'S BENCH  
FOR MANITOBA  
Deputy Registrar  
408 York Avenue  
Winnipeg, Manitoba R3C 0P9

**TO:           The Government of Manitoba**  
Manitoba Justice  
Civil Legal Services  
730 – 405 Broadway  
Winnipeg, Manitoba R3C 3L6

## APPLICATION

1. THE APPLICANTS MAKES APPLICATION for:
  - a) A declaration that the Applicants bring this Application on their own behalf, and also on behalf of the off-reserve Indigenous children in the care of the Applicant Agencies for whom they have the statutory capacity or guardianship and a legal duty to act for, including with respect to the determination, advancement and protection of their *Charter*, Constitutional, statutory and common law rights.
  - b) A declaration that Indigenous people, including Indigenous children, have inherent rights with respect to their children, including the inherent right to self determination and the inherent right to self-government, which includes jurisdiction in relation to child and family services, all which are recognized and affirmed by s. 35 of the *Constitution Act*, 1867.
  - c) A declaration that the Government of Manitoba (“Manitoba”) has contravened the honour of the Crown, breached the Principles of Reconciliation and breached its fiduciary and Constitutional duties to off-reserve Indigenous children who are or who were wards of the Applicant Agencies.
  - d) A declaration that Manitoba has acted and is acting unlawfully and without Constitutional competence by making use of, converting to its own use, anticipating, assigning to itself, applying a charge, applying set-offs and stacking limits to benefits granted to the Applicant Agencies pursuant to the *Children’s Special Allowances Act* S.C. 1992, c. 48 (the “CSA Act”) and the regulations thereunder.
  - e) A declaration that Manitoba has unjustifiably denied and still denies substantive equality and equal benefit of the law under s. 15 of the *Canadian Charter of Rights and Freedoms* (“the *Charter*”) to off-reserve Indigenous children who are or were in the care of the Applicant Agencies on the individual and/or enumerated grounds of ‘race, ‘ethnic origin’, ‘nationality’, and the analogous grounds of ‘family status’, “Aboriginality-residence” as it

pertains to off-reserve band member status, ‘children in care’ and ‘Indigenous children in care’ by virtue of its misappropriation and misuse of CSA Benefits.

- f) A declaration that Manitoba has acted and is acting unlawfully and without Constitutional competence by misusing the CSA Benefits by failing and/or refusing to apply those benefits exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom the benefits were paid in violation of the CSA Act.
- g) A declaration that Manitoba acted unlawfully and without Constitutional competence by denying substantive equality to off-reserve Indigenous children in care by its misappropriation and misuse of CSA Benefits in contravention of *An Act respecting First Nations, Inuit and Metis children, youth and families, S.C. 2019, c. 24*.
- h) Damages under s. 24(i) of the *Charter* for off-reserve Indigenous children who are or were in the care of the Applicant Agencies.
- i) A declaration that Manitoba has discriminated against off-reserve Indigenous children who are or have been in the care of the Applicant Agencies in violation of the common law and *The Human Rights Code, C.C.S.M. c. H175*.
- j) A declaration that Bill 2, Part 10, Division 4, s. 231 of *Budget Implementation and Tax Statutes Amendment Act, 2020, 3<sup>rd</sup> Sess, 42<sup>nd</sup> Leg, Manitoba 2020*, assented to on the 6<sup>th</sup> of November 2020, as a whole, and each of its discretely enumerated provisions (hereinafter referred to as “s. 231 of *BITSA*” or “s. 231”), are unconstitutional, ultra vires, inoperable and in contravention of the *Constitution Act, 1867*, the *Constitution Act 1982*, and the *Charter* are therefore of no force and effect.
- k) A declaration that by purporting to bar all actions or other proceedings relating to Manitoba’s actions concerning CSA Benefits, s. 231 invalidly infringes the core or inherent jurisdiction of the superior courts and thereby impermissibly impinges on s. 96 of *The Constitution Act, 1867* and is therefore of no force and effect.

- l) A declaration that s. 231 violates the rule of law and is therefore unconstitutional and of no force and effect.
- m) A declaration that s. 231 does not bar legal proceedings based on either Constitutional and/or *Charter* claims from proceeding in Manitoba's superior courts.
- n) A declaration that s. 231's total ban on actions or other proceedings, including Constitutional or *Charter* claims, is in contravention of s. 24 of the *Charter* and s. 52 of the *Constitution Act, 1982* and is therefore of no force and effect.
- o) A declaration that the actions and proceedings identified as Court of Queen's Bench File No. CI18-01-14043 and File No. CI18-01-18438 are not dismissed in accordance with s. 231 and that Court of Queen's Bench File No. CI18-01-14043 is joined or consolidated with this Application, with necessary and appropriate amendments to the pleadings, including amendments with respect to "single envelope funding" which was supposed to commence on April 1, 2019 after Manitoba declared it would no longer claw back or force remittance of CSA Benefits.
- p) A declaration that s. 231 unjustifiably denies substantive equality and equal benefit of the law under s. 15 of the *Charter* to off-reserve Indigenous children who are or were wards of the Applicant Agencies on the individual and/or enumerated grounds of race, ethnic origin, nationality, and the analogous grounds of 'family status', "Aboriginality-residence" as it pertains to off-reserve band member status, 'children in care' and 'Indigenous children in care'.
- q) A declaration that Manitoba did not have the Constitutional competence to enact s. 231 as it denies substantive equality to off-reserve Indigenous children in care in contravention of *An Act respecting First Nations, Inuit and Metis children, youth and families, S.C. 2019, c. 24* and s. 231 is therefore unconstitutional, ultra vires, inoperable and of no force and effect.

- r) A declaration that Manitoba cannot immunize or pardon itself for its unlawful actions in relation to the CSA Benefits through the enactment of s. 231.
- s) A declaration that Manitoba is not entitled at law and does not have the Constitutional competence to recover any further monetary amounts from the Applicant Agencies in relation to CSA Benefits that the Applicant Agencies receive, received or were eligible to receive for off-reserve Indigenous children who are or were wards of the Applicant Agencies.
- t) A declaration that Manitoba's actions and conduct described herein are arbitrary, deliberate, callous, highhanded, and reckless.
- u) A declaration that Manitoba's *Charter* breaches and violations cannot be reasonably and demonstrably justified in a free and democratic society.
- v) Punitive damages.
- w) Solicitor and his own client costs on a full indemnity basis.
- x) Such further and other relief as this Honourable Court may order.

2. **THE GROUNDS FOR THE APPLICATION are:**

**Defined Terms**

In addition to terms defined elsewhere in this Notice of Application, the following terms are defined:

- I. **Indigenous child and family services agency (or "Indigenous Agency or Agencies")** means First Nation Child and Family Services and Metis Child and Family Services Agencies established and mandated by the Southern First Nations Network of Care, the First Nations of Northern Manitoba Child and Family Services

Authority, or the Metis Child and Family Services Authority, to provide protection and care for Indigenous children who become wards of those agencies. The Applicant Agencies are Indigenous Agencies.

- II. **child and family service agency (or “CFS Agency”)** means a child and family services agency as defined in *The Child and Family Services Act* C.C.S.M. c. C80, whether Indigenous or non-Indigenous, established to provide protection and care for children who become wards of a CFS Agency.
- III. **non-Indigenous child and family services agency or non-Indigenous CFS Agency or Non-Indigenous Agency** means a CFS Agency in Manitoba that is not an Indigenous Agency.
- IV. **off-reserve Indigenous children** are children who are or were wards of the Applicant Agencies or any other Indigenous Agency between January 1, 2005 and March 31, 2019 and for whom Manitoba had a legal obligation to fund.
- V. **wards** mean children who are or were under apprehension, under the temporary guardianship and/or under the permanent guardianship of a CFS Agency.
- VI. **stacking** and **stacking limits** means the maximum level of funding to a recipient from all sources, including federal, provincial, territorial, and municipal, for any one activity, initiative, or project.
- VII. **Children’s Special Allowances Act** and **CSA Act** means the *Children’s Special Allowances Act*, S.C. 1992, C.48 and amendments thereto.
- VIII. **maintenance costs** or **maintenance** or **child maintenance** refers to the costs required for the care of a ward, including housing, food, clothing, education, training, extra-curricular activities and special needs.



- IX. **operational costs** or **operation costs** refers to the costs of operating a CFS Agency, primarily for salaries, commercial leases, and training.
- X. **Reserve** has the same definition as the term Indian Reserve is defined to have pursuant to the *Indian Act*, R.S.C., 1985, c. I-5 (the “Indian Act”), meaning land held by the Crown that is for the use and benefit of the respective Band for which the land was set apart.
- XI. **Canada Child Benefit** means the tax-free monthly payment made by the Minister of National Revenue, on behalf of Canada, to eligible families to help them with the cost of raising children under the age of 18 pursuant to s. 122.6 of the *Income Tax Act*, R.S.C., 1985, c. 1 (the “*Income Tax Act*”) and the federal taxation scheme. The Canada Child Benefit was at times provided under its predecessor names, those being the Canada Child Tax Benefit, the National Child Benefit, the Universal Child Care Benefit. All references to the Canada Child Benefit herein implicitly include a reference to its predecessor names and programs as they existed from time to time.
- XII. **Children’s Special Allowance** and **CSA Benefit** mean payments made by the Minister of National Revenue, on behalf of Canada, to CFS Agencies that successfully applied for those benefits (as determined by the Minister of National Revenue) and which benefits are to be used exclusively for the care, maintenance, education, training or advancement of the specific child for whom they were paid in accordance with and by virtue of the CSA Act. The CSA Benefit is and has always been the mirror equivalent of the Canada Child Benefit. The purpose of the CSA Benefit is to ensure that children in care are not discriminated against by not being eligible to receive the Canada Child Benefit just because they are in care.

### Purpose

1. The Applicants bring this Application for a determination of the rights of off-reserve Indigenous children who are or were wards of the Applicant Agencies in relation to CSA Benefits granted by the Minister of National Revenue, on behalf of Canada, to Applicant Agencies, which benefits were to be used exclusively for the care, maintenance, education, training or advancement of the specific child for whom they were paid in accordance with and by virtue of the CSA Act.
2. Since 2005, Manitoba has forcibly and illegally obtained and misused over \$338 million (and counting) in CSA Benefits from Indigenous Agencies in Manitoba, including from the Applicant Agencies.
3. Up until at least April 1, 2019 Manitoba forcibly and illegally misappropriated CSA Benefits granted to Indigenous Agencies in Manitoba, including from the Applicant Agencies.
4. The Applicants, other than the Southern First Nations Network of Care, the First Nations of Northern Manitoba Child and Family Services Authority, the Metis Child and Family Services Authority and the Southern Chief's Organization Inc. ("SCO"), are each corporations without share capital mandated as child and family services agencies whose purposes are to provide child and family services under *The Child and Family Services Act* C.C.S.M. c. C80 (the "*CFS Act*") and/or *The Adoption Act* C.C.S.M. c. A2 (collectively referred to as the "Applicant Agencies").
5. The Southern First Nations Network of Care, the First Nations of Northern Manitoba Child and Family Services Authority and the Metis Child and Family Services Authority are 'Authorities' as established by s. 4 of *The Child and Family Services Authorities Act*, C.C.S.M. c. C90 (the "*CFS Authorities Act*") (collectively referred to as the "Applicant Authorities").

6. The Applicant Authorities are responsible for administering and providing for the delivery of child and family services in Manitoba.
7. The Southern First Nations Network of Care is responsible for administering and providing for the delivery of child and family services (a) to people who are members of and/or identify with southern First Nations in Manitoba, (b) for children and families in Winnipeg who identify with First Nations in Ontario and who receive services from Animikii Ozoson Child and Family Services, and (c) other persons.
8. The First Nations of Northern Manitoba Child and Family Services Authority is responsible for administering and providing for the delivery of child and family services to people who are members of and/or identify with northern First Nations in Manitoba, as well as other persons.
9. The Metis Child and Family Services Authority is responsible for administering and providing for the delivery of child and family services to people who are and who identify with Metis and Inuit people, as well as other persons.
10. The SCO was established in 1999 and represents 34 southern First Nation communities in Manitoba. Their mission is to protect, preserve, promote and enhance First Nations peoples' inherent rights, languages, customs and traditions through the application and implementation of the spirit and intent of the Treaty-making process.
11. The SCO is statutorily recognized within the child welfare system in Manitoba by having the statutory responsibility for appointing the board of directors for the Southern First Nations Network of Care pursuant to s. 6(1) of *The CFS Authorities Act*.
12. The Applicant Agencies are Indigenous Agencies and are delegated by the Applicant Authorities to provide culturally appropriate child protection and prevention services in accordance with *The CFS Act* and *The CFS Authorities Act*.

13. The Applicant Agencies each have duties imposed upon them by s. 7(1) of *The Child and Family Services Act*, which duties include, but are not limited, to:
  - a. Protecting children;
  - b. Providing care for children in their care;
  - c. Developing permanency plans for all children in their care with a view to establishing normal family life for these children; and
  - d. Developing and maintaining childcare resources.
14. In carrying out their statutory duties, the Applicant Agencies must, at times, apprehend children who are in need of protection and place those children into agency care on either a temporary or permanent basis.
15. The Applicant Agencies are legally responsible for the care, maintenance, education and well being of the children they have apprehended for the time period for which they are under apprehension and/or for the time period that each Applicant is appointed as the legal guardian of any such children on a temporary or permanent basis pursuant to sections 25(1) and 48 of *The CFS Act*.
16. Where a CFS Agency, including an Applicant Agency, is the legal guardian of a child, the Agency must act for and on behalf of the child and appear in court to prosecute or defend any action or proceeding affecting the child's status (s. 48 of *The CFS Act*).
17. Indigenous Agencies, including the Applicant Agencies (except for Animikii Ozoson Child and Family Services, Metis Child, Family and Community Services and Michif Child and Family Services as described below), have two sources of funding, those sources being (a) the Government of Canada ("Canada") through Indigenous Services Canada ("ISC")(formally Indigenous and Northern Affairs Canada) and (b) Manitoba.

18. Canada, through ISC, provides funding for both operating costs and for child maintenance costs to Indigenous Agencies who provide services to children who (a) had at least one parent resident on a Reserve in Manitoba at the time those children came into the care of an Indigenous Agency and (b) the children had, or were eligible to have, status under the *Indian Act*. This is widely referred to as “on-reserve funding” and is provided directly to the Indigenous Agencies by ISC.
19. Manitoba provides financial funding to Indigenous Agencies for both operating costs and for child maintenance costs in relation to Indigenous children who do not meet the funding criteria of Canada as set out above and to Animikii Ozoson Child and Family Services, Metis Child, Family and Community Services and Michif Child and Family Services in all circumstances. This is widely referred to as “off-reserve funding” for off-reserve Indigenous children in care.
20. Animikii Ozoson Child and Family Services, Metis Child, Family and Community Services and Michif Child and Family Services only receive child welfare funding from Manitoba (“off-reserve funding” as described above). These three Indigenous Agencies receive no child welfare funding from Canada even in circumstances where the “on reserve funding” criteria are met for a given child. Animikii Ozoson Child and Family Services is and has challenged Canada’s refusal to provide child welfare funding for children who meet Canada’s “on reserve funding” criteria.
21. Prior to April 1, 2019, Manitoba provided its operational funding to Indigenous Agencies for off-reserve Indigenous children in care through the applicable Applicant Authority as the conduit.
22. Prior to April 1, 2019, Manitoba provided its maintenance funding directly to Indigenous Agencies.

### **The Canada Child Benefit and Children's Special Allowances**

23. The Canada Child Benefit forms part of Canada's federal taxation scheme and, pursuant to s. 122.6 of the *Income Tax Act*, is a tax-free monthly payment made to eligible families to help them with the cost of raising children under the age of 18.
24. The Child Disability Benefit is also part of Canada's federal taxation scheme and, in accordance with the *Income Tax Act*, it provides a tax-free monthly payment to families who care for a child under the age of 18 with severe and prolonged impairment in physical or mental functions.
25. For eligible families, the Child Disability Benefit is included in the Canada Child Benefit by way of an increase or supplement to that benefit.
26. The Canada Child Benefit is paid in respect of all children in Canada whose families net income qualifies them for the benefit whether they are on-reserve or off-reserve. Families with a net income under \$31,711 receive the maximum benefit. Families with higher incomes receive a gradually lower benefit.
27. The Canada Child Benefit and the Child Disability Benefit are not payable or available with respect to children who have come into the care of a child welfare agency.
28. Children's Special Allowances ("CSA Benefits") are the mirror equivalent of the Canada Child Benefit, being tax-free monthly payments made to successful applicant CFS Agencies, including Indigenous Agencies, that maintain children in care.
29. The purpose of the CSA Benefit is to prevent discrimination to children in care on the basis of family status by ensuring that children in care receive the equivalent financial benefit from Canada that would be granted for them by Canada if they were not in care.

30. CSA Benefits are equal to the maximum monthly amount of the Canada Child Benefit (including the Child Disability Benefit if applicable).
31. Like the Canada Child Benefit, CSA Benefits are paid in respect of all eligible children in Canada, whether they are in care on-reserve or off-reserve.
32. Applications for CSA Benefits must be made to and approved by Canada's Minister of National Revenue.
33. Applications for CSA Benefits can only be approved when they are made in the prescribed manner by the department, agency or institution that 'maintains' the child for whom the application is made.
34. A child is considered to be 'maintained' by an agency if, at the end of a given month, the child is dependent on the agency for his or her care, maintenance, education, training, and advancement to a greater extent than any other agency or individual.
35. In order to approve an application for CSA Benefits, the Minister of National Revenue must determine and decide that the applicant maintains the specific child with respect to whom the application is made to a greater extent than any other department, agency or institution or any person in accordance with s. 3(1) of the CSA Act and s. 9 of the CSA Act Regulations.
36. Once approval for the CSA Benefit application is granted by the Minister of National Revenue's office, CSA Benefit payments begin to be made by the Canada Revenue Agency to successful applicant agencies with respect to the specific child for whom the CSA Benefit is granted.
37. Pursuant to ss. 3(2) and 7 of the CSA Act, CSA Benefits must be applied exclusively toward the care, maintenance, education, training or advancement of the specific child

in respect of whom they were granted and they cannot be assigned, charged, attached, anticipated or given as security, and they are granted subject to those conditions.

38. The Applicant Agencies maintain each child that is brought into their care in accordance with the definition of the term 'maintenance' as is set out in s. 9 of the CSA Regulation.
39. The Applicant Agencies have applied for, and do apply to, the Minister of National Revenue's office for CSA Benefits for each child that is brought into their care.
40. The Minister of National Revenue's office has granted all applications for CSA Benefits that have been filed by the Applicant Agencies.
41. CSA Benefits have been provided by the Canada Revenue Agency to the Applicant Agencies for each successful CSA Benefit Application. Those payments all began in or around the month after the CSA Benefit Application was granted.

#### **Child Welfare Funding Until April 1, 2019**

42. Indigenous children are vastly over-represented in Manitoba's child welfare system.
43. In or around 2005, Manitoba demanded that the CSA Benefits granted to Indigenous Agencies with respect to off-reserve Indigenous children in their care be remitted to Manitoba.
44. Manitoba justified its demand for the CSA Benefits on the spurious basis that it was already providing sufficient maintenance funding to Indigenous Agencies for off-reserve Indigenous children in their care. The Indigenous Agencies refused Manitoba's demand and took the position that the remittance to Manitoba of the CSA Benefits was illegal as the CSA Benefits must be applied exclusively toward the care, maintenance, education, training or advancement of the specific child in respect of whom they were



granted and they cannot be assigned, charged, attached, anticipated or given as security, and they are granted subject to those conditions. CSA Benefits cannot be used for the purpose of off-setting child maintenance payments made by Manitoba.

45. Beginning in 2010, Manitoba began to hold back 20% of the operational funding it provided to Indigenous Agencies as a means of forcibly and wrongfully applying a set-off or charge on those operational funding payments for what Manitoba alleged as a debt owed to them by the Indigenous Agencies for their refusal to hand the CSA Benefits over to Manitoba since 2005 (the “Illegal Claw Back”).
46. Manitoba calculated the alleged CSA Benefit debt by estimating what each Indigenous Agency received in CSA Benefit payments from January 1, 2005 to March 31, 2011.
47. Manitoba also required and demanded that all Indigenous Agencies remit to Manitoba any current and future CSA Benefits they received or Manitoba would institute a second and further series of Illegal Clawbacks of operational funding against any Indigenous Agencies who refused.
48. The severe consequences and threats of 20% cuts in operational funding left some Indigenous Agencies with no choice but to remit to Manitoba the CSA Benefits they received for off-reserve Indigenous children in their care (“Forced Remittances”). Indigenous Agencies are non-profit corporations. The operational funding they receive is less than the minimum required to maintain their important operations and meet their legal duties under the CFS Act to protect children and provide welfare services to children and families in Manitoba.
49. Manitoba has not used the CSA Benefits it has received through the Illegal Claw Backs and Forced Remittances exclusively for the care, maintenance, education, training, or advancement of the specific children for whom those benefits were paid. Rather, Manitoba identifies the CSA Benefits as a source of ‘revenue’.

50. Manitoba has deposited these CSA Benefits into its General Treasury Account and has used these CSA Benefits to “balance its books.”
51. Manitoba used the CSA Benefits as a source of revenue for stacking limit purposes for child welfare and thereby applied an unlawful stacking limit policy to the CSA Benefits granted for off-reserve Indigenous children in care.
52. The CSA Benefit has increased substantially over time and from time to time and Manitoba has received the benefit of those increases.
53. Manitoba has not increased its maintenance funding for off-reserve Indigenous children in care either at the time of or at the level that the CSA Benefit has increased. The increases to the CSA benefit have been to Manitoba’s financial advantage alone, with no accompanying or related benefit provided for the off-reserve Indigenous child in care for whom they were granted.
54. Manitoba explicitly prohibits the Canada Child Benefit from being considered as a source of revenue within its stacking limit policy for children and their families who apply for and receive income and social assistance under *The Manitoba Assistance Act*, C.C.S.M. c. A150 (*Assistance Regulation* 404/88R s. 8(1)).
55. Likewise, and in accordance with the CSA Act, Canada prohibits CSA Benefits from being utilized as a source of revenue when calculating its child welfare funding obligations under stacking limit policies.
56. On-reserve Indigenous children in care, therefore, are granted the CSA Benefit and there is no set-off, claw back or deduction in Canada’s child welfare funding obligations and maintenance or a reduction to the social services provided to on-reserve Indigenous children in care as a result. On-reserve Indigenous children in care receive the CSA Benefit with no deduction or off-set in funding to the Indigenous Agencies who care for them.

57. For all children and their families in Canada for whom the Canada Child Benefit is granted, there is no deduction in social services funding obligations or reduction of social services provided to them because of receiving the Canada Child Benefit.
58. For off-reserve Indigenous children in care for whom the CSA Benefit is granted, Manitoba reduces its child welfare funding obligations for those children and, for off-reserve Indigenous children in care during the period of January 1, 2005 to March 31, 2019, Manitoba took the CSA Benefit from them except to the extent that Indigenous Agencies did not comply with Manitoba's Illegal Claw Backs.
59. Manitoba thereby directly and adversely discriminated against off-reserve Indigenous children in care by denying them substantive and equal benefit of the law under s. 15 of the *Charter* on the basis that they were children, children in care and off-reserve Indigenous people, and especially because they were the combination of those three vulnerable groups, being off-reserve Indigenous children in care.
60. Manitoba has acted unlawfully and without Constitutional competence by misappropriating the CSA Benefits by failing and/or refusing to apply those benefits exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom the benefits were paid in violation of the CSA Act.
61. Manitoba has also acted unlawfully and without Constitutional competence by denying substantive equality to off-reserve Indigenous children in care by its misappropriation of CSA Benefits in contravention of *An Act respecting First Nations, Inuit and Metis children, youth and families, S.C. 2019, c. 24*

**S. 231 of *BITSA***

62. Section 231 was assented to on November 6, 2020. Manitoba mischaracterized s. 231 as budget implementation and tax amendment legislation to wrongfully avoid public consultation on the bill prior to its passing. It is Manitoba's attempt to pardon its prior conduct and place itself above the law.
63. Section 231's stated purpose is to "address the government's actions concerning the special allowances that agencies received or were eligible to receive for children in their care during the period January 1, 2005 to March 31, 2019, inclusive."
64. There are a number of interrelated components to s. 231, including:
  - a. It retroactively deems the CSA Benefits received or eligible to have been received by CFS Agencies between January 1, 2005 and March 31, 2019 as contributions for Manitoba to use to fund child welfare generally.
  - b. It creates future and current debts owed by CFS Agencies to Manitoba in relation to the CSA Benefits they received or were eligible to receive on behalf of specific children in their care between January 1, 2005 and March 31, 2019 but did not provide to Manitoba through its Illegal Claw Backs and Forced Remittances.
  - c. It creates overreaching Crown Immunity by barring any legal proceedings, current and future, related to Manitoba's actions regarding the CSA benefits between January 1, 2005 and March 31, 2019, and by further legislating that there is no cause of action or remedy available as a result of the application of s. 231 in and of itself.

65. S. 231 contravenes the division of powers as set out in the Constitution Act, 1867, ss. 91 and 92, and is therefore *ultra vires*, reasons for which include:
- a. The pith and substance of s. 231 is in relation to matters that fall within the exclusive constitutional authority of the Parliament of Canada, including ‘The Public Debt and Property’, the ‘Raising of Money by any Mode or System of Taxation, and ‘Indians’ pursuant to ss. 91(1A), 91(3) and 91(24).
  - b. The pith and substance of s. 231 is the derogation from or elimination of extra provincial rights, including rights from the following extra-provincial instruments:
    - i. The CSA Act.
    - ii. The *Income Tax Act*.
    - iii. *United Nations International Covenant on Civil and Political Rights* (ratified by Canada on May 19, 1976).
    - iv. *United Nations Convention on the Rights of the Child* (ratified by Canada on June 24, 1987).
    - v. *United Nations International Convention for the Elimination of all forms of Racial Discrimination* (ratified by Canada in 1970).
    - vi. *United Nations Declaration on the Rights of Indigenous Peoples* (ratified by Canada on November 12, 2010).

- c. The pith and substance of s. 231 is to affect an unconstitutional amendment to the CSA Act.
    - i. The legal rights and statutory duties of CFS Agencies who are granted the CSA Benefits are changed and removed.
    - ii. The legal rights of off-reserve Indigenous children in care for whom CSA Benefits are granted are removed.
    - iii. The recipient and beneficiary of the CSA Benefits is changed. In both cases, Manitoba is now the recipient and the beneficiary.
66. S. 231 contravenes the doctrine of federal paramountcy and is therefore unconstitutional and inoperative, reasons for which include:
- a. it creates a direct operational conflict with the CSA Act.
    - i. For the period of January 1, 2005 to March 31, 2019, off-reserve Indigenous children in care do not receive the benefit of the CSA Benefit.
    - ii. For the period of January 1, 2005 to March 31, 2019, the CSA Benefits are assigned, charged, attached and anticipated by and to Manitoba.
    - iii. For the period of January 1, 2005 to March 31, 2019, the recipient and beneficiary of the CSA Benefit is now Manitoba in both cases.
    - iv. For the period of January 1, 2005 to March 31, 2019, the CSA Benefits can be used for purposes that violate the CSA Act.

- b. It frustrates the purpose and intent of the CSA Act.
    - i. The CSA Act no longer prevents discrimination for all children in care.
    - ii. For the period of January 1, 2005 and March 31, 2019, off-reserve Indigenous children in care are discriminated against in Manitoba despite the purpose and intent of the *CSA Act* to prevent this discrimination.
67. S. 231 is beyond the Constitutional competence of Manitoba and is therefore *ultra vires* as it removes part of the core or inherent jurisdiction of the superior courts in contravention and violation of s. 96 of the *Constitution Act, 1982*. It also offends the rule of law as affirmed by the *Charter*, reasons for which include:
- a. It prevents and abolishes access to the courts for off-reserve Indigenous children in care in Manitoba who have disputes with Manitoba that require the determination of their rights.
  - b. Manitoba does not have the constitutional power to enact legislation that prevents a discrete segment of society (off-reserve Indigenous children in care) from accessing the courts.
  - c. Manitoba is preventing access to justice through s. 231.
  - d. Access to justice is fundamental to the rule of law.
  - e. If off-reserve Indigenous children in care, and their legal guardians and representatives, cannot challenge government actions that impact their rights in a court of law, they cannot hold the state to account, and Manitoba will be, or be seen to be, above the law, which is a breach of the rule of law.

68. S. 231 violates s. 15 of the *Charter* and is therefore of no force and effect, reasons for which include:
- a. S. 231 removes the rights of off-reserve Indigenous children in care and their legal guardians to access just and fair procedures for the resolution of conflicts and disputes with government, as well as to effective remedies for all infringements of their individual and collective rights.
  - b. S. 231 removes the rights of off-reserve Indigenous children in care to self determination.
  - c. Access to courts and self determination are both rights guaranteed by *The Charter, The Path to Reconciliation Act, the United Nations Declarations on the Rights of Indigenous People, the United Nations Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination*.
  - d. For the period of January 1, 2005 to March 31, 2019, it is only off-reserve Indigenous children in care and their legal guardians who have their rights regarding the CSA Benefit/Canada Child Benefit, including their rights to access the courts, abolished by s. 231. All other children and their guardians retain these rights.
69. S. 231 violates s. 24 of the *Charter* and s. 52 of the *Constitution Act, 1982* and is therefore *ultra vires* and of no force and effect.
- a. Manitoba does not have the Constitutional competence to extinguish actions seeking the determination of *Charter* and Constitutional rights and/or whether federal laws have been breached by virtue of s. 24 of the *Charter* and s. 52 of the *Constitution Act, 1982*.



- b. To the extent that s. 231 prohibits and abolishes these legal actions, it is *ultra vires* and of no force and effect.
70. S. 231's creation of a debt owing to Manitoba for CSA Benefits granted to Indigenous Agencies until March 31, 2019 but not remitted to Manitoba, is unconstitutional, discriminatory and in violation of s. 15 of the *Charter*, reasons for which include:
- a. Manitoba did not have the Constitutional competence to take the CSA Benefits in the first place. It therefore does not now have the Constitutional competence to legislate its authority to keep those CSA Benefits.
- b. S. 231 is a legislated stacking limit policy that is applied to CSA Benefits, which the Parliament of Canada has explicitly prohibited by the CSA Act and Canada does not apply to reduce its funding obligations for on-reserve Indigenous children in care.
- c. The distinction created and continued by s. 231 is that the federal income tax benefit (CSA Benefit/Canada Child Benefit) granted in the name of a child in Canada between January 1, 2005 and March 31, 2019, does not have to be remitted to Manitoba, except in the case of off-reserve Indigenous children in care.
- d. The s. 231 legislated stacking limit policy and legislated debt unjustifiably deny substantive equality and equal benefit of the law to the off-reserve indigenous children in care between January 1, 2005 and March 31, 2019 for whom the CSA Benefits were granted.
- e. The s. 231 legislated stacking limit policy and legislated debt further contribute to the insufficient child welfare funding provided by Manitoba to Indigenous Agencies as described above, and thereby perpetuates historical disadvantage to off-reserve Indigenous children in care to an even greater degree.

71. Manitoba did not have the constitutional competence to enact s. 231 as it denies substantive equality to off-reserve Indigenous children in care by its misappropriation of CSA Benefits in contravention of *An Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c. 24.

### **Inherent Rights of Indigenous People, Reconciliation, and the Honour of the Crown**

72. Indigenous people have inherent rights with respect to their children, including the rights to self-determination and jurisdiction with respect to child welfare services provided to Indigenous children both on and off-reserve, which are recognized and affirmed by s. 35 of the *Constitution Act, 1867*.
73. Manitoba has contravened the honour of the Crown, breached the Principles of Reconciliation and breached its fiduciary and Constitutional duties to off-reserve Indigenous children who are or who were wards of the Applicant Agencies, including for the following reasons:
  - a. The honour of the Crown requires Manitoba to protect off-reserve Indigenous children in care, to act in their best interests, to give a broad and purposive interpretation to what is required to protect and achieve their legal rights, including their rights to social services, social benefits, federal tax benefits, their human rights, *Charter* rights and Constitutional rights and to not take action that abrogates from, ignores or removes those rights.
  - b. Manitoba has ignored and breached, instead of protected and achieved, the CSA Act rights, human rights, *Charter* rights and Constitutional rights of off-reserve Indigenous children in care.

- c. Manitoba has unlawfully “balanced its books” on the backs of off-reserve Indigenous children in care, who are some of the most vulnerable members of our society.
- d. Manitoba has removed the legal rights of off-reserve Indigenous children in care, who are some of the most vulnerable members of our society.
- e. Manitoba has discriminated against off-reserve Indigenous children in care as per the common law and ss. 9(2), 9(3) and 13(1) of *The Human Rights Code*, C.C.S.M. c. H175.
- f. Manitoba is placing itself above the law by legislating an ability to treat one discrete group of its citizens, off-reserve Indigenous children in care, differently than all other citizens in terms of rights and the benefit of the rule of law.
- g. Manitoba’s conduct as stated above has seriously interfered with and imperilled Canada’s exclusive s. 91(24) constitutional jurisdiction over Indians, and Lands reserved for the Indians.

**Statutes, International Instruments and Rules to be Relied Upon**

- a) *The Children’s Special Allowance Act* and Regulations.
- b) Section 10 of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140.
- c) Rule 14.05(2)(b) of the *Queen’s Bench Rules*; and
- d) *The Court of Queen’s Bench Act*, C.C.S.M. c. C280, s. 32; and
- e) *Constitution Act, 1867 (UK), 30 & 31 Vict, c 3, reprinted in R.S.C. 1985, Appendix II, No. 5; sections 91, 92; and 96 and*

- f) Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (UK), 1982, c 11, sections 1, 15, 24, 35 and 52; and
- g) The Child and Family Services Act, C.C.S.M. c. C80; and
- h) The Child and Family Services Authorities Act, C.C.S.M. c. C90; and
- i) Bill 2, Part 10, Division 4, s. 231 of Budget Implementation and Tax Statutes Amendment Act, 2020, 3<sup>rd</sup> Sess, 42<sup>nd</sup> Leg, Manitoba 2020 (assented to on the 6<sup>th</sup> of November 2020; and
- j) United Nations Convention of the Rights of the Child; and
- k) United Nations Declaration on the Rights of Indigenous Peoples; and
- l) United Nations International Covenant on Civil and Political Rights; and
- m) United Nations International Convention for the Elimination of all forms of Racial Discrimination; and
- n) The Income Tax Act, R.S.C., 1985, c. 1, sections 122.6 and 146.1; and
- o) An Act respecting First Nations, Inuit and Metis children, youth and families, S.C. 2019, c. 24; and
- p) The Path to Reconciliation Act, C.C.S.M. c. R30.5; and
- q) The Human Rights Code, C.C.S.M. c. H175; and
- r) Interpretation Act, R.S.C., 1985, c. I-21.
- s) The Manitoba Assistance Act, C.C.S.M. c. A150 and the Assistance Regulation 404/88R s. 8(1).
- t) Such other and further grounds as the Applicants may advise and this Honourable Court may accept.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Application:

1. The Affidavits of Bryan Hart and Billie Schibler to be affirmed and other Affidavit evidence to be filed, including Affidavit evidence of parties not adverse in interest once filed.
2. Such further and other material as the Applicants may adduce and this Honourable Court may accept.

November 27, 2020

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**SCHEDULE "C"**

FILED MAY 23 2023

File No. C123-01-41054

**THE KING'S BENCH**  
**Winnipeg Centre**

BETWEEN:

RENE LAFONTAINE, MARY DERENDORF, 4501712 MANITOBA ASSOCIATION INC.  
O/A METIS CHILD AND FAMILY SERVICES AUTHORITY,  
METIS CHILD, FAMILY AND COMMUNITY SERVICES AGENCY INC., AND  
MICHIF CHILD & FAMILY SERVICES INC.

Plaintiffs

- and -

THE GOVERNMENT OF MANITOBA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M. cC130

**STATEMENT OF CLAIM**

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Service of a true copy hereof admitted this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Solicitor for the \_\_\_\_\_

FILED MAY 23 2023

File No. C123-01-41054

THE KING'S BENCH  
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STATEMENT OF CLAIM

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Counsel for the Plaintiffs



File No. \_\_\_\_\_

**THE KING'S BENCH**  
**Winnipeg Centre**

BETWEEN:

RENE LAFONTAINE, MARY DERENDORF, 4501712 MANITOBA ASSOCIATION INC.  
O/A METIS CHILD AND FAMILY SERVICES AUTHORITY,  
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Plaintiffs

- and -

THE GOVERNMENT OF MANITOBA

Defendant

Proceeding under *The Class Proceedings Act*, C.C.S.M. cC130

**STATEMENT OF CLAIM**

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 *King'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 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.

*(Where the claim made is for a stated amount of money only, include the following:)*

File No. \_\_\_\_\_

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

Date MAY 23 2023

Issued by

  
Deputy Registrar

TO: **THOMPSON DORFMAN SWEATMAN LLP**  
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Counsel for The Government of Manitoba

## CLAIM

1. The Plaintiffs Rene Lafontaine and Mary Derendorf, on their own behalf and as Representative Plaintiffs on behalf of the members of the Class (defined below), claim against the Defendant Government of Manitoba ("**Manitoba**") the following relief:

- (a) an order certifying this action as a class proceeding under *The Class Proceedings Act*, C.C.S.M. c.C130 (the "**CPA**");
- (b) if necessary, judgment against Manitoba for breach of trust, breach of fiduciary duty, negligence, unjust enrichment and intentional interference with economic relations;
- (c) an accounting and disgorgement of children's special allowance benefits ("**CSA Benefits**") that were paid to the Métis Agencies (defined below) pursuant to the *Children's Special Allowances Act*, S.C. 1992, c.48 (the "**CSA Act**") and its regulations, and that were unlawfully misappropriated by Manitoba from the Plaintiffs Metis Child, Family and Community Services and Michif Child and Family Services (together, the "**Métis Agencies**") between January 1, 2005 and March 31, 2019 (the "**Class Period**");
- (d) an accounting and disgorgement of provincial funding that was unlawfully withheld or clawed back by Manitoba from the Métis Agencies during the Class Period, on account of CSA Benefits that were demanded by Manitoba but not remitted by the Métis Agencies;

- (e) an order directing the repayment of the misappropriated CSA Benefits and unlawfully clawed back provincial funding to the Métis Agencies to be distributed to the Class in accordance with the *CSA Act* and the directions of the Court;
- (f) in the alternative, an order directing the repayment of the misappropriated CSA Benefits and unlawfully withheld and/or clawed back provincial funding to the Class members, to be administered and distributed by the Métis Agencies in accordance with the *CSA Act* and the directions of the Court;
- (g) damages for lost opportunity for the Class not having use of the unlawfully misappropriated and withheld and/or clawed back funds during the Class Period;
- (h) damages under section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- (i) an order for an aggregate monetary award and judgment pursuant to section 29(1) of the *CPA*;
- (j) \$10,000,000 in punitive and exemplary damages, on the basis that Manitoba's CSA Benefits policy during the Class Period was arbitrary, deliberate, callous, highhanded and reckless;
- (k) interest on all amounts awarded in this action at a compound rate to be determined by the Court; and

- (l) an order that Manitoba is responsible for the administrative and legal costs of distributing any amounts awarded to the Class;
- (m) the costs of this proceeding on a full indemnity basis, plus all applicable taxes; and
- (n) such further and other relief as the nature of the case may require and this Honourable Court may deem just Relief as to this Honourable Court may seem just.

### **The Parties**

2. The Representative Plaintiff Rene Lafontaine resides in Winnipeg, Manitoba. Between 2011 and August 2022, she was a child in care of Metis Child, Family and Community Services ("**Métis CFCS**"). While in care, Métis CFCS was entitled to, and did, apply for and receive CSA Benefits in respect of Rene. Rene is currently 18 years old. Rene self-identifies as Métis and is completing the process to become a registered citizen of the Manitoba Métis Federation (the "**MMF**"), which is the officially recognized, democratic self-government of the Red River Métis.

3. The Representative Plaintiff Mary Derendorf resides in Winnipeg, Manitoba. Between 2007 and June 2017, she was a child in care of Métis CFCS. While in care, Métis CFCS was entitled to, and did, apply for and receive CSA Benefits in respect of Mary. She is currently 22 years old. Mary does not identify as Indigenous.

4. The Plaintiff Metis Child and Family Services Authority (the "**Métis Authority**") and the Plaintiff Metis Agencies are necessary parties for this proceeding. Their

presence is necessary to enable the Court to adjudicate effectively and completely on the issues in this action. They have consented to being joined as Plaintiffs and have therefore been named as Plaintiffs pursuant to Rule 5.03 of the *Court of King's Bench Rules*, MR 553/88.

5. The Métis Authority was established by *The Child and Family Services Authorities Act* C.C.S.M. c. C90 (the "**CFS Authorities Act**"). Pursuant to the *CFS Authorities Act*, the Métis Authority is responsible for administering and providing for the delivery of child and family services to Métis and Inuit Manitobans, and to other Manitobans who choose to receive services from the Métis Authority.
6. The Métis Authority is an affiliate of the MMF. The *CFS Authorities Act* entitles the MMF to appoint the Board of the Métis Authority.
7. The Métis Authority oversees the Métis Agencies. The Métis Agencies are child and family services agencies as defined in *The Child and Family Services Act* C.C.S.M. c. C80 (the "**CFS Act**").
8. Pursuant to the *CFS Act*, the Métis Agencies act as the legal guardian for children in their care. They are responsible for providing protection, care and maintenance for children in their care. They are statutorily mandated to prosecute or defend claims for and on behalf of the children in their care, and to legally protect and advance those children's rights and interests.

9. The Métis Authority and Métis Agencies together comprise the Métis child and family services system in Manitoba. They deliver culturally relevant and community-based child protection and prevention services to the children and families they serve.

10. The services offered by the Métis Authority and Métis Agencies are not exclusively provided to those who are, or who identify as, Indigenous. There is no requirement that children in their care be Indigenous or self-identify as Indigenous.

11. The Defendant Government of Manitoba ("**Manitoba**") is the Crown that provides advice to "Her Majesty the Queen in Right of the Province of Manitoba" and is designated as such pursuant to Section 10 of *The Proceedings Against the Crown Act*, C.C.S.M. c P140.

### **The Class**

12. The Representative Plaintiffs bring this action on behalf of all Indigenous and non-Indigenous persons who are or were in the care of the Métis Agencies during the Class Period, and for whom the Métis Agencies received CSA Benefits that were directly or indirectly taken by Manitoba (the "**Class**").

### **Payment of CSA Benefits to the Métis Agencies**

13. The Métis Agencies have, for decades, received CSA Benefits. CSA Benefits are payable by the Canada Revenue Agency and governed by the *CSA Act*.

14. Under section 3 of the *CSA Act*, CSA Benefits are paid in respect of children in care and must be used exclusively for the benefit of the child for whom the benefit is paid.

15. Under sections 4 and 5 of the *CSA Act*, the responsibility for applying for CSA Benefits and the entitlement to receive CSA Benefits lies exclusively with the agency that maintains the child.

16. The Métis Agencies have applied for and received CSA Benefits in respect of every child, both Indigenous and non-Indigenous, that were or are in their care, including Rene, Mary and the Class.

### **Manitoba's policy to misappropriate CSA Benefits**

17. Beginning on January 1, 2005, Manitoba implemented a policy requiring that CSA Benefits granted to child and family services agencies in respect of children in their care be remitted to Manitoba.

18. Many Indigenous child and family services agencies, including the Métis Agencies, refused to remit the CSA Benefits to Manitoba. To compel compliance, Manitoba unilaterally withheld or clawed back an amount equivalent to the unremitted CSA Benefits from the operational funding it provided to these agencies, taking the abusive and unreasonable position that those amounts satisfied the debt owed for the unremitted CSA Benefits.

19. Furthermore, Indigenous agencies, including the Métis Agencies, were compelled to remit CSA Benefits under threat by Manitoba of further claw backs on their funding from the province.



20. Manitoba terminated its policy of forcibly taking CSA Benefits from child and family services agencies through mandatory remittances and unilateral claw backs on April 1, 2019.

### **Litigation challenging the Manitoba's CSA Benefits policy**

21. On April 28, 2018, the Métis Agencies joined a number of other Indigenous child and family services agencies to commence an application against Manitoba seeking declaratory relief regarding Manitoba's forced remittances and claw backs of CSA Benefits (the "**2018 Application**").

22. On December 20, 2018, a proposed class action was commenced by Elsie Flette and Lee Malcolm-Baptiste against Manitoba (the "**Flette Class Action**"). The Flette Class Action sought declaratory relief and claimed damages for the forced remittances and claw-backs of the CSA Benefits.

23. On November 27, 2020, the applicants from the 2018 Application joined several other Indigenous agencies as well as Indigenous child and family service authorities to commence a second application against Manitoba regarding CSA Benefits (the "**2020 Application**").

24. The 2020 Application expanded upon the relief sought in the 2018 Application, including with respect to section 231 of the *Budget Implementation and Tax Statutes Amendment Act, 2020*, S.M. 2020, c. 21 (the "**BITSA**"), which purported to provide legislative authority for Manitoba's unlawful CSA Benefits policy during the Class Period, and to explicitly dismiss the 2018 Application and the Flette Class Action.

### **Manitoba's CSA Benefits policy is found to be unconstitutional**

25. By decision dated April 20, 2021, the Honourable Justice Edmond of the Manitoba Court of King's Bench ordered the consolidation of the various CSA Benefits proceedings on the consent of the parties. The purpose of the consolidation was to determine constitutional issues that were common to all the proceedings.

26. By decision dated May 18, 2022 (the "**Constitutional Decision**"), Justice Edmond held, among other things, that:

- (a) pursuant to the doctrine of paramountcy, section 231 of the *BITSA* operationally conflicts with the *CSA Act* and is of no force or effect and therefore invalid; and
- (b) Manitoba's policy to preclude children in care from receiving CSA Benefits, and enacting section. 231 of the *BITSA*, is a violation of s. 15(1) of the *Charter* and cannot be justified by s. 1 of the *Charter*.

27. The effect of the Constitutional Decision was to render unconstitutional and illegal the entirety of Manitoba's CSA Benefits policy, as it was carried out in practice during the Class Period and as it was enacted into law through section. 231 of the *BITSA*, and as it applied to CSA Benefits for all children in care.

28. In other words, the Constitutional Decision benefits all children in care for whom CSA Benefits were applied for, received and then remitted and/or clawed back.

29. Manitoba did not appeal the Constitutional Decision and all appeal periods have lapsed.

30. Justice Edmond did not consider or determine the amount to be paid by Manitoba or any other monetary remedy resulting from the Constitutional Decision.

**This class proceeding is an alternative to the 2023 Application**

31. The Métis Authority and the Métis Agencies are pursuing a separate application against Manitoba (the “**2023 Application**”). The purpose of the 2023 Application is to determine the quantum to be paid by Manitoba to the Métis Authority and the Métis Agencies as a result of the Constitutional Decision. In the 2023 Application, the Métis Authority and the Métis Agencies plead that they hold any and all legal entitlement to the repayment of unlawfully taken CSA Benefits and related damages.

32. The 2023 Application seeks, among other things, disgorgement and repayment of all misappropriated CSA Benefits taken from the Métis Agencies as well as any and all direct, consequential, statutory, *Charter* and or punitive/exemplary damages naturally flowing from the Constitutional Decision.

33. If the relief requested in the 2023 Application is granted, the Métis Authority and the Métis Agencies, with the support of the MMF, will establish a protocol and process for the distribution of the proceeds to the children in respect of whom the CSA Benefits were originally applied for and paid.

34. This class proceeding has been commenced to provide an alternative remedy if it is determined that the Class, and not the Métis Authority and the Métis Agencies, has a direct legal entitlement to repayment of CSA Benefits and related damages.

35. Any amounts ordered paid or approved by the Court in this proceeding will be received, distributed and administered by the Métis Authority and the Métis Agencies in accordance with the *CSA Act* and any protocols approved and/or ordered by the Court. The Métis Authority and the Métis Agencies are uniquely equipped with the expertise, institutional infrastructure and cultural competence necessary to carry out the distribution exercise on behalf and for the benefit of the Class.

36. Any amounts awarded in this action will not be reduced or otherwise diminished by contingency fee. Plaintiffs' counsel is not being compensated through a contingency fee arrangement.

**Manitoba is liable for its unlawful CSA Benefits policy**

37. Manitoba was found liable in the Constitutional Decision. Manitoba's actions in undertaking their CSA Benefits policy and purporting to validate that policy through section 231 of the *BITSA* were held to be unconstitutional. The only remaining issue to be determined is the quantum of damages Manitoba must pay.

38. However, if required to be determined, Manitoba is also liable to the Class for breach of trust/knowing receipt of trust property, breach of fiduciary duty, negligence, unjust enrichment, and intentional interference with economic relations.

***Breach of trust and knowing receipt of trust property***

39. Section 3(2) of the *CSA Act* creates a trust obligation on behalf of the Métis Authority and the Métis Agencies with respect to CSA Benefits.

40. The purpose of the *CSA Act* and its Regulations is to preclude the CSA Benefits from being taken or appropriated by any province, including Manitoba.

41. When the Métis Authority and the Métis Agencies received the CSA Benefits, they were required to account for payments separately and such payments were to be used exclusively for the purposes established by the *CSA Act*.

42. As a result of Manitoba's CSA Benefits policy, CSA Benefits were converted to Manitoba's own use and applied to its general treasury and were not distributed to, or used for the exclusive benefit of, the Class as required by the *CSA Act*.

43. Manitoba knew or ought to have known that the *CSA Act* created a trust in favour of the Class. Manitoba knew or ought to have known that:

- (a) Canada, the settlor, intended to create a trust;
- (b) the CSA Benefits were trust funds which were to be used exclusively for the specific purposes established by the *CSA Act*;
- (c) the Métis Authority and the Métis Agencies, in their capacities as trustees, were responsible for administering the CSA Benefits pursuant to the *CSA Act*; and
- (d) the proposed Class members were the beneficiaries of the CSA Benefits.

44. Manitoba's CSA Benefits policy resulted in Manitoba's knowing receipt of trust property:

- (a) Manitoba, a stranger to the trust, took possession of the trust property, i.e., the CSA Benefits;
- (b) Manitoba took the trust property for its own benefit; and
- (c) Manitoba knew or had constructive knowledge that by converting the CSA Benefits for its own use and not the uses specified in the *CSA Act*, the trust property was being misapplied.

***Breach of fiduciary duty***

45. At all material times, Manitoba was in a fiduciary relationship with Class members by virtue of:

- (a) Manitoba's ability to exercise discretion or power over Class members;
- (b) Manitoba's ability to unilaterally exercise that power or discretion so as to adversely impact legal and/or practical interests of the Class; and
- (c) the Class being particularly vulnerable to the exercise of discretion or power of Manitoba.

46. This fiduciary relationship obliged Manitoba to place the interests of the Class ahead of its own interests. In breach of its fiduciary duties owed to members of the Class, Manitoba misappropriated CSA Benefits, or withheld and/or clawed back amounts equivalent to CSA Benefits, for its own purposes and to the detriment of the Class.

***Breach of the duty of care***

47. At all material times, Manitoba was aware of the requirements and purpose of the *CSA Act*. Manitoba was aware that the CSA Benefits were intended only for the purposes set out under the *CSA Act*. Manitoba nevertheless misappropriated the CSA Benefits for its own use and benefit.

48. Manitoba owed a duty of care to the Class to ensure that the CSA Benefits be used only for the purposes exclusively established by the *CSA Act*.

49. It was foreseeable by Manitoba, and was in fact intended by Manitoba, that by its CSA Benefits policy, CSA Benefits would not be applied by the Métis Authority and the Métis Agencies as required by the *CSA Act*.

50. Furthermore, Manitoba was aware, at all material times, that the Métis Authority and the Métis Agencies would suffer financially and would be limited in their ability to provide care to children as a result of Manitoba's CSA Benefits policy.

51. Manitoba breached its duty of care to the Class when it implemented its CSA Benefits policy with the result that Manitoba received CSA Benefits, which in turn caused foreseeable harm to the Class by denying them the benefit of the CSA Benefits.

***Unjust enrichment***

52. The necessary consequence of the Constitutional Decision is that Manitoba has been unduly and unjustly enriched and the Class correspondingly deprived by the actions of Manitoba, absent any juristic reason. Specifically:

- (a) Manitoba's CSA Benefits policy enriched Manitoba in the amount of the unlawfully taken CSA Benefits;
- (b) the Class suffered a corresponding deprivation, in that the CSA Benefits were supposed to be used for their exclusive benefit, but the Class was deprived of the use of the CSA Benefits; and
- (c) there is no juristic reason for Manitoba's taking of the CSA Benefits, because Manitoba's actions have been determined to be unconstitutional.

53. The Class is accordingly entitled to restitution of the CSA Benefits.

***Intentional interference with economic relations***

54. Manitoba is liable to the Class for intentional interference with economic relations:

- (a) Manitoba's CSA Benefits policy was unlawful against the Métis Agencies, in that the Métis Agencies have the legal entitlement to the CSA Benefits, and gives rise to an actionable civil wrong by the Métis Agencies against Manitoba;
- (b) Manitoba's action caused economic harm to the Class by depriving them of the economic benefit of the CSA Benefits; and
- (c) Manitoba's actions were intentional in that it knew that its actions would cause harm to the Class.



55. Manitoba knew that the CSA Benefits were paid to the Métis Authority and the Métis Agencies for the sole purpose specified in the *CSA Act* and were not to be used by Manitoba to subsidize its own funding obligations to the Métis Authority and the Métis Agencies. Manitoba's misconduct was knowingly unlawful.

### **Disgorgement**

56. Through its unlawful CSA Benefits policy, Manitoba inequitably obtained quantifiable monetary benefits. They took those benefits from the Class members to the Class members' detriment. The value of the monetary benefits unlawfully and inequitably taken by Manitoba is at least \$45.6 million, although the full particulars of the monetary benefits taken by Manitoba are within the knowledge of Manitoba. As a matter of law and equity, Manitoba is required to disgorge those benefits.

### **Damages**

57. As a direct consequence of Manitoba's CSA Benefits policy, Manitoba misappropriated at least \$45.6 million from the Métis Authority and the Métis Agencies. Those funds would have, and should have, been used exclusively for the benefit of the Class, including Rene and Mary. The Class members are entitled to compensatory damages in the amount of at least \$45.6 million, and possibly more. The full particulars of the monetary value of the CSA Benefits that were misappropriated by Manitoba are within the knowledge of Manitoba.

58. The Class members are also entitled to damages for loss of use and lost opportunity. They lost the opportunity to use the CSA Benefits to accrue long-term financial benefits. Among other things, they lost the opportunity of investing CSA

Benefits into Registered Education Savings Plans or Registered Disability Savings Plans, which would have resulted in substantial investment returns for the Class members for whom those investments would have been made.

59. An aggregate monetary award under s. 29(1) of the CPA is warranted:
- (a) the Representative Plaintiffs seek monetary relief on behalf of the Class;
  - (b) in light of the Constitutional Decision, no questions of law or fact other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of Manitoba's monetary liability; and
  - (c) the aggregate or a part of Manitoba's liability to some or all members of the Class can reasonably be determined without proof by individual members of the Class.

### **Charter damages**

60. The Constitutional Decision determined that Manitoba's CSA Benefits policy breached section 15 of the *Charter* and was not saved by section 1 of the *Charter*. The Class members are correspondingly entitled to a compensatory remedy under section 24(1) of the *Charter*.

61. The Class members have suffered significant loss as a result of Manitoba's breach of the *Charter* as set out in this Statement of Claim and articulated by the Court in the Constitutional Decision. An award of damages under section 24(1) of the *Charter* is appropriate. Such an award will compensate the Class for the harm they suffered as

a result of Manitoba's actions, and also affirm Class members' *Charter* rights and the *Charter* rights of all Canadians.

### **Punitive and exemplary damages**

62. Punitive and exemplary damages are appropriate. Through its knowingly unlawful actions, Manitoba deliberately and callously deprived the most vulnerable and marginalized children in Manitoba of their statutorily conferred CSA Benefits.

63. Manitoba acted in bad faith by threatening and coercing the Métis Authority and the Métis Agencies to remit the CSA Benefits to Manitoba under threat of having their entitlement to provincial funding unilaterally and unlawfully withheld or clawed back.

64. Manitoba's attempt to legitimize its transparently unlawful acts by passing section 231 of the *BITSA*, which also expressly and specifically sought to bar legitimate legal proceedings seeking to address Manitoba's conduct was high-handed, deliberate, malicious and cruel.

65. Manitoba robbed the Class of the opportunities and experiences that they would have otherwise had if the CSA Benefits were used for their intended statutory purpose.

66. Manitoba's conduct warrants the Court's condemnation through a significant award of punitive and/or exemplary damages both as an expression of the Court's reprimand and to discourage similar conduct.

**Interest**

67. As a consequence of the misappropriation of the CSA Benefits, equity obliges Manitoba to pay compounded interest at a rate equivalent to the rate at which Manitoba customarily earns interest on its investments or at a rate ordered by this Court.

**Receipt and distribution of monetary award**

68. Under the *CSA Act*, the Métis Agencies are the recipients of CSA Benefits and their use of CSA Benefits is subject to strict statutory restrictions.

69. In accordance with the Métis Agencies' statutory entitlement and mandate with respect to CSA Benefits, any monetary award made in this proceeding should be delivered to the Métis Agencies to be distributed by the Métis Agencies to Class members in accordance with the *CSA Act* and any other order the Court deems appropriate.

**Relevant legislation**

70. The Plaintiffs plead and rely upon the provisions of the *Children's Special Allowances Act* and Regulations, and amendments; *The Child and Family Services Act* and amendments, *The Child and Family Services Authorities Act*; *The Class Proceedings Act*; *The Proceedings Against the Crown Act*, *The Income Tax Act*, *The Budget Implementation and Tax Statutes Amendment Act*, *The Constitution Act, 1867*, *The Constitution Act, 1982, Part I* and the *United Nations Convention on the Rights of the Child*, and *An Act respecting First Nations, Inuit and Métis children, youth and families*.

71. The Plaintiffs therefore claim the relief described in paragraph 1 above.

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Date of Issue

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Counsel to the Plaintiffs

**SCHEDULE "D"**

**THE KING'S BENCH**  
**Winnipeg Centre (Proceedings under *The Class Proceedings Act*)**

BETWEEN:

**RENE LAFONTAINE, MARY DERENDORF, 4501712 MANITOBA ASSOCIATION  
INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY,  
METIS CHILD, FAMILY AND COMMUNITY SERVICES AGENCY INC., AND  
MICHIF CHILD & FAMILY SERVICES INC.**

Plaintiffs

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

---

**ORDER**

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**THE KING'S BENCH**  
**Winnipeg Centre (Proceedings under *The Class Proceedings Act*)**

THE HONOURABLE )  
MR. JUSTICE HUBERDEAU ) \_\_\_\_\_, THE \_\_\_\_TH  
) DAY OF JUNE, 2024

BETWEEN:

**RENE LAFONTAINE, MARY DERENDORF, 4501712 MANITOBA ASSOCIATION  
INC. O/A METIS CHILD AND FAMILY SERVICES AUTHORITY,  
METIS CHILD, FAMILY AND COMMUNITY SERVICES AGENCY INC., AND  
MICHIF CHILD & FAMILY SERVICES INC.**

Plaintiffs

- and -

**THE GOVERNMENT OF MANITOBA**

Defendant

**ORDER**

**THIS MOTION**, made by the Plaintiffs was heard this day at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba by video conference,

**ON READING** the materials filed on behalf of the Plaintiffs, including the Case Management Conference Brief dated May 31, 2024;

**AND ON BEING ADVISED** that the parties consent to this Order;

**AND UPON HEARING** oral submissions on behalf of the parties and the Class;



**AND WHEREAS** by Order dated December 13, 2023, this Action was certified as a Class Proceeding and Lax O’Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation were appointed as class counsel (“**Class Counsel**”);

**AND WHEREAS** the parties have reached an agreement to settle the Action, and Court approval of the settlement is required pursuant to *The Class Proceedings Act*, C.C.S.M. c. C.130,

**THIS COURT ORDERS** that:

**A. Settlement Approval Hearing**

1. The Settlement Approval Hearing will be heard before this Court on September 5-6, 2024 at 10:00 a.m.
2. The Settlement Approval Hearing shall be heard in-person, unless otherwise ordered by this Court.

**B. Administrator**

3. The Administrator of the Administration and Distribution Protocol will be the Metis Child and Family Services Authority (the “**Authority**”), with the assistance of Epiq Class Action Services Inc. (“**Epiq**”).

**C. Notice Plan**

4. The Long Form Notice of Certification and Settlement Approval (the “**Long Form Notice**”), a copy of which is attached as Schedule “A”, is hereby approved for distribution in accordance with the Notice Plan as set out at paragraph 7 below subject to non-substantive amendments to be agreed to by the parties.

5. The Short Form Notice of Certification and Settlement Approval (the “**Short Form Notice**”), a copy of which is attached as Schedule “B”, is hereby approved for distribution in accordance with the Notice Plan as set out at paragraph 7 below subject to non-substantive amendments to be agreed to by the parties.
6. The Digital Notice, a copy of which is attached as Schedule “C”, is hereby approved for distribution in accordance with the Notice Plan as set out at paragraph 7 below.
7. The Authority, with the assistance of Epiq, shall disseminate the Long Form Notice and Short Form Notice in the following manner (together with the Opt-Out Form and the Objection Form referenced at paragraphs 10 and 14, respectively, the “**Notice Plan**”):
  - a. deliver the Long Form Notice via physical mail and email (if known) to all Class Members at the email address and/or physical address provided by Metis Child and Family Services Authority; Metis Child, Family and Community Services Agency Inc.; and Michif Child & Family Services Inc., where applicable;
  - b. in accordance with section 14(2) of *The Public Guardian and Trustee Act*, CCSM c P205, serve a copy of the Long Form Notice on the Public Guardian and Trustee;
  - c. publish the Short Form Notice in a community newspaper, a regional newspaper, and a national newspaper;
  - d. post the Short Form Notice at the offices of:

- i. Metis Child and Family Services Authority;
    - ii. Metis Child, Family and Community Services Agency Inc.;
    - iii. Michif Child & Family Services Inc;
    - iv. Manitoba Métis Federation;
    - v. The Manitoba Advocate for Children and Youth; and
    - vi. Correctional institutions in the Province of Manitoba.
  - e. With Manitoba's assistance, use best efforts to disseminate the Short Form Notice through Employment and Income Assistance payment mailers. Further, with Manitoba's assistance, to reach out to other provincially funded social service organizations to encourage physical posting of the Short Form Notice at locations where those organizations carry out operations for members of the public;
  - f. post the Short Form Notice on the website to be established by the Authority, or Epiq; and
  - g. post the Short Form Notice and/or the Digital Notice on social media through the social media accounts of the Manitoba Métis Federation.
8. Class Counsel may make non-material changes to the Notice Plan as are deemed necessary with the consent of the Defendant.

9. The Notice Plan satisfies the requirements of section 19 of the *Class Proceedings Act*, CCSM cC130 and is the best notice practicable under the circumstances.

#### **D. Opting Out**

10. Class Members may opt out of this class proceeding by delivering an Opt-Out Form in the manner set out in the Long Form Notice and Short Form Notice.
11. Notice is deemed given on June 28, 2024, and that the opt-out period expires at 5:00 pm C.S.T. on August 26, 2024 (the “**Opt-Out Deadline**”).
12. Any person or party who opts out of this action in accordance with the provision for doing so in the Long Form Notice or Short Form Notice or paragraph 10 of this Order shall be excluded from the Class and the action.
13. By September 3, 2024, Class Counsel, the Authority or Epiq pursuant to their authority as under the comprehensive Settlement Agreement shall submit a report to the Defendant containing the names of each Class Member who has validly and timely opted out of the class proceeding.

#### **DI. Objections**

14. Any persons wishing to submit an Objection Form shall deliver the Objection Form in the form attached hereto as Schedule “B” to the Notice Plan, which must be received by the Administrator no later than August 26, 2024 (the “**Objection Deadline**”).

15. Any Objection Form received after the deadline set out in paragraph 14 shall not be filed with the Court or considered at the hearing to approve the Settlement Agreement without leave of the Court.

16. Class Counsel, the Authority or Epiq shall be responsible for the receipt of Class Members' Objection Forms and shall serve on the parties and file with the Court an affidavit including copies of all Objection Forms it has received as of August 26, 2024 on September 3, 2024.

17. The expenses of distributing the notice in accordance with the Notice Plan are to be deducted from the Settlement Fund, if the settlement is approved.

18. There shall be no costs arising out of this Order.

Signed the \_\_ day of June, 2024

\_\_\_\_\_  
Huberdeau J.

Consent as to form and content:

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

\_\_\_\_\_  
Per: Murray Trachtenberg as agent for Rahool Agarwal  
Co-Counsel for the Plaintiffs

**MN TRACHTENBERG LAW CORPORATION**

\_\_\_\_\_  
Per: Murray Trachtenberg  
Co-Counsel for the Plaintiffs

**THOMPSON DORFMAN SWEATMAN LLP**

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Per: Ross McFayden  
Counsel for the Defendant

**SCHEDULE "E"**

## NOTICE OF CLASS ACTION CERTIFICATION AND HEARING FOR SETTLEMENT APPROVAL

### *Regarding class action for recovery of Children's Special Allowances*

**If you were a provincially funded child in the care of a Child and Family Services Agency in Manitoba between 2005 and 2019, your legal rights may be affected. Please read this Notice carefully.**

#### **What is this Notice About?**

This Notice is being provided in relation to a class proceeding commenced against the Government of Manitoba ("**Manitoba**") in respect of Manitoba's actions and policies relating to the administration of Children's Special Allowance Benefits ("**CSA Benefits**") from children in the care of Métis Child, Family and Community Services Agency Inc. and Michif Child & Family Services Inc. (the "**Métis Agencies**") between January 1, 2005 and March 31, 2019 (the "**Lafontaine Class Action**"). There are separate but related class proceedings dealing with Manitoba's actions and policies relating to the administration of CSA Benefits paid for children in the care of Child and Family Services Agencies in Manitoba other than the Métis Agencies over that same period of time (the "**Flette/Lavallee Class Actions**").

This Notice was approved by the Court of King's Bench of Manitoba (the "**Court**") to provide Class Members with notice that:

- 1) On December 13, 2023, the Court certified the Lafontaine Class Action as a class proceeding and certified the class as all Indigenous and non-Indigenous persons who were in the care of the Métis Agencies at any time between January 1, 2005, and March 31, 2019 (the "**Class Period**"), and for whom the Métis Agencies received CSA Benefits pursuant to the *Children's Special Allowances Act* ("**CSA Act**") that were directly or indirectly taken by Manitoba, including through claw backs of provincial funding (the "**Class**").
- 2) The Plaintiffs in the Lafontaine Class Action have reached a settlement with the Government of Manitoba in the amount of **eighty-four-million eight-hundred-thousand (\$84,800,000)** to be paid to class members with a portion of those funds to be used to pay legal fees, the costs of administering the settlement and for programs and services to be delivered in connection with the distribution of settlement funds (the "**Settlement**"). The Court will need to approve the Settlement. The Settlement Approval Hearing is scheduled for **September 5-6, 2024**.



## Why are you receiving this Notice?

You are receiving this Notice because you may be a member of the Class and may be affected by the Settlement. If you do not agree to the Settlement, you will need to “object” in accordance with the process set out in this Notice. If you do not want to be a member of the Class and do not want to be bound by the Settlement, you will need to “opt-out” in accordance with the process set out in this Notice.

## Certification

- Certification is a preliminary step in a class action, where the court assesses various criteria before determining whether the proposed representative plaintiffs can advance the claims of all class members through a class action.
- On December 13, 2023, the Court certified the Lafontaine Class Action as a class proceeding and certified the Class.
- The Court appointed Rene Lafontaine and Mary Derendorf as the Representative Plaintiffs.
- The Court appointed Lax O’Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation as Class Counsel.

## Opting Out

Members of the Class who do not want to participate in the class action must formally “opt out”. To opt out you must complete and submit the opt-out form, which can be found at **Schedule “A”** or online at <http://metisclassaction.ca>. The opt-out form must be sent by e-mail to [info@metisclassaction.ca](mailto:info@metisclassaction.ca) or by mail to the Métis Child and Family Services Authority ( the “**Authority**”) at:

**Métis Child and Family Services Authority**

Administrator, Lafontaine Class Action re: Children’s Special Allowance  
c/o Epiq Class Action Services Canada Inc.  
P.O. Box 507 STN B  
Ottawa ON K1P 5P6

No Class Member will be permitted to opt out of the class action unless the completed opt-out form is received by the Authority by **5:00 p.m. CST on August 26, 2024.**

**A member of the Class who opts out will not be entitled to participate in the Lafontaine Class Action, will not be bound by the Settlement once approved by the Court, and will not be eligible for any recovery in the Lafontaine Class Action. A Class member who opts**

out may be eligible to pursue a claim in a separate proceeding. If you wish to pursue your own claim in a separate proceeding, you should consult with a lawyer immediately.

## Settlement

- On March 19, 2024, the Plaintiffs reached an agreement in principle with Manitoba to settle the Lafontaine Class Action for a payment of \$84,800,000 (the “**Agreement in Principle**”). A portion of the Settlement funds will pay for legal fees, settlement administration fees and programs and services to be delivered in connection with the distribution of settlement funds.
- On June 19, 2024, the Plaintiffs and Manitoba entered into a definitive settlement agreement. Under the settlement agreement, the Métis Child and Family Services Authority (the “**Authority**”), with the assistance of Epiq Class Action Services Inc. (“**Epiq**”) is appointed to manage the distribution of the Settlement funds. The Authority will determine each Class member’s eligibility and entitlement to payment from the Settlement funds (the “**Settlement Benefits**”).
- Settlement Benefits will be calculated based on the length of time the Class Member was in care of the Métis Agencies and the amount of CSA Benefits that were applied for, received and remitted to Manitoba and/or clawed back.
- Any amount paid to a Class member from the Settlement Benefits will not be deemed to be a form of income replacement or compensation for loss income, and will not affect eligibility for, the amount, nature and/or duration of social assistance programs administered by or on behalf of Manitoba.
- As part of the approval of the Settlement, Class Counsel will be requesting Court approval that a portion of Settlement funds be used to pay the legal fees, disbursements and applicable taxes relating to the prosecution and settlement of the Lafontaine Class Action. Class Counsel in the Lafontaine Action are not being paid on a contingency basis and are not seeking to be paid a percentage of the overall settlement amount. Instead, Class Counsel fees reflect the actual billable time paid by the Plaintiffs.

## Your Legal Rights and Options at this Stage

|                          |  |
|--------------------------|--|
| <p><b>Do Nothing</b></p> | <p>If you support or are indifferent to the proposed Settlement, you do not have to do anything right now.</p> <p>When the administration process begins, you will be able to identify yourself to the Authority and receive compensation.</p> |
|--------------------------|--|

|  |  |
|--|--|
| <b>Object to the Proposed Settlement</b> | If you disagree with the proposed Settlement offering compensation to Class Members, you can voice your objection to the Court by completing and submitting the Objection Form attached as <b>Schedule “B”</b> <u>no later than August 26, 2024.</u> |
| <b>Object to the Proposed Fees</b>       | If you disagree with the legal fees allocated to Class Counsel, you can voice your objection to the Court by completing and submitting the Objection Form attached as <b>Schedule “B”</b> <u>no later than August 26, 2024.</u>                      |
| <b>Opt-Out of the Class Proceeding</b>   | If you do not want to participate in the class action, you must formally “opt out” by completing and submitting the opt-out form attached as <b>Schedule “A”</b> <u>no later than August 26, 2024.</u>   |

## Important Information

### Basic Information

#### (1) Why is there a Notice?

The Court has approved this Notice to let Class Members know about the certification of the Lafontaine Class Action and the Settlement Approval Hearing, and to explain their rights as a Class member.

#### (2) What is this lawsuit about?

From January 1, 2005 to March 31, 2019, Manitoba took Children’s Special Allowances (CSA) Benefits from Child and Family Service Agencies in Manitoba, the legal guardians of children in care (the “CSA Policy”).

The CSA Benefit is the equivalent to the Canada Child Benefit received by parents of children who are not in care, and should have been used exclusively for the benefit of the child for whom it was owed to under the Federal *Children’s Special Allowances Act*. In total, Manitoba wrongfully took more than \$45,000,000 from the Class during this time.

In 2020, Manitoba passed legislation which deemed lawsuits regarding its CSA Policy to be dismissed, and retroactively legitimized its CSA Policy during the claim period.

In 2022, the Court found Manitoba's actions to be unconstitutional and discriminatory. Afterwards, three class actions were certified to pursue recovery of the money taken by Manitoba, including the Lafontaine class action.

### **(3) Am I a member of the Class, or a Guardian of a Class member?**

If you were a child in the care of either of the Métis Agencies at any time between January 1, 2005, and March 31, 2019, you are likely a member of the Class and likely entitled to compensation.

If you are a parent or guardian to a minor child who may be a part of the Class, you are responsible for making decisions on behalf of the Class member with respect to the class action, including opting out or making an objection.

Two other, related class actions have also been certified, with **different** class definitions:

- The Flette Class: All Indigenous persons, and the estates of those persons, who were in the care of Child and Family Services Agencies in Manitoba (the "**CFS Agencies**"), other than the Métis Agencies, at any time between 2005 to 2019, and for whom the CFS Agencies received CSA Benefits that were directly or indirectly taken by Manitoba, including through claw backs of provincial funding; and
- The Lavallee Class: All non-Indigenous persons, and the estates of those persons, who were in the care of CFS Agencies, other than the Métis Agencies, at any time between 2005 to 2019, and for whom the CFS Agencies received CSA Benefits that were directly or indirectly taken by Manitoba, including through claw backs of provincial funding.

It is possible a person may be a member of more than one class and entitled to compensation from more than one class action. For example, if a person was in the care of one of the Métis Agencies for a certain period of time, and in the care of a different child and family service agency for another period of time, and both periods of time were between 2005 and 2019, that person is likely a member of more than one class and is likely entitled to compensation from more than one class action.

If you believe you may be a member of more than one class action, please inquire with the Authority who can assist you.

### **(4) What is the status of the lawsuit?**

The Lafontaine Class Action was certified as a class action on December 13, 2023. Now, the parties have agreed to settle the case and Manitoba has agreed to provide compensation to the Class members.

The Court must approve the proposed Settlement before it is effective. At a Court hearing on September 5-6, 2024, the parties will be asking the Court to approve the Settlement. Once the Settlement is approved, the Authority will initiate the process for distributing the Settlement funds to Class members.

## Settlement Proposal

### (1) What does the Settlement offer?

The proposed Settlement offers total compensation to the Class in the Lafontaine of \$84,800,000 plus approximately \$7,000,000 in CSA funds retained by the Métis Agencies. From that amount, approximately \$7.5 million will be used for (1) legal fees, (2) administration of the Settlement, and (3) programs to support Class members.

Each Class member will receive a payment in proportion to the amount of time spent in care between January 1, 2005 and March 31, 2019 and the amount of CSA Benefits that were applied for, received and remitted to Manitoba and/or clawed back.

If there are any undistributed amounts, the Authority will distribute the remaining amounts held on behalf of the Undistributed Class Members to the Métis Agencies as a *cy près* distribution. The Métis Agencies will exclusively apply the *cy près* distribution toward the care, maintenance, education, training or advancement of individuals in their care or programming and services for the care, maintenance, education, training or advancement of individuals formerly in the care of the Métis Agencies.

## The Lawyers Representing the Class

### (1) Do I have a lawyer?

Yes. The Court has appointed Lax O'Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation to represent you and all other Class Members as "Class Counsel". You will not be charged for contacting these lawyers with questions:

Email: [metisclassaction@lolq.ca](mailto:metisclassaction@lolq.ca)

Phone: 1-416-645-5079

### (2) How will the lawyers be paid?

At the hearing on September 5-6, 2024, Class Counsel will seek Court approval that a portion of the Settlement funds be used to pay the legal fees, disbursements and applicable taxes relating to the prosecution and settlement of the Lafontaine Class Action, which are currently estimated to be \$1,500,000. This amount may increase depending on the legal fees, disbursements and

applicable taxes relating to the administration of this Settlement. The precise amount will be provided in advance of the Settlement Approval Hearing. Class Counsel fees will be subject to court review and approval.

If Class Members object to the proposed Settlement or legal fees, they are responsible for paying the legal fees of any lawyer or other professional or person who they retain to assist in advancing any such objections.

## Learning More

The Court office will not be able to answer questions about matters in this Notice. If you have any questions regarding the proposed Settlement or making a Claim, information is available by accessing the following website <http://metisclassaction.ca>, contacting Class Counsel, contacting the Authority, or contacting Epiq at the following:

**Métis Child and Family Services Authority**

Email: [csaclassaction@metisauthority.com](mailto:csaclassaction@metisauthority.com)

**Epiq Class Action Services Inc.**

Email: [info@metisclassaction.ca](mailto:info@metisclassaction.ca)

Phone: 1-877-835-4546

You may also be a member of the Flette or Lavallee Class Actions. For more information on the Flette or Lavallee Class Actions, you can contact the claims administrator or the following law firms:

**Flette Lavallee Class Action Claims Administrator**

Exchange Solutions Inc.

Email: [info@csasettlement.com](mailto:info@csasettlement.com)

Phone: 1-204-947-7101 or Toll Free 1-844-947-7101

**(a) The Flette Class:**

**DD West LLP**

Email: [CSA@ddwestllp.com](mailto:CSA@ddwestllp.com)

**(b) The Lavallee Class:**

**Cochrane Saxberg LLP**

Email: [CSA@cochrancesaxberg.com](mailto:CSA@cochrancesaxberg.com)

**OR**

**DD West LLP**

Email: [CSA@ddwestllp.com](mailto:CSA@ddwestllp.com)

## **Important Dates**

**Deadline to Provide an Objection to Oppose the Proposed Settlement and/or Fees:  
August 26, 2024**

**Deadline to Opt-Out of Class Proceeding: August 26, 2024**

**Settlement Approval Hearing: September 5-6, 2024**

## **SCHEDULE "A"**



## OPT-OUT FORM

**\*\*ONLY SUBMIT THIS FORM IF YOU WISH TO OPT-OUT OF THE CLASS PROCEEDING\*\***

SEND YOUR OPT-OUT FORM TO: [info@metisclassaction.ca](mailto:info@metisclassaction.ca) OR

**Métis Child and Family Services Authority**

Administrator, Lafontaine Class Action re: Children's Special Allowance

c/o Epiq Class Action Services Canada Inc.

P.O. Box 507 STN B

Ottawa ON K1P 5P6

YOUR OPT-OUT MUST BE RECEIVED BY: **AUGUST 26 2024, 5:00 P.M. CENTRAL TIME**

|                  |          |               |             |
|------------------|----------|---------------|-------------|
| First Name       |          | Last Name     |             |
| Mailing Address  |          |               |             |
| City             | Province |               | Postal Code |
| Telephone Number |          | Email Address |             |

If you are acting on behalf of a Class Member, please provide your authority to act:

\_\_\_\_\_

I confirm that I wish to opt-out of the Lafontaine Class Action.

By opting-out, I understand that:

- I will not be entitled to participate in the Class Action;
- I will not be bound by any judgment in the Class Action; and
- I will not be eligible for any recovery in the Class Action.

\_\_\_\_\_  
Signature of Class Member (or Representative)

\_\_\_\_\_  
Date (dd/mm/yy)

**GET MORE INFORMATION:**

Call Toll Free: 1-877-835-4546 or visit <http://metisclassaction.ca>

## **SCHEDULE “B”**

**OBJECTION FORM**

**\*\*ONLY SUBMIT THIS FORM IF YOU WISH TO OBJECT TO THE PROPOSED SETTLEMENT AND/OR LEGAL FEES OF CLASS COUNSEL\*\***

SEND YOUR OBJECTION FORM TO: [info@metisclassaction.ca](mailto:info@metisclassaction.ca) OR

**Métis Child and Family Services Authority**  
Administrator, Lafontaine Class Action re: Children’s Special Allowance  
c/o Epiq Class Action Services Canada Inc.  
P.O. Box 507 STN B  
Ottawa ON K1P 5P6

YOUR OBJECTION MUST BE RECEIVED BY: **AUGUST 26, 2024, 5:00 P.M. CENTRAL TIME**

**Objector’s Contact Information:**

|                  |          |                |  |
|------------------|----------|----------------|--|
| First Name       |          | Last Name      |  |
| Mailing Address  |          |                |  |
| City             | Province | Postal Code    |  |
| Telephone Number |          | Email Address: |  |

**Brief Statement of the Nature and Reasons for Objection:**

I am objecting to the Proposed Settlement or legal fees for the following reasons:

**GET MORE INFORMATION:**

Call Toll Free: 1-877-835-4546 or visit <http://metisclassaction.ca>



**SCHEDULE "F"**

## NOTICE OF CLASS ACTION CERTIFICATION AND HEARING FOR SETTLEMENT APPROVAL

### *Regarding class action for recovery of Children's Special Allowances*

**If you were a child in the care of a Child and Family Services Agency in Manitoba between 2005 and 2019, your legal rights may be affected. Please read this Notice carefully.**

#### **What is this Notice about?**

This Notice is being provided in relation to a class proceeding commenced against the Government of Manitoba ("**Manitoba**") in respect of Manitoba's actions and policies relating to the administration of Children's Special Allowance Benefits ("**CSA Benefits**") from children in the care of Métis Child, Family and Community Services Agency Inc. and Michif Child & Family Services Inc. (the "**Métis Agencies**") between January 1, 2005 and March 31, 2019 (the "**Lafontaine Class Action**"). There are separate but related class proceedings dealing with Manitoba's actions and policies relating to the administration of CSA Benefits paid for children in the care of Child and Family Services Agencies in Manitoba other than the Métis Agencies over that same period of time (the "**Flette/Lavallee Class Actions**").

This Notice was approved by the Court of King's Bench of Manitoba (the "**Court**") to provide Class Members with notice that:

- 1) On December 13, 2023, the Court certified the Lafontaine Class Action as a class proceeding; and
- 2) The Plaintiffs in the Lafontaine Class Action have reached a settlement with the Government of Manitoba in the amount of eighty-four-million eight-hundred-thousand (\$84,800,000) to be paid to class members with a portion of those funds to be used to pay legal fees, the costs of administering the settlement and for programs and services to be delivered in connection with the distribution of settlement funds (the "**Settlement**"). The Court will need to approve the Settlement. The Settlement Approval Hearing is scheduled for **September 5-6, 2024**.

#### **Am I a member of this class?**

If you were a child in the care of either of the Métis Agencies at any time between January 1, 2005, and March 31, 2019, you are likely a member of the Class and likely entitled to compensation.

If you are a parent or guardian to a minor child who may be a part of the Class, you are responsible for making decisions on behalf of the Class member with respect to the class action, including opting out or making an objection.

Two other related class actions have also been certified with **different** class definitions:

- The Flette/Lavallee Class Actions: All children in the care of a Child and Family Services Agency **other than** the Métis Agencies between January 1, 2005 and March 31, 2019.

It is possible a person may be a member of more than one class and entitled to compensation from more than one class action. For example, if a person was in the care of one of the Métis Agencies for a certain period of time, and in the care of a different child and family service agency for another period of time, and both periods of time were between 2005 and 2019, that person may be a member of more than one class and is likely entitled to compensation from more than one class action.

If you believe you may be a member of more than one class action, please inquire with the Métis Child and Family Services Authority and/or Epiq Class Action Services Inc. (contact information below) who can assist you, including by providing the contact information to class counsel for the Flette/Lavallee Class Actions and/or for the entity responsible for administering the settlement of the Flette/Lavallee Class Actions.

### **What happens if I don't agree with the Settlement?**

If you disagree with the proposed Settlement Agreement offering compensation to Class Members, or the legal fees sought by Class Counsel, you can voice your objection to the Court by completing and submitting the Objection Form found at <http://metisclassaction.ca> **no later than August 26, 2024.**

Members of the Class who do not want to participate in the class action must formally "opt out". To opt out you must complete and submit the opt-out form, which can be found online at <http://metisclassaction.ca>. No Class Member will be permitted to opt out of the class action unless the election to opt out is received by **5:00 p.m. CST on August 26, 2024.**

A member of the Class who opts out will not be entitled to participate in the class action, will not be bound by the Settlement, and will not be eligible for any recovery in the class action. A Class Member who opts out may be eligible to pursue a claim in a separate proceeding. If you wish to pursue your own claim in a separate proceeding, you should consult with a lawyer immediately.

**Who can I contact for more information?**

The Court has appointed the Métis Child and Family Services Authority and Epiq Class Action Services Inc. to administer the Settlement. You may contact either for more information about the Settlement:

**Métis Child and Family Services Authority**

Email: [csaclassaction@metisauthority.com](mailto:csaclassaction@metisauthority.com)

**Epiq Class Action Services Inc.**

Email: [info@metisclassaction.ca](mailto:info@metisclassaction.ca)

Phone: 1-877-835-4546

**Who will represent me?**

The Court has appointed Lax O'Sullivan Lisus Gottlieb LLP and MN Trachtenberg Law Corporation to represent you and all other Class Members as "Class Counsel". You will not be charged for contacting these lawyers with questions:

Email: [metisclassaction@lolg.ca](mailto:metisclassaction@lolg.ca)

Phone: 1-416-645-5079

**Important Dates**

**Deadline to Oppose the Proposed Settlement and/or Fees: August 26, 2024**

**Deadline to Opt-Out of Class Proceeding: August 26, 2024**

**Settlement Approval Hearing: September 5-6, 2024**



**Digital Notice**

Were you in the care of Métis Child, Family and Community Services Agency Inc. and/or Michif Child & Family Services Inc. between 2005 to 2019? You may be a member of a class proceeding and entitled to compensation. Visit <http://metisclassaction.ca> to learn more.

**SCHEDULE “G” – Form of letter to other Governments**

Dear \_\_\_\_\_

Manitoba has recently settled the class action styled Rene Lafontaine, Mary Derendorf, 4501712 Manitoba Association Inc. o/a Metis Child and Family Services Authority, Metis Child, Family and Community Services Agency Inc., and Michif Child & Family Services Inc. in the Manitoba Court of King's Bench against The Government of Manitoba, having Court File No. CI 23-01-41054, which involved claims by the Plaintiffs with respect to the Government of Manitoba's actions and policies relating to the administration of Children's Special Allowance Benefits.

Pursuant to the terms of settlement, the Province has agreed to pay compensation to individual Class Members; and has further agreed that any settlement funds received by those Class Members would be deemed not to be a form of income replacement, or compensation for loss of income and will not affect eligibility for, the amount, nature and/or duration of social assistance programs administered by or on behalf Manitoba.

We are writing to request your agreement that any social assistance benefits available to Class Members from your government will not be affected by any settlement funds received by individual Class Members. Please let us know if you are agreeable.

Yours truly,