

**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

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**STATEMENT OF CLAIM**

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Service of a true copy hereof admitted this

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

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

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TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *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:)*

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 2023Issued by   
Deputy Registrar

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## 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/known 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.

---

Date of Issue

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