FILED MAY 30 2023

File No. CI23-01- 41219

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

BETWEEN:

**TRUDY LAVALLEE, as litigation guardian on behalf of the minor child, A.L. and Joshua Camplin,**

Plaintiffs,

- and -

**THE GOVERNMENT OF MANITOBA,**

Defendant.

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

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# STATEMENT OF CLAIM

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

BETWEEN:

**TRUDY LAVALLEE, as litigation guardian on behalf of the minor child, A.L. and JOSHUA CAMPLIN,**

Plaintiffs,

- and -

**THE GOVERNMENT OF MANITOBA**,

Defendant.

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, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

May 30, 2023 Issued by:_____

Deputy Registrar
100c - 408 York Avenue
Winnipeg MB R3C 0P9

TO: The Honourable Kelvin Goertzen
Ministry of Justice and Attorney General of Manitoba
104 Legislative Building
410 Broadway
Winnipeg, Manitoba R3C 0V8

## STATEMENT OF CLAIM

1. The Plaintiff, Trudy Lavallee, claims against the Defendant as litigation guardian on behalf of the minor child A.L. and as proposed representative Plaintiff on behalf of the Class identified in paragraph 5(a) of this Statement of Claim.

2. The Plaintiff, Joshua Camplin, claims against the Defendant as a proposed representative Plaintiff, on behalf of the Class identified in paragraph 5(b) of this Statement of Claim.

3. The Plaintiffs claim:

    a. An Order certifying this action as a Class proceeding and appointing Trudy Lavallee and Joshua Complin as Representative Plaintiffs;

    b. A declaration that the Defendant breached its legal duties, constitutional duties and statutory obligations to ensure that the Children's Special Allowances ("CSA") payments went to the benefit of the non-Indigenous children in care for whom they were paid;

    c. A declaration that the Defendant's CSA Policy as it relates to non-Indigenous children in care between 2005 and 2019 was unconstitutional and unlawful;

    d. A declaration that the Defendant breached of section 15 of the *Charter* by discriminating against children in care on the basis of the analogous ground of "family status" as a child in care and that such discrimination is not justified under section 1 thereof;

e. An accounting for all CSA Benefits that were denied to non-Indigenous children in care due to Manitoba's CSA Policy and used to otherwise offset its child welfare funding obligations;

f. Restitution of all CSA Benefits unlawfully denied to non-Indigenous children in care by the Defendant;

g. Damages under section 24(1) of the *Charter*;

h. Damages for discrimination at common law and repayment of all benefits improperly denied to the members of the Class;

i. In the alternative, an aggregate award of money for breach of trust, breach of fiduciary duty, unjust enrichment or conversion;

j. Damages regarding such an amount as this Court finds appropriate for the cost of administrating the plan of distribution of the recovery awarded;

k. Punitive damages;

l. Disgorgement of monetary benefits;

m. Interest at a compound compensatory rate;

n. Costs on a full indemnity basis;

o. Special damages including damages equal to the costs of bringing this action and the denial of CSA Benefits; and,

p. Such further and other relief as this Honourable Court may deem just.

4. **Defined Terms**

I. **Canada Child Benefit ("CCB")** means the tax-free monthly payment made to eligible families pursuant to sections 122.6 to 122.63 of the *Income Tax Act*. The CCB was at times provided under its predecessor names and statutory authorities, those being the Canada Child Tax Benefit, the National Child Benefit, the Universal Child Care Benefit, and the family allowance pursuant to *Family Allowances Act, 1973*, SC 1973, c 44, s 1. All references to the CCB herein implicitly include a reference to its predecessor names and programs as they existed from time to time;

II. "***CFS Act***" means *The Child and Family Services Act*, CCSM c C80;

III. "**CFS Agency**" means a child and family services agency as defined in the *CFS Act*, whether Indigenous or non-Indigenous, established to administer child and family services in Manitoba during the Class Period;

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

V. ***CSA Act*** means the *Children's Special Allowances Act*, S.C. 1992, C.48 and amendments thereto;

VI. **CSA Benefit** means the children's special allowances paid pursuant to the CSA Act;

VII. **Federal Child (or Federal Children) in care** means a Manitoban child who:

a. has, or is eligible for Indian status pursuant to the *Indian Act*; and

b. at least one of whose parents or guardians are normally resident on-Reserve at the time the child enters care;

VIII. ***Flette*** means this Honourable Court's decision in *Flette et al v. The Government of Manitoba* 2022 MBQB 104 concerning Manitoba's CSA Policy;

IX. ***Income Tax Act*** means the *Income Tax Act*, RSC 1985, c 1 (5th Supp);

X. **Non- Indigenous** means a person who is not Indian (i.e., First Nation), Métis or Inuit;

XI. **First Nation CFS Agency** means an Indigenous CFS Agency, except a Metis CFS Agency and also has jurisdiction exclusive to providing child welfare services to individuals residing on Reserve;

XII. **Government CFS Agency** means a CFS Agency integrated into a Manitoba government department or an Agency that is not arm's length from the Government of Manitoba such as Winnipeg Child and Family Services;

XIII. **Maintenance costs** refers to the eligible costs and payments pursuant to the Child Maintenance Manual required for the care of a ward, including housing, food, clothing, education, training, extra-curricular activities, and special needs;

XIV. **Manitoba's CSA Policy** means the practice of the government of Manitoba, through its departments and the government Agencies it controls, of denying CSA Benefits to Indigenous and non-Indigenous children in care. Manitoba does not use the CSA Benefits it applies for and receives exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid. Rather Manitoba deposits and aggregates the CSA Benefits into its general revenue fund and uses the money for its own non-child welfare related purposes. Manitoba does not account for the CSA Benefit paid for each child in its care and it did not make any outlays or expenditures for the specific child using the CSA Benefits (or a CSA Benefit substitute) between 2005 and 2019;

therefore, it does not record or account for the use of CSA Benefits, all in breach of the CSA Act, and in breach of Manitoba's duty to act in the best interests of children in care pursuant to the CFS Act. Manitoba's CSA Policy was described in ***Flette***;

XV. **Manitoba** means His Majesty the King in right of Manitoba named in this proceeding as The Government of Manitoba pursuant to section 10 of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, and all its agents;

XVI. **Off-Reserve Indigenous child in care** means a "Provincial Child" as defined herein, who is "Indigenous" as defined herein;

XVII. **On-Reserve Indigenous child in care** means a "Federal Child" as defined herein, who is "Indigenous" as defined herein;

XVIII. **Operational Funding** refers to government funding for the general operating costs incurred operating a CFS Agency, primarily for salaries, commercial leases, and training, and does not include payments to agencies and other persons and entities payable based on Rates for Service, although their operational funding is based upon the number of children in care within a CFS Agency;

XIX. **Provincial Child (or Provincial Children)** means a child in care in Manitoba, except a Federal Child;

XX. **Rates for Service** includes the rate set by the minister charged by the Lieutenant Governor in Council with the administration of the *CFS Act* for payment to foster care providers and agencies for certain services provided under the *CFS Act*;

XXI. **Reserve** has the same definition as the term "Reserve" pursuant to the *Indian Act*, R.S.C., 1985, c. I-5, section 2(1) (the "*Indian Act*"); and

XXII. **Wards** mean children who are or were the subject of a temporary or permanent Order in favour of a CFS Agency or the Direct of Child and Family Services and placed outside of their home for protection reasons.

## A. THE PARTIES

### Representative Plaintiff Trudy Lavallee

5. The Plaintiff, Trudy Lavallee, is the Executive Director of Animikii Ozoson Child and Family Services Agency ("AOCFS").

6. A.L. is a non-Indigenous child who is in the care of AOCFS, born on January 15, 2011, who is the subject of a permanent order of guardianship which expires when A.L. achieves the age of majority.

7. Like all other children in the care of CFS Agencies between 2005 and 2019, A.L. was denied CSA Benefits by the Defendant Manitoba. CSA Benefits applied for and received for the benefit of A.L., by AOCFS, were forced to be remitted or were clawed back or held back by Manitoba based on its CSA Policy. Therefore, A.L. has not received any tangible benefit because of the payment of CSA Benefits to AOCFS.

8. In *Flette* this Honourable Court found Manitoba's CSA Policy to be discriminatory toward off-Reserve Indigenous children in care.

9. Ms. Lavallee intends to make an application pursuant to *The Class Actions Act* for her appointment as a representative Plaintiff of the Class. As well, Ms. Lavallee intends to make an application to act as litigation guardian.

**Representative Plaintiff Joshua Camplin**

10. The proposed Plaintiffs' Representative, Joshua Camplin ("Mr. Camplin"), resides in Winnipeg, Manitoba and identifies as non-Indigenous.

11. Mr. Camplin was born on April 20, 1996, in Winnipeg, Manitoba. He currently resides in Richer, Manitoba.

12. In 2005, when Mr. Camplin was eight years old, his parents died and as a result, he and his two younger sisters came into the care of Winnipeg Child and Family Services ("WCFS") and were eventually the subject of Permanent Orders of Guardianship in favour of the Director of Child and Family Services.

13. WCFS is a Government CFS Agency. WCFS or another department of the Ministry of Families applied for and received CSA Benefits on behalf of Mr. Camplin during the period he was in care, 2005 to 2017.

14. After an extension of care, Mr. Camplin left the care of WCFS in 2017.

15. Like all other members of the Class, during the period that Mr. Camplin was in need of protection and in the care of Manitoba, he was denied CSA Benefits by the Defendant Manitoba. CSA Benefits applied for and received for Mr. Camplin's benefit were not applied by Manitoba exclusively toward his care, maintenance, education, training or advancement during the period he was in care.

**The Defendant**

16. The Defendant, Government of Manitoba ("Manitoba"), and its department or division, Winnipeg Child and Family Services, is being sued pursuant to sections 3 and 10 of *The Proceedings Against the Crown Act*, C.C.S.M c. P140.

17. Wherever appropriate, a singular term shall be construed to mean the plural where necessary, and a plural term the singular.

## B. NATURE OF THE ACTION

18. The primary objective of this Action is the repayment of CSA Benefits denied to non-Indigenous children in care by Manitoba to defray its child welfare funding costs from 1993 to 2019.

## C. THE CLASS

19. The Class is all those non-Indigenous children and the estates of those children who are or were wards of child and family services agencies funded by Manitoba and whose CSA Benefits were payable under the provisions of section 3(2) of the *CSA Act* but which payments, beginning in or about 1993, were aggregated and deposited into Manitoba's "consolidated revenue fund" instead of being applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid, and who belong to one of the following sub-classes:

    a. are under eighteen years of age; or,

b. are 18 years of age or more and are no longer wards of a CFS Agency.

**Vulnerability of Children in Care**

20. Children are among the most precious members of society. Children who have been removed from their homes by the state because they are in need of protection, are in an extremely vulnerable position. They are vulnerable to abuse. They are vulnerable to experiencing a childhood devoid of much of the love a natural family can offer. Numerous government studies have found that the outcomes for Canadians who were involved in the child welfare system are less favourable than for Canadians who were not involved in the child welfare system. Family status, which the status of whether a person lives in care or out of care, is an analogous ground to the protected grounds enumerated in the *Charter*.

## D. THE CSA ACT

21. The CSA provisions were previously contained in the *Family Allowances Act*, 1973, SC 1973, c44 (the "*Family Allowances Act*"). The purpose of the *Family Allowance Act* was (a) to help ease the financial burden of raising children, in such a way that families with the greatest need will receive the greatest benefit for the care of their children; and, (b) to avoid discrimination against children under care of CFS Agencies, by sending a CSA cheque directly to a foster parent or to a CFS Agency, in the same way a family allowance cheque is sent to a biological parent. In 1992, the CSA provisions in the Act were extracted from the *Family Allowances Act*, which Act was repealed.

22. In 1992, under the powers of Parliament accorded by the *Constitution Act, 1867* section 91(1A), Canada passed the *CSA Act* which contained the same or similar provisions as had been previously found in the *Family Allowances Act*. Its preamble is entitled “An Act to provide for the payment of special allowances for the care and maintenance of certain children”. Section 3 of the *CSA Act* reads as follows:

> **3 (1)** Subject to this Act, there shall be paid out of the Consolidated Revenue Fund, for each month, a special allowance in the amount determined for that month by or pursuant to section 8 in respect of each child who
>
> (a) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal and is maintained by
>
> (i) a department or agency of the government of Canada or a province, or
>
> (ii) an agency appointed by a province, including an authority established under the laws of a province, or by an agency appointed by such an authority, for the purpose of administering any law of the province for the protection and care of children;
>
> (b) is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children; or
>
> (c) resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under the laws of an Indigenous governing body and is maintained by
>
> (i) the Indigenous governing body,
>
> (ii) a department or agency of the Indigenous governing body, or
>
> (iii) an agency appointed by the Indigenous governing body, including an authority established under the laws of the Indigenous governing body, or by an agency appointed by such an authority, for

> the purpose of administering any law of the Indigenous governing body for the protection and care of children.
>
> (2) A special allowance shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid.

23. Consequently, the purpose of the *CSA Act*, as a whole, is to ensure that children who have come into care are not discriminated against because of the fact they are in care such that they still receive benefits equivalent to the Canada Child Benefits available to other children in Canada, pursuant to the *Family Allowances Act* and subsequently in 2016 under section 122.6 of the *Income Tax Act*.

24. When the *CSA Act* was being passed the government minister confirmed that the *CSA Act* is about avoiding discrimination.[1]

> *The principle underlying the new family allowance program is that the allowance represents a supplement to family income. Logically-speaking, therefore, we should not be paying an allowance in respect of children maintained by provincial governments in foster homes or institutions or maintained in private voluntary institutions. There are other provisions to cover the costs for such care, such as the Canada Assistance Plan. However, I have received strong representations to the effect that we would be discriminating against already disadvantaged children in institutional care if we were to eliminate the allowances now paid….*
>
> *Moreover, we propose to include children in the care of those private voluntary institutions that have been approved by a provincial government. This will mean that allowances now will be paid in respect of an estimated 9,000 children maintained in private voluntary institutions and for whom payments are not made under existing legislation.*
>
> *In order to avoid discriminating against children residing with foster parents, we propose that the special allowance cheque be sent directly*

[1] Canada Parliament, House of Commons Debates, 29th Parl, 1st Sess, Vol 7 (15 October 1973) at 6867.

> *to the foster parent in the same way that a family allowance cheque is sent to a regular parent."* [emphasis added]

25. The CSA is to supplement, not replace, maintenance contributions. Section 9(a) of the Children's Special Allowance Regulations, SOR/93-12 ("*CSA Regulations*") reads as follows:

> **9** For the purposes of the Act, a child is considered to be maintained by an applicant in a month if
>
> > **(a)** the applicant, at the end of the month, provides for the child's care, maintenance, education, training and advancement to a greater extent than any other department, agency or institution or any person;

26. Canada's intention to create a trust is unmistakably construed from the expression "shall be applied exclusively toward", which is found at section 3(2) of the *CSA Act*.

27. One purpose of the *CSA Act* and Regulations is to preclude the CSA Benefits from being taken or appropriated by the provinces of Canada, including Manitoba, to defray funding of Child Welfare services.

28. When the predecessor of the *CSA Act* was proceeding through the Senate in 1973, there were concerns raised that the provinces may claim the CSA Benefit as revenue to offset funding obligations for Child Welfare. An amendment to specifically preclude Provinces taking the CSA Benefit was rejected by the majority based on their view that the existing language in the Act already precluded such taking. The amendment and comments for rejecting it are set out below.

> *(2) A special allowance shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid,* ***and shall not be used to reduce payments***

***otherwise paid*** *by any agency of the Government of Canada or of any province.*

*The addition of the words, "and shall not be used. . ." et cetera, would preclude any chiseling, but the way it is now, without that being in the law, they can and will chisel.*

*Hon. Mr. Langlois: I submit that the bill goes far enough as it is, because it gives the right of control to the Minister of National Health and Welfare. The bill is quite specific. The clause you have referred to, clause 9, is quite specific and is clear enough to establish sufficient protection for the children to ensure that the money will not be used for some other purpose.*

*Hon. Mr. Argue: In the case of the old age pensioners, the federal government extended exactly the same protection to the old age pensioners in Saskatchewan, but the Government of Saskatchewan gobbled up the money while those people had to live in provincial homes on a mere pittance.*

*Hon. Mr. Langlois: I am sorry. I cannot comment on this last remark of my learned friend. I have not studied the case of Saskatchewan to which he is referring. Neither have I had the time to compare the provisions of the present legislation with the old age security legislation. He may be right on that score, but I think in this piece of legislation the minister has the right to intervene and to see that the money goes to the children for whom it is intended. (*Canada Parliament, Debates of the Senate, 29th Parl, 1st Sess, Vol 2 (10 December 1973) at 1306 – 1308, Tab 72)

*….*

*“The main reason for that provision of course, Mr. Chairman, is to make it perfectly clear to the province or the provincial child welfare agency which might be receiving this cheque on behalf of a child without parents, that that money is to be used for the benefit of that child and not for some other provincial purpose. It was not specifically aimed at foster parents as such though, of course, they would also be covered.*

*As Mr. Cafik [Parliamentary Secretary to Minister of National Health and Welfare] indicated, there is, of course, a difference between the special allowance and the regular family allowance in that the special allowance is not taxable and is* ***not variable by provincial law****. [emphasis added]*

29. The purpose of sections 3, 4 and 7(a) of the *CSA Act* and section 9 of the *CSA Regulations* is to preclude the CSA Benefits from being misappropriated by the provinces of Canada, including Manitoba.

30. The CSA Benefit is a statutory, tax-free monthly payment that can be provided by the Canada Revenue Agency ("CRA") to successful applicant CFS Agencies who are responsible for the maintenance of a child who is:

    a. under the age of 18;
    b. physically resides in Canada; and
    c. is maintained by a registered Agency.

31. The purpose of the *CSA Act* is to provide federal funds to CFS Agencies and foster parents for children in care, in an amount that is consistent with the Canada Child Benefit (including the Child Disability Benefit if applicable) ("CCB") which is provided to parents of children who are not in care. The CSA Benefit is equal to the maximum monthly amount of the CCB.

32. Like the CCB, the CSA Benefit is paid in respect of all eligible children in Canada, whether they are Provincial Children or Federal Children.

33. All children in care are entitled to the CSA Benefit and CFS Agencies have a legal right to receive the CSA Benefit just as parents of children not in care are entitled to receive the CCB. But for Manitoba's CSA Policy, AOCFS and all other CFS Agencies in Manitoba, would have used the CSA Benefits applied for and received to the benefit of provincial children in care.

34. The *CSA Act* is administered by the CRA and the CSA Benefits, payable pursuant to the *CSA Act*, are payable in respect of each child who is maintained in accordance with the provisions of section 3(1) of the *CSA Act*. Applications for the CSA Benefit are made to and approved by the Minister of National Revenue.

35. A child is considered by the *CSA Act* to be 'maintained' by an applicant if, at the end of a given month, the child is dependent on the applicant for his or her care, maintenance, education, training, and advancement to a greater extent than any other department, agency or institution or any person.

36. In order to approve an application for CSA Benefits, the CRA 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 section 3(1) of the *CSA Act* and section 9 of the *CSA Regulations*.

37. Pursuant to sections 3(2) and 7 of the *CSA Act*, CSA Benefits "shall be applied exclusively toward" the care, maintenance, education, training or advancement of the specific child in respect of whom they were granted, and the CSA Benefits cannot be assigned, charged, attached, anticipated or given as security, and they are granted subject to those conditions.

## E. CSA ACT PROVISIONS BREACHED BY MANITOBA

38. Manitoba and its CFS Agencies apply to the CRA for CSA Benefits for each child who is brought into care. Between 1993 and 2019 Manitoba required CFS

Agencies, including Winnipeg Child and Family Services, to make application for CSA Benefits for children in the care of the agency or director.

39. The CRA has granted all applications for CSA Benefits that have been filed by CFS Agencies. However, due to Manitoba's CSA Policy, described by this Honourable Court in *Flette,* non-Indigenous provincial children in care have not received any benefit from the CSA Benefits.

40. Once a special allowance is approved in respect of a child, the special allowance is paid to the Director, CFS Agency or foster parent (if designated pursuant to Regulation) pursuant to section 5 of the *CSA Act*.

41. But for Manitoba's CSA Policy, to the extent that any CSA Benefits for a child in care are not used to the exclusive benefit of that child, upon turning 18 years of age, this claim asserts that a child is entitled to a lump sum payment for the balance of unspent benefits from the CSA Benefits applicant.

42. Canada has a policy that specifically prohibits CSA Benefits from being utilized as a source of revenue or to be used to reduce or offset child welfare funding obligations. Federal children in care who were living on-Reserve with a parent at the time of apprehension receive their CSA Benefits in addition to the full amount of maintenance payable in accordance with the Child Maintenance Guidelines used jointly by Canada and Manitoba to determine funding levels for foster parents.

43. Notwithstanding Canada's CSA policy, and in contravention of the *CSA Act*, Manitoba does not make the CSA Benefits it applies for and receives available to

the child for whom it is paid. Rather Manitoba deposits and aggregates the CSA Benefits into its general revenue fund and uses the money for its own purposes. Manitoba does not account for the CSA Benefit paid for each child in its care and it does not make any outlays or expenditures for the specific child using the CSA Benefits (or a CSA Benefit substitute which is in addition to maintenance available through the Child Maintenance Guidelines); therefore, it does not record or account for the use of CSA Benefits, all in breach of the *CSA Act.* All of which is in breach of Manitoba's duties to children in care.

44. CFS Agencies should provide services in a manner that is at least reasonably equivalent for both on-Reserve and off-Reserve children in care. However, during the period 2005 to 2019, off-Reserve Indigenous children in care and non-Indigenous children in care were denied CSA Benefits, while Federal children in care were not denied CSA Benefits.

## F. DISCRIMINATION

45. Manitoba's CSA Policy is discriminatory toward provincial children in care, including non-Indigenous children in care. The primary reason is that all children who reside out of care in Manitoba are eligible to receive the CCB, which is the equivalent of the CSA Benefit. Manitoba's CSA Policy causes provincial children in care to not receive the benefit of the CSA Benefit. This constitutes a denial of a benefit that all other children in Manitoba receive, i.e., the CCB.

46. In *Flette*, Manitoba's CSA policy was found to create adverse impact discrimination against off-Reserve Indigenous children in care by denying them a benefit that

children out of care receive. Adverse impact discrimination occurs when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground.

47. The only conceivable justification for taking CSA Benefits (and denying them to the child for whom they were paid) is if the taker replaced it with something equivalent. There is no evidence to establish that Manitoba has replaced the CSA Benefit with something equivalent. In *Flette*, the Court found the evidence showed that there was no equivalent replacement of CSA Benefits.

48. Manitoba's CSA Policy amounts to a breach of section 15 of the *Charter* and constitutes discrimination against the Class based on the analogous ground of family status, specifically in that:

a. non-Indigenous children in care are denied all CSA Benefits and/or the benefit of those Benefits because Manitoba's policy is to use the CSA Benefits to defray the cost of maintaining children in care.

b. There is discrimination against a most vulnerable group in society; namely, children in care, in that families who receive CCB under section 122.6 of the *Income Tax Act* for their children, who are not in care, do not have these benefits offset, deducted or otherwise appropriated by Manitoba; whereas, non-Indigenous provincial children in care are denied the equivalent of CCB in the form of CSA Benefits;

c. The CSA Benefits are denied to non-Indigenous children in care who are deemed to be a provincial funding responsibility. The key discrimination determinants are the residence of parents off-Reserve at the time of apprehension of the child and/or the lack of Indian or Treaty status or the eligibility for Indian or Treaty status of the child under the *Indian Act*.

49. The effect of Manitoba's CSA Policy is to perpetuate hardships suffered by a vulnerable, poor and disadvantaged group resulting in a breach of section 15(1) of the *Charter*. The discriminatory distinction is the denial of CSA benefits to Class members in a manner that has the effect of reinforcing, perpetuating, or exacerbating a disadvantage, including historical disadvantage.

50. There is no pressing and substantial objective, purpose or principle to explain Manitoba's CSA Policy and the denial of the CSA Benefits to the children for whom they were paid. Therefore, Manitoba's CSA Policy cannot be justified under section 1 of the *Charter*.

## G. FIDUCIARY DUTY AND TRUST

51. Manitoba stands in a fiduciary relationship with the Plaintiffs and the proposed Class. At all material times, Manitoba had undertaken to act in the best interests of the Plaintiffs when they were children in care.

52. A general fiduciary duty exists because Manitoba, as the fiduciary, undertook to act in the best interests of children in care who are vulnerable to Manitoba's control and children in care stand to be adversely impacted by Manitoba exercising control

over the use of CSA Benefits. Manitoba's general fiduciary duty to provincial children in care is not in conflict with its duty to act in the best interests of society as a whole since Manitoba does not have discretion about how to use CSA Benefits and must follow the *CSA Act*.

53. The *CSA Act* created a Trust in favour of the Class by placing a condition or restriction on the use of those funds; namely, for the exclusive benefit of children in care, as a supplement to, or in excess of, those funds received from other sources; including Manitoba's Child Maintenance Guidelines.

54. The purpose of the *CSA Act* is to provide CSA Benefits to be used exclusively for the benefit of Class members who are the most vulnerable and marginalized children in Canadian society.

55. Denial of these benefits to members of the Class was a result of the deliberate and callous actions of Manitoba in knowing those actions to be misappropriation and otherwise wrongful as disclosed in various Hansard debates in the Manitoba Legislature.

56. The opportunities lost, and experiences foregone as a result of the denial of the CSA Benefits to the Class members during their formative years can never be replaced and has caused emotional damage and pain and suffering for the Class members.

57. Manitoba owes provincial children in care a duty of care to administer CSA Benefits in accordance with the *CSA Act*.

## H. SECTION 24(1) CHARTER DAMAGES

58. The denial of CSA benefits to the Class members has no social value and is fundamentally unfair to a group most in need of governmental protection and assistance.

59. The breaches of the *Charter* as set out above are not saved by section 1 of the *Charter*. The impugned conduct is related solely to Manitoba appropriating money into its consolidated revenue fund to be used for other purposes without any justification. Manitoba's actions represent a prolonged practice on the part of Manitoba to perpetrate practices which disadvantage non-Indigenous children in care.

60. Furthermore, Manitoba's CSA Policy has no substantial or pressing legislative objectives. Rather, the CSA Policy runs contrary to Manitoba's professed objectives and requirements in the provision of child and family services to the Class members.

61. Pursuant to the *CFS Act,* Manitoba shall act in the best interests of the children in its care. The denial of the CSA Benefit for off-Reserve Indigenous children in care, which has a deleterious impact on the provision of services to them and deprives them of various fundamental needs, is not in the best interests of those children.

62. The Class members have suffered loss because of breaches of the *Charter* by Manitoba, as set out in paragraphs above. An award of damages under section 24(1) of the *Charter* is appropriate in this case because it would compensate the

Class members for the discrimination and loss they have suffered. *Charter* damages would also vindicate the Class members' rights under the *Charter* and deter future taking of CSA Benefits.

## I. UNJUST ENRICHMENT

63. Manitoba has been unduly enriched and the Class correspondingly deprived by the actions of Manitoba, absent any juristic reason for said enrichment. Specifically:

a. all non-Indigenous provincial children in care were deprived of CSA Benefits by the exercise of Manitoba's actions notwithstanding that the *CSA Act* requires that CSA Benefits shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid;

b. Manitoba received a positive financial benefit by applying said CSA Benefits to its consolidated revenue fund for uses other than being applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid; and

c. Manitoba acted without legal authority in denying the CSA Benefit to non-Indigenous children in care and Manitoba is illegally enriched. Maintenance payments to support non-Indigenous children in care provided by Manitoba are not fungible with CSA Benefits. As such, Manitoba has no juristic reason for taking or appropriating CSA payments.

## J. DAMAGES

64. The conduct of Manitoba is such that it requires the opprobrium of this Court in the form of punitive damages.

65. As set out in detail in this claim, the acts and omissions the Defendants were reprehensible and showed a callous disregard for the Plaintiffs' rights and well-being. The conduct of Manitoba was deliberate, lasted for decades, and represented a marked departure from ordinary standards of reasonable and decent behavior.

66. Compensatory damages are insufficient in this case, and the conduct of Manitoba merits punishment and warrants a claim for punitive damages as a punitive damage award is necessary to express society's condemnation of the conduct of the Defendants, and to achieve the goals of both general and specific deterrence.

### Disgorgement

67. Manitoba's CSA Policy constituted a breach of its fiduciary duties, through which Manitoba inequitably obtained quantifiable monetary enrichment. Manitoba should be required to disgorge those CSA Benefits, plus interest.

### Interest

68. As a consequence of the misappropriation of the CSA Benefits under the circumstances set out herein, equity obliges Manitoba to pay compound interest at a rate equivalent to the rate at which Manitoba customarily earns interest on its investments and/or the rate at which it borrows money.

## K. LEGISLATION RELIED ON

69. The Plaintiffs plead and rely on the following statutes and regulations:

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

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

c. *The Court of King's Bench Act*, C.C.S.M. c. C280, s. 32;

d. *The Child and Family Services Act,* C.C.S.M. c. C80;

e. *The Child and Family Services Authorities Act,* C.C.S.M. c. C90;

f. *Children's Special Allowances Act* S.C. 1992, C.48 and Regulations, and amendments thereto*;*

g. *The Class Proceedings Act, CCSM c C130*;

h. *Income Tax Act, RSC 1985, c 1 (5th Supp);*

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

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

70. For all the reasons set out above, the Plaintiffs claim the relief set out in paragraph 1 herein.

DATED at Winnipeg, Manitoba, this 30th day of May, 2023.

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