File No. CI 18-01-18438

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

ELSIE FLETTE, as litigation guardian on behalf of minor children, E.F. and I.F. and LEE MALCOLM-BAPTISTE,

Plaintiffs,

- and -

GOVERNMENT OF MANITOBA,

Defendant.

Proceeding under the Class Proceedings Act C.C.S.M. CC130

FRESH AS AMENDED STATEMENT OF CLAIM

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File No.: 131503-0001

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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 Queen'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.

December 20, 2018

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

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

CLAIM

1. The Plaintiff, Elsie Flette, claims against the Defendant as litigation guardian on behalf of minor children E.F. and I.F. and as proposed representative Plaintiff on behalf of the Class identified in paragraph 5(a) of the Fresh as Amended Statement of Claim.:

2. The Plaintiff, Lee Malcolm-Baptiste, claims against the Defendant as a proposed representative Plaintiff, on behalf of the Class identified in paragraph 5(b) of the Fresh as Amended Statement of Claim.

3. The Plaintiffs claim for:

   a. An Order certifying this action as a Class proceeding;

   b. A declaration that *The Budget Implementation and Tax Statutes Amendment Act, 2020,* SM 2020 c.21 does not deny access of Aboriginal children in care to Manitoba's superior courts of justice to claim constitutional and *Charter* violations or breaches;

   c. Alternatively, a declaration that *The Budget Implementation and Tax Statutes Amendment Act*, 2020, SM 2020 c.21 s. 231, is constitutionally invalid in that it purports to deny Aboriginal children in care or their representatives access to Manitoba's superior courts of justice as guaranteed by section 96 of the *Constitution Act,* 1867 and therefore is *ultra vires* and is of no force and effect and offends the Rule of Law;

d. A declaration that *The Budget Implementation and Tax Statutes Amendment Act, 2020*, SM 2020 c.21, s. 231, is constitutionally invalid on the grounds that its operation impermissibly conflicts with the exclusive legislative power of Parliament under s.91(1A) and s.91(3) of the *Constitution Act, 1867* to spend its own money, and the power to raise by any mode or system of taxation and therefore is *ultra vires* and is of no force and effect;

e. A declaration that *The Budget Implementation and Tax Statutes Amendment Act*, *2020,* SM 2020 c.21, s. 231, is inoperative on the grounds that it invalidly conflicts with, or frustrates the purpose of, the *Children's Special Allowances Act*, SC 1992, c 48, Sch. and Regulations thereto to provide Children's Special Allowance for the exclusive benefit of children in care and therefore is *ultra vires* and is of no force and effect;

f. A declaration that the Children's Special Allowance payments obtained by the Defendant through Forced Remittances and/or Claw Backs, pursuant to *The Budget Implementation and Tax Statutes Amendment Act*, *2020,* SM 2020 c.21, s. 231, or otherwise, from First Nations and Métis Child and Family Service Agencies are unconstitutional and unlawful;

g. An accounting for all Children's Special Allowance payments unlawfully obtained by the Defendant;

h. A declaration that *The Budget Implementation and Tax Statutes Amendment Act*, 2020, *SM 2020* c.21, s. 231, to the extent it purports to extinguish the Plaintiffs' constitutional and/or private law rights to restitution of Children's Special Allowance unlawfully taken by the Defendant, is invalid and of no force and effect;

i. Restitution of all Children's Special Allowance payments unlawfully or wrongfully taken by the Defendant from First Nation and Metis Child and Family Service agencies;

j. A declaration that, to the extent *Financial Administration Act*, C.C.S.M. c.F55, specifically s.15 and s.40 thereof, purports to deem Children's Special Allowance as overpayments which are deposited or, are to be deposited, as public money into the Consolidated Fund of the Defendant, as a refund or repayment, the *Financial Administration Act* is constitutionally invalid as it impermissibly conflicts with the legislative power of Parliament under s.91(1A) of *The Constitution Act,* 1867 to spend its own money and is therefore *ultra vires* and is of no force and effect;

k. A declaration that, to the extent *The Budget Implementation and Tax Statutes Amendment Act*, *2020*, SM 2020 c.21, s.231 deems Children Special Allowance payments received or receivable by Aboriginal Child

and Family Services Agencies during the funding period to be overpayments, to which the Defendant is entitled, such monies are for the exclusive benefit of Aboriginal children in care and as such does not impact the Plaintiffs' claim for return of the Children's Special Allowance in this action;

l. A declaration that *The Budget Implementation and Tax Statutes Amendment Act*, *2020*, SM 2020 c.21, s.231 does not prevent this action from being commenced or continued and cannot purport to dismiss the Plaintiffs' claims of constitutional invalidity and breaches of the *Canadian Charter of Rights and Freedoms*;

m. A declaration that *The Budget Implementation and Tax Statutes Amendment Act*, *2020*, SM 2020, s.231 violates s.52 of the *Constitution Act*, 1982 in that it purports, directly or indirectly, to prevent the Plaintiffs from advancing and/or continuing a claim under s.12 and s.15, and to seek remedies under s.24(1) of the *Canadian Charter of Rights and Freedoms*, and is not justified under s.1 thereof and is of no force and effect;

n. A declaration that by the enactment of *The Budget Implementation and Tax Statutes Amendment Act 2020,* SM 2020 c.21, s.231, the Defendant is in breach of s.12 of the *Canadian Charter of Rights and Freedoms* by imposing cruel and unusual punishment on Aboriginal children in care, as an identifiable vulnerable group in society, in

denying them their rightful and lawful access to benefits and that such cruel and unusual punishment is not justified under s.1 thereof;

o. A declaration that, by the enactment of *The Budget Implementation and Tax Statutes Amendment Act 2020,* SM 2020 c.21, s.231, the Defendant is in breach of s.15 of the *Canadian Charter of Rights and Freedoms* by discriminating against Aboriginal children in care on the basis the enumerated grounds of “race”, “ethnic origin” or “nationality” or the analogous grounds of “family status”, or “residence of a parent” and/or “lack of Indian or Treaty status or eligibility for Indian or Treaty status under the Indian Act” or “children in care” or “Aboriginal children in care” and that such discrimination is not justified under s. 1 thereof;

p. A declaration that *The Budget Implementation and Tax Statutes Amendment Act 2020*, SM 2020 c. 21, s.231 is in conflict, or is inconsistent, with s.11 of an *Act respecting First Nations, Inuit and Métis children, youth and families* S.C. 2019 c.24 by creating substantive inequality between Aboriginal children in care and other children;

q. Damages under s. 24(1) of the *Canadian Charter of Rights and Freedoms;*

r. In the alternative, an aggregate award of money pursuant to Division 2 of *The Class Proceedings Act, C.C.S.M.* c.C130 for breach of trust,

fiduciary duty, negligence, restitution for unjust enrichment wrongdoing and/or breach of public law for said constitutional violations;

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

t. Punitive damages;

u. Disgorgement of monetary benefits;

v. Interest at a compound compensatory rate; and,

w. Costs on full indemnity basis.

4. **Defined Terms**

In addition to terms defined elsewhere in the Fresh as Amended Statement of Claim, the following terms are defined:

(i.) **Aboriginal Child and Family Services Agency** means First Nation Child and Family Services and Metis Child and Family Service Agencies established to provide protection and care for aboriginal children who become wards of said Agency (“Aboriginal Agency or Agencies”).

(ii.) **Aging out payment** means the amount of Children’s Special Allowance payments accumulated by a ~~CFS~~ Child and Family Services Agency for and on behalf of eligible children and which payments have not been utilized for the child’s benefit prior to the child reaching the age of majority.

(iii.) ***The BITSA Act*** means *The Budget Implementation and Tax Statutes Amendment Act, 2020,* SM 2020 c.21, s. 231. passed by the Manitoba Legislature on November 6, 2020 ("BITSA Act" or "s.231").

(iv.) **Charter** means the *Canadian Charter of Rights and Freedoms* as set out in *the Constitution Act, 1982*.

(v.) **Child and Family Services Agency** means a child and family services agency, whether aboriginal or non-aboriginal, established to provide protection and care for children who become wards of an Agency ("CFS Agency").

(vi.) **The Child and Family Services Act** means *The Child and Family Services Act*, C.C.S.M.c.C80 ("CFS Act").

(vii.) ***The Child and Family Services Authorities Act*** means the *Child and Family Services Act* CCSM c.C90 ("Authorities Act").

(viii.) **Children's Special Allowance Regulations** means the *Children's Special Allowances Regulations* SOR/98-12 ("Regulations").

(ix.) **Children's Special Allowance Act** means the *Children's Special Allowance Act*, S.C.1992, C.48 and amendments thereto ("Act").

(x.) **Children's Special Allowance** means the payments made to CFS Agencies which are payable to the exclusive benefit of eligible children pursuant to the Act and Regulations ("CSA").

(xi.) **The Constitution Act**, **1867** means the *Constitution Act*, 1867(UK), 30 and 31 Victoria, c.3 ("Constitution Act, 1867").

(xii.) **The Constitution Act, 1982** means the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 (“Constitution Act 1982”).

(xiii.) ***The Financial Administration Act*** means the *Financial Administration Act* CCSM c.F55 (“FAA”).

(xiv.) ***The FNIM Act*** means *An Act respecting First Nation, Inuit and Métis children, youth and families, S.C.2019, C.24(“FNIM Act”).*

(xv.) **Convention** means the Convention on the Rights of the Child, passed by the United Nations on November 20, 1989, 3 UUT51577, ratified by Canada on May 28, 1990 and which came into force in Canada on January 12, 1992 (“Convention”).

(xvi.) **Federal Government** means Canada in reference to the passage of federal legislation, including the Act pertaining to benefits for eligible children. (“Canada”).

(xvii.) **First Nation Child and Family Services Agency** means an agency which is funded both by Canada and the Government of Manitoba to provide protection and care for aboriginal children who become wards of said agency (“First Nation Agency”); with the exception of Animikii Ozoson Child and Family Services, which is funded solely by the Government of Manitoba.

(xviii.) **Métis Child and Family Services Agency** means an agency which is funded by the Government of Manitoba to provide protection and care for Métis children who become wards of said agency “(“Métis Agency”).

(xix.) Non-Aboriginal Child and Family Services Agency means an agency funded and operated under the control of the Government of Manitoba pursuant to the CFS Act, to provide protection and care for all children (Aboriginal and non-Aboriginal) who become wards of said agency ("Non-Aboriginal Agency").

The Class

5. The Class is all those aboriginal children and the estates of those children who are or were wards of child and family services agencies and who were or are funded by the Government of Manitoba and whose Children's Special Allowance payments were payable under the provisions of s.3 (2) of the Act but which payments, beginning in or about 1993, were instead taken directly or indirectly from CFS Agencies by the Government of Manitoba and who:

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.

The Parties

6. The proposed Plaintiff Representative, Elsie Flette, resides in the City of Winnipeg, and is the guardian of her two grandchildren, E.F. and I.F. ("grandchildren") who are children entitled to CSA benefits and who are members of the Class.

7. The proposed Plaintiff representative, Lee Malcolm-Baptiste, resides at Berens River First Nation, and is currently 19 years of age.

8. The Defendant, Government of Manitoba ("Manitoba"), is being sued pursuant to s 3 of *The Proceedings Against the Crown Act, C.C.S.M* c. P140.

Elsie Flette ("Flette")

9. Flette is retired. Her daughter is a First Nation member of the Keeseekoowenin Ojibway First Nation in Manitoba and is the maternal mother of E.F. and I.F.. Flette is the maternal grandmother of E.F., born May 17, 2013 and I.F., born May 2, 2018. Both E.F. and I. F. are, or are entitled to be, registered with Treaty status under the *Indian Act* R.S.C., 1985 C.1-5 ("Indian Act")

10. E.F. was apprehended from her mother by All Nations Coordinated Response Network ("ANCR"), Central Intake Agency, in Winnipeg on June 16, 2016, with subsequent transfer of the file to the West Region Child and Family Services Agency ("WRCFS") on June 30, 2016. E.F.'s mother was residing in Winnipeg at the time of E.F.'s apprehension.

11. E.F. was placed into foster care with Flette as a place of safety by ANCR on June 16, 2016, and as a kinship care foster placement with Flette by WRCFS.

12. I.F. was apprehended at birth from the Health Sciences Centre ("HSC") in Winnipeg by WRCFS. Her mother was residing in Winnipeg at the time of I.F.'s apprehension.

13. I.F. was placed into foster care with Flette by WRCFS on May 15, 2018.

14. Both grandchildren have been in kinship care foster placement with Flette continuously since those respective dates.

15. Without an adult representative Plaintiff, no action could be brought by those members of the Class who are not of the age of majority, resulting in a substantial injustice to the Class.

16. Flette intends to make an application to the Court under s.2 (4) of *The Class Proceedings Act* (“CPA”) for her appointment as a representative Plaintiff of the sub-Class identified in para 5(a) of the Fresh as Amended Statement of Claim. As well, on October 15, 2020, Flette filed an affidavit, as required by Rule 7.02(2) of the *Court of Queen's Bench Rules*, Man Reg 553/88, to act as litigation guardian of her grandchildren.

17. Lee Malcolm-Baptiste (“Baptiste”) was born on September 5, 1999 at the HSC in Winnipeg to Tamara Malcolm, a member of the Ebb and Flow First Nation in Manitoba. Baptiste is also a member of the Ebb and Flow First Nation in Manitoba.

18. Baptiste lived with his mother in Winnipeg until approximately October of 2007, when he was apprehended by All Nations Coordinated Response, and later transferred to Winnipeg Child and Family Services (“WCFS”) in November of 2007.

19. From that point in time, Baptiste was placed by WCFS into various group homes, holding facilities and foster homes.

20. Subsequently, WRCFS assumed wardship over Baptiste and he was thereafter placed into foster care with various other individuals until in or about July, 2015.

21. In or about July, 2015, Baptiste travelled to stay with his mother, who by then was residing in Cutler, Ontario, but he remained a ward of WRCFS until he reached the age of majority.

The CFS Agencies

22. In or about March, 1985, the WCFS was separated into 6 regional CFS agencies. All CFS Agencies were permitted to retain child related benefits received from Canada. At that time, at the WCFS, the practice was to pool these benefits and use the funds for special needs of children which were not covered under provincial maintenance payments. Agreements were negotiated to determine how these funds were to be allocated to the 6 regional CFS Agencies.

23. In or about 1991, the CFS Agencies were re-centralized into the WCFS, and all child benefit related funds were pooled back into the WCFS for the funding of special needs not covered by maintenance payments made under the CFS Act.

24. All Agencies were delegated authority by Manitoba to provide culturally appropriate child protection and prevention services pursuant to CFS Act.

25. All Aboriginal Agencies are responsible for the care, maintenance, education, training or advancement of Aboriginal children who they have apprehended or who have been voluntarily placed with said Agencies.

26. There are two funding sources for the First Nation Agencies: (a) from Manitoba, for operating and child maintenance contributions; and, (b) from the Government of Canada ("Canada") for operating and child maintenance contributions to First Nation Agencies who provide services to Aboriginal children, and which children had at least one parent who was resident ~~of~~ on a First Nation reserve at the time those children came into care of a First Nation Agency and the children had, or were eligible to have, Indian or Treaty status under the *Indian Act*.

27. Manitoba does not provide financial contribution to First Nation Agencies for maintenance costs for Aboriginal children, who are eligible for federal funding. Manitoba only provides financial contributions to Agencies for Aboriginal children who came into their care, and who are not eligible for federal funding.

28. A Métis Agency provides care primarily for Métis children who are not eligible for federal funding regardless of where their parents reside at the time of apprehension. A Métis Agency only receives provincial funding contributions for maintenance of children in care.

29. Consequently, given Manitoba's funding, the Aboriginal Agencies are dependant upon Manitoba for their financial existence. These agencies who have an

operational deficit in any given year, must find monies from within their internal resources to deal with any operational deficits.

Children's Special Allowances Act S.C.* 1992, c.48, Sch. *("Act")

30. 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 natural parent. In 1992, the CSA provisions in the Act were extracted from the *Family Allowances Act*, which Act was repealed.

31. In 1992, under the powers of Parliament accorded by *The Constitution Act*, 1867 s. 91(1A), Canada passed the 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". S. 3 (1) of the 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)*** *is maintained*

> ***(i)*** *by a department or agency of the government of Canada or a province, or*
>
> ***(ii)*** *by 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,*
>
> *and who 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; or*
>
> ***(b)*** *is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children."*

32. Consequently, the purpose of the 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 s.122.6 of the *Income Tax Act,* R.S.C., 1985, c1(5th Supp) ("ITA").

33. S. 3(2) and s. 4(1) of the Act reads as follows:

> **Use of special allowance**
>
> **(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*" [emphasis added]
>
> **Application for special allowance**
>
> 4(1) A special allowance is not payable in respect of a child for any month unless

> (a) an application therefor has been made in the prescribed manner by the department, agency or institution referred to in section 3 that maintains the child; and
>
> (b) payment of the special allowance has been approved under this Act.

34. The CSA is to supplement, not replace, maintenance contributions. S. 9 (a) of the **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;

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

36. The purpose of the Act and Regulations is to preclude the CSAs from being taken or appropriated by the provinces of Canada, including Manitoba.

37. The Act is administered by the Canada Revenue Agency (CRA) and the CSAs, payable pursuant to the Act, are payable in respect of each child who is maintained in accordance with the provisions of s. 3(1) of the Act.

38. The CSA is a statutory, tax-free monthly payment that can be provided by the CRA to successful applicant 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.

39. The monthly CSA payment for a given child is equal to the maximum monthly amount of Canada's child benefit (child tax benefit payment plus the national child benefit supplement, the child disability benefit and the universal childcare benefit, if applicable).

40. In order to receive a CSA payment, all CFS Agencies must first register with the CRA and obtain a registered account business number and prove to the satisfaction of the CRA that they are licensed or approved to have the custody or care of children. The CFS Agency, not Manitoba, must then submit an application form to the Federal Minister of National Revenue ("Minister") in respect of each child.

41. Once a CSA is approved in respect of a child, the CSA is paid to the CFS Agency or foster parent pursuant to s.5 of the Act.

42. To the extent that any CSA payment allocated to a child's care was not used to the exclusive benefit of that child, upon turning 18 years of age, that child is entitled to a lump sum payment or equivalent benefits from the CFS Agency responsible for that child.

The Trust

43. For the purpose of determining whether ~~an~~ a CFS Agency is entitled to receive a CSA payment with respect to a given child, the Minister must determine that the particular child in question, at the end of that month, is dependent on the applicant Agency for his or her care, maintenance, education, training or advancement to a greater extent than any other agency or individual.

44. When a CFS Agency receives CSA payments from the CRA, it is required to account for payments separately and such payments are to be used exclusively for the purposes as established by the Act ("the Trust").

45. CFS Agencies normally receive the CSA funds beginning the month after the month that the child started to be maintained by the CFS Agency. The funds are paid out of the Canada's Consolidated Revenue Fund ("CRF").

Unlawful Conduct

46. Since in or about 1993, all CFS Agencies in Manitoba have applied for and received CSA funding from Canada, through the CRA, for children who have been taken into their care.

47. From approximately 1993-2003, in respect of Aboriginal children in the care of Non-Aboriginal Agencies, Manitoba claimed CSA payments from said Agencies; but not from First Nation Agencies.

48. In 2003, Métis Agencies were established and from 2003 to 2005, Manitoba also claimed CSA payments from Métis Agencies

49. Métis Agencies have always been directed to remit CSA payments to Manitoba. Animikii Ozoson Child and Family Services ("AOCFS"), which provides care primarily for Aboriginal children who came from the province of Ontario and who are not eligible for federal funding, also has always been directed to remit CSA payments to Manitoba.

50. Commencing in or around April 2005, the transfer of children from non-Aboriginal agencies to First Nation Agencies increased substantially, and the CSA funding followed said Agencies. As a result, Manitoba recognized that it was losing control over substantial revenue. Accordingly, Manitoba started demanding that the First Nations Agencies begin to remit to Manitoba the CSA that those Agencies had received in respect of any child for which Manitoba was making a financial contribution.

51. Many, but not all, Aboriginal Agencies refused to comply with Manitoba's demand, recognizing what Manitoba refused to acknowledge; that is, that the CSA payments were Trust funds.

52. Between May – October, 2005, funds which had been pooled with the WCFS, and which were funds paid by Canada prior to the Act, were transferred to Aboriginal

Agencies based on a negotiated agreement between the WCFS and the Aboriginal Agencies.

New Funding Model

53. In or around October, 2010, a new funding model was negotiated between Manitoba, Canada and First Nations resulting in increased funding to the Aboriginal Agencies through their respective Authorities under *The Authorities Act*.

54. For the fiscal years of 2010/2011 and 2012/2013, Manitoba provided the Aboriginal Agencies with some, but not all, of the requisite amount of funding that they were supposed to have received.

55. However, Manitoba did not release the entirety of the funding model adjustments to the Aboriginal Agencies. Instead, Manitoba began a process of unilaterally holding back an arbitrary 20% of the "funding model adjustment payments" (Adjustment Payments) from the Aboriginal Agencies, as a cudgel to require ~~the~~ said Agencies to pay to Manitoba what it alleged was a debt owing to it from those Agencies who had not remitted the CSA payments demanded by Manitoba ("Claw Backs").

56. With respect to the First Nations Agencies, Manitoba calculated this alleged debt by estimating what it believed each Agency received in CSA payments from the CRA from the date of Manitoba's initial demand through to March 31, 2011, but which

had not been remitted to Manitoba. With respect to the Métis Agencies and AOCFS, Manitoba has a precise calculation of CSA payments received by them from CRA.

57. Manitoba has withheld 20% of said Adjustment Payments from the Aboriginal Agencies, which unilateral withholding remains unabated, until such time that Manitoba deems that any alleged CSA debt has been repaid.

58. Furthermore, Manitoba unilaterally imposed an arbitrary additional 20% holdback on future Manitoba funding that was to be provided to any Aboriginal Agency, which had refused to remit any and all CSA payments demanded by Manitoba.

59. By a letter dated September 27, 2013 to the Aboriginal Agencies, Manitoba pronounced that, henceforth, it would estimate future CSA payments to be received by each Agency and then would deduct such estimate from any funding to be paid by Manitoba to such Agency.

60. As a result of said pronouncement, the Aboriginal Agencies capitulated and sent to Manitoba the CSA payments that they had accumulated and received on an ongoing basis ("Forced Remittances").

61. None of the Aboriginal Agencies have ever willingly consented or agreed to the unilateral and arbitrary Forced Remittances and/or the Claw Backs applied as a set

off to Agency funding by Manitoba, but have done so in order to preserve their ability to care for children under their custody as required by the CFS Act.

THE BITSA ACT

62. On November 6. 2020, the *BITSA Act* was given Royal Assent. and is deemed to be in force as of April 1, 2019.

63. S.231 (1) to (6) establish a “deemed” overpayment by CFS Agencies in favour of Manitoba as follows:

> **Definitions**
> 231(1) The following definitions apply in this section.
>
> "agency" and "authority" have the same meaning as in subsection 1(1) of The Child and Family Services Act.
>
> "minister" means the minister appointed by the Lieutenant Governor in Council to administer The Child and Family Services Act.
>
> "special allowance" means the special allowance under the Children's Special Allowances Act (Canada) and the regulations made under that Act.
>
> **Purpose**
> 231(2) This section 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 (referred to in this section as the "funding period").
>
> **Provincial funding framework**
> 231(3) Section 6.6 of The Child and Family Services Act provides that the minister may fix rates payable for services provided under that Act. Those rates are effective as of the date that is fixed in the minister's order, which may be retroactive.
>
> **Deemed rates for service**
> 231(4) For the funding period, the rates payable for services fixed by the minister for each agency are deemed to have been fixed at the amount

determined in accordance with following formula (referred to in this section as "the minister's rates for services"):

$$A - B$$

In this formula,

A is the greater of
(a) the amount of funding that the government provided, directly or indirectly, to the agency during the funding period, and

(b) the amount of funding that the government would have provided, directly or indirectly, to the agency during the funding period, if the government had not reduced or retained by way of set-off some or all of that funding as a result of the agency receiving or being eligible to receive the special allowance for children in its care;

B is the amount of the special allowance that the agency received or was eligible to receive during the funding period for children in its care.

Deemed notice of minister's rates for services
231(5) Each agency and each authority is deemed to have received notice of the minister's rates for services on the following dates:

(a) in the case of an agency, on the later of January 1, 2005, or the day the agency was mandated under the Agency Mandates Regulation, Manitoba Regulation 184/2003;

(b) in the case of an authority, on the day The Child and Family Services Authorities Act came into force.

Deemed overpayment amount
231(6) Each agency that received, directly or indirectly, funding from the government during the funding period in excess of the minister's rates for services is deemed to have received an overpayment from the government in an amount equal to the excess (referred to in this section as the "overpayment").

64. After the deemed "overpayment" is calculated s. 231(7) establishes a collection mechanism. S. 231(7) states:

Deemed recovery of overpayment amount

> 231(7) The following actions taken before or after the coming into force of this section are deemed to be actions taken in respect of the government's recovery of any overpayment that it made:
>
> > (a) the government reducing or retaining by way of set-off a portion of the funding it otherwise would have provided, directly or indirectly, to an agency by an amount equivalent to an amount of the special allowance received or receivable by the agency;
> >
> > (b) an agency remitting to the government, or the government directly or indirectly collecting from the agency, an amount of the special allowance received or receivable by the agency, or the equivalent of such an amount.

65. The "deemed" overpayment and collection mechanism, as established under s. 231 is stated to apply from January 1, 2005 to March 31, 2019 and purportedly constitutes a retroactive debt which was paid into Manitoba's Consolidated Fund; and further, purports to justify receipt of uncollected CSA payments from Agencies and directed to be paid into Manitoba's Consolidated Fund when collected.

Lack of Constitutional Competency

66. S. 231 purports to prohibit the Plaintiffs from accessing the constitutionally protected judicial oversight function of Manitoba's superior courts of justice. Pursuant to the Rule of Law and s. 96 of *The Constitution Act*, 1867, the province cannot remove access to the superior courts of justice. Thus, s. 231 is inconsistent with the Rule of Law and s. 96 of *The Constitution Act*, 1867 and, as such, by operation of s. 52(1) of *The Constitution Act*, 1982, is of no force or effect.

67. The subject matter of s. 231 is the appropriation of federal monies (the CSAs). Its enactment is for no other purpose. Manitoba has acknowledged, at least implicitly, that its actions prior to the enactment of s.231 were invalid.

68. As the federal government has exclusive power to legislate in relation to federal monies under the *Constitution Act*, 1867, s 91(1A) and 91(3) there is an impermissible constitutional conflict between the operation of s. 231 and the exclusive powers of Parliament over federal monies.

69. Manitoba lacks lawful and/or constitutional authority to appropriate the CSA funding from CFS Agencies. The 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 benefits received from other services; including Manitoba.

70. As such, the impact of s.231 is to perpetrate an illegal act on the part of Manitoba, by giving it the chrysalis of validity when, as the facts are, Canada has legislated that every child in care receives CSA payments dedicated exclusively to their benefit and which Canada recognizes cannot be offset through the application of stacking provisions (i.e. the deduction of CSA payments from other sources of funding). Accordingly, Manitoba has done that which Canada has prohibited be done with the disposition of federal funds through CRA by illegally reducing funding to Aboriginal children in care by the amount of CSA payments received by Aboriginal Agencies on their behalf.

71. Furthermore, notwithstanding that The FAA Act is otherwise valid by the doctrine of paramountcy of federal legislation, Manitoba lacks any legal authority to act in violation of s.3, s.4 and s.7 of the Act and s.9 of the Regulations.

72. The purpose of s. 3, s.4 and s.7(a) of the Act and s.9 of the Regulations is to preclude the CSAs from being misappropriated by the provinces of Canada, including Manitoba.

73. To the extent that s. 231 creates a purported entitlement to the CSAs, through the mechanism of The FAA Act, Manitoba is prohibited in doing so by virtue of the Act and Regulations. Specifically, s.231 purports to legalize and validate the prior practice of Manitoba to demand receipt of and deposit CSA payments, (labelled as overpayments) into the Consolidated Fund of Manitoba under the FAA. An unconstitutional purposive conflict, therefore, arises.

74. These actions by Manitoba, by appropriating CSAs for its own benefit are *ultra vires* the powers of the provincial legislature under s.92 of *The Constitution Act*, 1867 and are therefore void and of no force and effect.

Breach of Trust

75. As a result of Manitoba's demands, the Aboriginal Agencies ~~continue~~ continued to apply for and receive CSA payments, but remitted all CSA payments to Manitoba. Those Trust funds were converted to Manitoba's own use and applied to

its general treasury and were not distributed back to Aboriginal Agencies as part of provincial child maintenance.

76. The actions of Manitoba, in instituting the Forced Remittance and Claw Back policies, amount to a breach of trust for which Manitoba is responsible, in that Manitoba knew or ought to have known, at all material times that:

a. Canada, the settlor, intended to create a trust;

b. the CSA payments were Trust funds which were to be used exclusively for the specific purposes established by the Act;

c. the Aboriginal Agencies, in their capacity as trustees, were responsible for administering the Trust funds pursuant to the Act;

d. the proposed Class members, not Manitoba, were the beneficiaries of the Trust funds;

e. it was unlawful for Manitoba to appropriate said CSA payments for its own purposes or otherwise set off said CSA payments against Manitoba's funding obligations to the Aboriginal Agencies.

f. the Aboriginal Agencies would suffer a financial hardship if they did not accede to Manitoba's unlawful demands.

77. As such, Manitoba, a stranger to the Trust, is knowingly in receipt of said CSA payments without lawful authority. The Class members are constructive beneficiaries of CSA payments, now in the possession of Manitoba.

78. Moreover, pursuant to s.91(1A) of the *Constitution Act,* 1867, the federal government has the exclusive power to spend federal money and to impose conditions or restrictions on the disposition of those monies or to state the terms upon which federal monies are available.

79. The Act expressly imposes conditions or restrictions upon the disposition of those federal monies and states the terms upon which CSA payments are available and to whom; namely for the exclusive benefit of children in care.

80. Consequently, by virtue of s.231, Manitoba:

a. Purported to convert federal monies (CSA) imposed with a Trust into a debt owing to Manitoba;

b. Collected CSA from the Aboriginal Agencies over the funding period;

c. Essentially labelled those CSA payments to Aboriginal Agencies retroactively as an overpayment; and,

d. Construed those purported overpayments as public money for the purposes of depositing CSA payments into the Consolidated Fund for use as general revenue by Manitoba,

all in conflict, and incompatible, with the Act, such that Manitoba had no authority to convert federal funds dedicated for a restricted purpose into provincial public money.

Fiduciary Duty

81. At all material times, including prior to, and upon the enactment and implementation of s. 231, Manitoba was aware that the CSA funds obtained through Claw Backs and Forced Remittance were Trust funds.

82. Manitoba was in a fiduciary relationship with the Class~~.~~ by virtue of:

a. Manitoba having scope for the exercise of discretion or power;

b. Manitoba's ability unilaterally to exercise that power or discretion so as to adversely impact legal or practical interests of the Class; and

c. the Class being particularly vulnerable to or at the mercy of Manitoba.

83. That fiduciary relationship obliged Manitoba to place the interests of the Class ahead of its own interests. In breach of that fiduciary relationship, Manitoba appropriated the CSA funds for its own purposes on the basis of alleged overpayments, which it construed as debts that it claimed were owed by the Aboriginal Agencies to Manitoba.

84. Manitoba breached its fiduciary duty to the Class in applying the CSA payments in satisfaction of those claimed debts.

85. Manitoba is bound to account to the Class for all CSA payments unlawfully appropriated, plus interest.

Duty of Care

86. At all material times, including in enacting s. 231, Manitoba was aware of the existence of the provisions of the Act, including s.3, s.4, s.7, and s.9 of the Regulations thereof. As such, Manitoba was aware that any CSA funds appropriated would be subject to the obligations imposed by the Act.

87. Manitoba owed a duty of care to the Class to ensure that the terms of the Trust were honoured.

88. It was foreseeable by Manitoba, and was in fact intended by Manitoba, that, by its Forced Remittances and Claw Backs, the CSA payments would not be applied by the CFS Agencies as required by the Act.

89. Furthermore, Manitoba was aware, at all material times, that the Aboriginal Agencies would suffer financially and would be limited in their ability to ~~in~~ provide care to children by acceding to Manitoba's demands for the relinquishing of CSA payments under threat of retribution by Manitoba, while at the same time fulfilling their obligations under the Act.

90. Manitoba breached its duty of care to the Class when it implemented the Forced Remittances and Claw Backs with the result that Manitoba received CSA payments to its unlawful benefit in violation of the Trust.

91. The unlawful actions of Manitoba in receiving the benefit of the CSAs are a violation of its duty of care, particulars of which include:

a. any CSA payment that Manitoba received was applied to its Consolidated Fund in violation of s. 3 and s.7 of the Act and s.9 of the Regulations;

b. the Forced Remittances and/or Claw Backs, were done with the knowledge and intention of Manitoba that the Aboriginal Agencies would be deprived of sufficient funding to provide for enhanced services and support to children entitled to CSA benefits; and,

c. the CSAs were misapplied by Manitoba towards its own uses generally or applied as a set-off against its funding obligations to the Agencies.

92. S. 231 amounts to an *ultra vires* method of extinguishing remedies in restitution based on unjust enrichment, wrongdoing, and/or constitutional grounds. Furthermore, if Manitoba cannot take CSA by unconstitutional means, then it cannot retain CSA by unconstitutional means.

Grounds for Restitution

(a) Unjust Enrichment

93. 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 CFS Agencies, which provided protection and care for Class members, were deprived of the CSA payments earmarked for the benefits of Aboriginal children under their care;

b. Manitoba received a positive benefit by applying said CSA payments for its own use or reducing its funding obligations to the CFS Agencies; and,

c. Manitoba acted without legal authority in extracting said CSA payments from the CFS Agencies, and Manitoba is illegally enriched. As such, Manitoba has no juristic reason for taking or appropriating CSA payments.

(b) Bad Faith ("Wrongdoing")

94. Manitoba knew that the CSA payments were made by Canada to the Agencies for the sole purpose specified in s.3 (2) of the Act and s.9 of the Regulations and were not to be used by Manitoba to subsidize its own funding obligations to the CFS Agencies or otherwise illegally placing said CSA payments into its Consolidated Fund. As such, Manitoba acted in bad faith by coercing and threatening the Aboriginal Agencies that their own funding would be clawed back if the CSA payments by these Agencies were not made. Further, Manitoba knew that Canada was allowing First Nation Agencies to retain CSA payments for the benefit of children in their care who received only federal funding.

95. The manner in which Manitoba has camouflaged its purported entitlement reveals a conscious bad faith attempt to purloin monies dedicated to the Class. In any event, Manitoba was acting as a "wrong-doer" in its deliberate actions in knowingly passing legislation to justify actions which Manitoba knew were illegal. Therefore, the Plaintiffs are entitled to restitution of CSAs paid.

(c) Public Law

96. The CSAs were paid and collected under the retroactive application of s. 231.

97. *The BITSA Act* is an unconstitutional statute.

98. The CSAs were paid and collected under the auspices of an unconstitutional statute, and thus Manitoba is liable to make restitution to the Class as a matter of public law.

Breach of *Charter* Rights

99. Pursuant to s.52 of the *Constitution Act,* 1982, the *Charter*, including s, 12, s.15 and s. 24(1) are *prima facie* valid. Consequently, the denial of the *Charter* rights of the Class is prohibited.

Section 12 – Cruel and Unusual Punishment

100. A primary objective of the CSA is to provide children in care, the overwhelming majority of whom are disadvantaged Aboriginal children coming from impoverished circumstances, with assistance in providing them with the necessities of life, including care, maintenance, education, training or advancement as a supplement over and above what they receive from Manitoba.

101. The denial of CSA benefits to the Class by the Defendant is so excessive as to outrage Canadian standards of decency amounting to cruel and unusual treatment and is a breach under section 12 of the *Charter*.

102. The effect of the Forced Remittances and Claw Backs is to perpetuate hardships suffered by a vulnerable, poor and disadvantaged group resulting in a breach of section 12 of the *Charter*.

Section 15 - Discrimination

103. S.231 amounts to discrimination against the Class on the basis of the enumerated grounds of "race" or "ethnic origin" or "nationality" or the analogous grounds of "family status" or "residence of a parent and/or lack of Indian or Treaty status or eligibility for Indian or Treaty status under the *Indian Act"* or "children in care" or "Aboriginal children in care" specifically in that:

a. Under Manitoba's funding responsibilities, Aboriginal children in care are denied CSA payments, as opposed to Aboriginal children in care under Canada's funding responsibilities based solely and arbitrarily on the Indian (Treaty) status of the child and the residency of a parent at the time the child is apprehended;

b. Given that approximately 90% of children in care in Manitoba are Aboriginal, there is a disparate, disproportionate and substantial hardship being inflicted on Aboriginal children in care;

c. There is discrimination against a most vulnerable group in society; namely, Aboriginal children in care, in that families who receive Canada Child Benefits under s.122.6 of the *Income Tax Act R.S.C., 1985, c1* for their children, who are not in care, do not have these benefits offset, deducted or otherwise appropriated by Manitoba; whereas, Aboriginal children in care under Manitoba's responsibility are denied the equivalent Canada Child Benefits in the form of CSA payments;

d. The CSA payments are denied to Aboriginal children in care who are deemed to be a provincial funding responsibility. The key discrimination determinants are residence of a 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*.

104. The discriminatory distinction denies CSA benefits to Class members in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage, including historical disadvantage.

Right to Charter Damages

105. The Plaintiffs state that The BITSA Act does not infringe the right of the Plaintiffs to claim a remedy under s.24(1) of the *Charter;* alternatively, if The BITSA Act purports to infringe upon such *Charter* rights, The BITSA Act is *ultra vires* and of no force and effect.

106. 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.

107. The breaches of the *Charter* as set out in paragraphs 99-106 above are not saved by s.1 of the *Charter*. The impugned conduct is related solely to Manitoba appropriating money into its general treasury to be used for other purposes without any justification. Manitoba's actions represent a prolonged practice on the part of Manitoba (now purportedly ordained by statute) to perpetrate practices which disadvantage Aboriginal children in the care of CFS Agencies over whom Manitoba exercises financial control.

108. Furthermore, the practices of Manitoba have no substantial or pressing legislative objectives. Rather, the practices run contrary to Manitoba's professed objectives and requirements in the provision of child and family services to the Class members.

Convention

109. The *Charter* is to provide at least the same level of protection as the international human rights instruments which Canada has ratified.

110. The *Convention* is such an international human rights instrument.

111. Canada played an instrumental role in drafting and promoting the *Convention*.

112. The *Convention* obliges Canada to act in the best interests of children and to ensure, to the maximum extent possible, the survival and development of children.

113. The *Convention* was ratified by Canada with the blessing of the Provinces, including Manitoba.

114. In particular, the provisions of the *Convention* include:

a. Article 2.1. States Parties shall respect and ensure the rights set forth in the present Convention, to each child within their jurisdiction without discrimination of any kind irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethic or social origin, property, disability, birth or other status.

b. Article 3.1. In all actions concerning children, whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

c. Article 6.2. States Parties shall ensure to the maximum extent possible the survival and the development of the child.

115. Manitoba recognizes and implements the principles of the *Convention* as set out in the Declaration of Principles in the CFS Act.

116. Manitoba's actions are also in violation of the Declaration of Principles and s. 2(1) of the CFS Act, in that the Class members are being denied benefits which has a deleterious impact on the provision of services to them and deprives them of various fundamental needs.

117. Manitoba's actions are in violation of the *Convention* in that:

a. The Forced Remittances and Claw Backs amount to discrimination in breach of Article 2.1 of the *Convention*;

b. The Forced Remittances and Claw Backs are actions which are not in the best interests of the members for the Class in breach of Article 3.1 of the *Convention*; and,

c. The Forced Remittances interfere with and thwart the development of Class members in violation of Article 6.2 of the *Convention*.

Substantive Inequality

118. S.231 creates substantive inequality between Aboriginal Children in care who are deemed a federal funding responsibility as compared to Aboriginal children in care who are deemed to be provincial funding responsibility by prohibiting access to CSA benefits; thus Manitoba's actions are in conflict with s.11 of the FNIM Act.

Behavior Modification

119. After the issuance of the Statement of Claim, Manitoba has publicly announced that it was modifying its behaviour in respect of the Forced Remittances and Claw Backs and will permit Agencies to retain and administer the CSA's in accordance with the Act effective the 1st of April 2019. However, notwithstanding Manitoba's assurances that Agencies would no longer be required to remit the CSA funds received on behalf of provincially funded children, Manitoba continues effectively to deduct these funds from its funding to Agencies through a Block Funding or Single Envelope mechanism, which estimates the total annual CSA payments received or to

be received by Aboriginal Agencies and reduces its overall funding by that same aggregate CSA total, thereby continuing to hamper the ability of Agencies to utilize those CSA funds properly.

Damages

(a) Monies Received by the Defendant

120. The Annual Public Account Reports of Manitoba reveal that Manitoba, through its practices and procedures related to CSA funds, in violation of the terms of the Trust and in breach of its duties, for the period of 2006-2019 has obtained the cumulative sum of approximately $338,000,000.00. Manitoba collected approximately $26,000,000.00 in CSA funds annually, which amount subsequently increased to approximately to $50,000,000.00 annually. The majority of the amounts collected come from the Aboriginal Agencies.

121. The above sums are entirely made up of funding provided by Canada through the CRA to successful applicant CFS Agencies receiving CSA funding for those children under their care, including the Aboriginal Agencies.

(b) Damages to Flette

122. In the case of E.F., WRCFS has collected CSA payment from Canada through CRA in the amount of $533.33 on a monthly basis since July, 2016, which was increased to $541.33 per month in July, 2018. From July 2016 to April, 2019 this amount totaled $18,213.22 and increases monthly.

123. In the case of I.F., WRCFS has collected CSA from Canada in the amount of $533.33 for June 2018 and $541.33 per month since July 2018. From June 2018 to April, 2019 this amount totalled $5,946.53 and increases monthly.

124. Accordingly, the grandchildren, through Flette, do not have access to said CSA payments, as contemplated by the Act. As such, these children are being denied the opportunity to access programs and other benefits to which they would otherwise be entitled, but for the deprivation of said funds.

125. Flette has had to incur unnecessary costs in order to provide for her grandchildren; benefits which otherwise would have been achieved through access to CSA payments to which the grandchildren were, and continue to be, entitled.

126. As a result, up to April, 2019 both Flette and her grandchildren have had the total sum of $24,160.00 withheld from them and illegally transferred to and used for ~~its~~ Manitoba's general use. Both children will continue to suffer the loss of CSA funding as long as Manitoba continues to coerce and threaten WRCFS with reduced provincial funding if that Agency does not remit said CSA payments to Manitoba.

127. Furthermore, Flette and her grandchildren in a kinship foster care have been discriminated against on the basis that the children who are deemed to have been eligible for federal funding for child maintenance will receive full funding from Canada, including maintenance funding and CSA payments.

128. As a result, Class members, including Flette's grandchildren, have been denied the benefits of such care, maintenance, education, training or advancement which they ought to have received had they had access to CSA benefits.

(c) Damages to Baptiste

129. In addition to not receiving the benefit of CSA payments while he was a minor, Baptiste has not received any CSA aging out payments. To date that amount is unknown, but is substantial, and the exact amount is known by Manitoba.

130. As well, any member of the Class who attained 18 years of age has been and continues to be deprived of payment from Manitoba for any CSAs which he or she is or would have been otherwise entitled to receive upon attaining 18 years of age, but for the actions of Manitoba.

Punitive Damages

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

132. 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 illegal.

133. Since at least 2015, the official opposition has challenged Manitoba to cease and desist from forcing the receipt and conversion of said CSA funding to Manitoba's own uses. When the official opposition came to power in 2016, Manitoba acknowledged the illegalities of the policies or practices in place of seizing CSA payments from the Agencies, but it has refused to return the monies illegally obtained, even though Manitoba has announced the termination of said policies or practices.

134. 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.

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

S. 24 (1) *Charter* Damages

136. The BITSA Act violates s.24 of the *Charter* and s.52 of the *Constitution Act*, 1982, in that Manitoba does not have the constitutional authority to extinguish rights of the Class to seek a remedy for Charter breaches.

137. The Class members have suffered loss as a result of breaches of the *Charter* by Manitoba, as set out in paragraphs ~~76-80~~ 99-106 above. An award of damages under s. 24(1) of the *Charter* is appropriate in this case because it would compensate the Class members for the loss they have suffered. *Charter* damages would also vindicate the Class members' rights under the *Charter* and deter future *de facto*

predatory funding practice of Forced Remittances and Clawbacks of child and family services by Manitoba.

Disgorgement

138. Manitoba's failure to provide adequate and equal funding for services and products to the Class members constituted a breach of its fiduciary duties, through which ~~the~~ Manitoba inequitably obtained quantifiable monetary benefits over the course of the Class period. ~~The~~ Manitoba should be required to disgorge those benefits, plus interest.

Interest

139. As a consequence of the appropriation of the CSA payments 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.

140. The Plaintiffs plead and rely upon the provisions of the *Children's Special Allowances Act* and Regulations, and amendments thereto; *The Child and Family Services Act* and amendments thereto, *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* all as aforesaid.

141. The Plaintiffs therefore claim the relief described in paragraph 3 above.

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