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IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

June 12, 2023

Issued by: _____

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CLAIM

1. The Plaintiffs, on behalf of the Class described herein, claim:
 - (a) an order certifying this action as a Class Proceeding and appointing the Plaintiffs as representative plaintiffs for the Class, as defined below, and if required, a representative order pursuant to Rule 114 of the *Federal Court Rules* SOR/98-106 in respect of the Plaintiffs and in respect of other First Nations that elect to join this action;
 - (b) a declaration that His Majesty the King in Right of Canada, as represented by the Defendant (or “**Canada**”), contravened the honour of the Crown and breached its fiduciary duties to the Plaintiffs and the Class by creating and failing to remedy the lack of access to adequate housing on First Nation Lands, as defined below;
 - (c) a declaration that Canada is liable to the Plaintiffs and the Class for damages caused by its negligence in creating and failing to remedy the lack of access to adequate housing on First Nation Lands;
 - (d) a declaration that Canada is liable to the Plaintiffs and the Class for damages caused by creating and failing to remedy the lack of access to adequate housing on First Nation Lands;
 - (e) a declaration that Canada has violated the rights of the Plaintiffs and the Class under sections 7, 15, 2(a) and 2(c) of the *Charter of Rights and Freedoms* (the “*Charter*”) by denying access to adequate housing on reserves, and further, that none of these breaches is saved by section 1 of the *Charter*;
 - (f) a declaration that Canada has violated the rights of the Plaintiffs and the Class under section 36 of the *Constitution Act, 1982* by creating and failing to remedy the lack of access to adequate housing on First Nation Lands;

- (g) an interim or interlocutory injunction, or supervisory order pursuant to the *Charter* requiring Canada to immediately construct, or approve and fund the construction of, adequate housing for Class members, or in the alternative, damages in an amount sufficient to fund same;
- (h) a permanent injunction or supervisory order pursuant to the *Charter* requiring Canada to immediately repair, construct, and maintain, or approve and fund the repair, construction, and maintenance of adequate housing on reserves, or in the alternative, damages in an amount sufficient to fund same;
- (i) an order pursuant to section 24(1) of the *Charter* condemning the Defendant to pay damages to the Class in the amount of \$5 billion, or such sum as the Court deems appropriate, for the breaches of their *Charter* rights;
- (j) an order condemning Canada to pay damages to Class members in the amount of \$5 billion, or such sum as the Court deems appropriate, for breaches of its fiduciary duties, negligence, and nuisance;
- (k) in the alternative, an order condemning Canada to make restitution to the Class for the savings that it realized by failing to ensure access to adequate housing;
- (l) an order condemning Canada to pay punitive damages in the amount of \$100 million;
- (m) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act - R.S.C., 1985, c. F-7*;
- (n) costs of the action on a substantial indemnity basis, plus applicable taxes, in the event that Canada engages in frivolous or vexatious conduct in defending this action;
- (o) costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and

(p) such further and other relief as this Honourable Court deems just.

OVERVIEW

2. For more than 150 years, the Defendant, Canada, has made concerted and systematic efforts to remove First Nations people from their territories and either destroy or assimilate them. Canada has often taken extreme measures to advance these objectives, including the use of force, and it has frequently shown disdain for the lives of the First Nations people who stood in its path.

3. In furtherance of colonization, Canada created reserves to house First Nations and their members. Canada decided the location and size of reserves, frequently establishing them in isolated and remote locations that were far from population centres and had limited economic opportunities, leaving First Nations ill-equipped to provide for themselves. Having relegated First Nations to a sliver of their territories, Canada then assumed control over all aspects of life on reserve. In so doing, it deliberately deprived First Nations of the basic necessities of life, including housing.

4. Adequate housing on reserve is integral to the survival and prosperity of First Nations and their members. However, Canada has deliberately underfunded housing on reserves, while simultaneously isolating First Nations and imposing restrictions on their ability to provide housing for themselves. The resulting catastrophe for First Nations and their members was not only predictable, it was the Defendant's intended result. Throughout, Canada sought to weaken First Nations, diminish their numbers, and ultimately force the assimilation of their members.

5. The Plaintiffs and Class members are First Nations and their members, all of whom have been gravely affected by Canada's deliberate efforts to deprive reserve communities of adequate housing. Canada has compelled them to live in conditions that compromise their health, jeopardize their safety, and undermine their ability to preserve their culture and spirituality. Tragically, Canada's destructive practices continue to the present day. Canada has strangled housing on reserves in an effort to end First Nations'

way of life, and the Plaintiffs and Class members bear the consequences of this man-made disaster.

6. This action seeks to address the deplorable state of housing infrastructure on reserves by requiring Canada to correct its harmful practices and compensate those First Nations and their members that have been forced to endure the most extreme manifestations of an engineered housing crisis.

7. The action arises from Canada's near total control over permissible development on reserves, including its authority under the *Indian Act*, RSC, 1985, c. I-5. Because reserve land is owned by the Crown, the Plaintiffs and Class members are occupants, without the right to sell, transfer, or mortgage the land without the express permission of Canada. In turn, Canada has inhibited Class members from using reserve land as security to access credit. These restrictions have intentionally hindered First Nations' efforts to improve their often difficult living conditions. As a result, the majority of First Nations people living on reserve reside in housing that is owned and administered by a First Nation and funded, directly or indirectly, by Canada ("**Band-Owned Housing**").

8. Residents of Band-Owned Housing are at the Defendant's mercy for the construction and maintenance of their homes. Despite their reliance on Canada, the Plaintiffs and Class members have been subjected to the most extreme deficiencies in Band-Owned Housing. In the Plaintiffs' and Class members' First Nations, at least half of the population resides in housing structures (i) with a shortfall of two or more bedrooms; and (ii) in need of major repairs.

9. These conditions represent the most egregious failure of social housing in reserve communities. In addition to problems of overcrowding and poor condition, the Plaintiffs' and Class members' Band-Owned Housing is often unsafe, badly designed, improperly ventilated, and uninsulated. As a result, Class members are more susceptible to fires, severe weather events, respiratory illnesses, and exposure to toxic substances and mold.

10. In the Plaintiffs' and Class members' First Nations, it is common for more than a dozen people to live together in a substandard two-bedroom home that is falling to pieces. Often, space is so limited that people are forced to sleep in shifts, sleep on the kitchen and hallway floors, or create temporary shelters. Others must resort to even more precarious housing, living out of school buses, shacks, tents, and makeshift cabins.

11. The Plaintiffs' and Class members' First Nations are blighted with decrepit Band-Owned Housing, much of which would be condemned elsewhere in Canada. Canada has sought to drive First Nations people from these reserve communities by rendering them uninhabitable. However, many are unwilling to abandon what remains of their culturally and spiritually significant lands. These lands were promised to them forever so that they could maintain and share their traditions, teachings, and ceremonies.

12. For many, moving off reserve would either be impossible, or it would come at unacceptable personal cost, separating them from their families, communities, and distinct ways of life. Sadly, however, the perilous state of Band-Owned Housing in the Plaintiffs' and Class members' communities has driven some to leave their reserves, despite the enormous personal and social cost. Some find housing far from home, but many live unhoused in urban centers.

13. Canada received consistent advice, including from its own experts, that it was depriving the Plaintiffs and Class members of adequate housing on reserve. Canada was repeatedly told that its funding was grossly inadequate, that its operational procedures were designed to fail First Nations, and that its restrictions on reserve development prevented First Nations from closing the infrastructure gap. Despite this consistent advice, Canada stayed the course, perpetuating a widespread abuse of human rights.

14. Section 91(24) of the *Constitution Act, 1867* establishes Canada's responsibility for First Nation Lands, which includes the construction and maintenance of housing on reserve. Despite this responsibility, Canada has failed to fulfill its duties under the Constitution and pursuant to the honour of the Crown to First Nations and their members.

15. At all material times, Canada owed the Plaintiffs and Class members fiduciary duties, duties consistent with the honour of the Crown, and a duty of care to ensure that they had access to adequate housing on reserve. As a result of Canada's failure to discharge these duties, the Plaintiffs and Class members have been denied access to adequate housing on reserve, which hinders their ability to care for themselves and those around them, engage in cultural and spiritual practices, and frequently puts them in dangerous circumstances where they are targeted for violence.

16. Canada's failures have deprived the Plaintiffs and Class members of their right to security of the person in a manner that is arbitrary and which contravenes the principles of fundamental justice, contrary to section 7 of the *Charter*. These failures also constitute inequitable treatment on the basis of an enumerated and an analogous ground, namely race and residence on a reserve, respectively, contrary to section 15 of the *Charter*. Finally, Canada's failures also constitute a serious infringement of the Plaintiffs' and Class members' freedom of religion and spirituality and freedom of assembly, contrary to sections 2(a) and (c) of the *Charter*.

17. None of these breaches is consistent with a free and democratic society, nor do they represent a reasonable limit on Class members' rights. Therefore, none of the breaches can be justified under section 1 of the *Charter*.

18. Canada has also breached section 36 of the *Constitution Act, 1982*, which requires it to promote equal opportunities for the well-being of Canadians, further economic development to reduce disparity in opportunities, and provide essential public services of reasonable quality to all Canadians. These essential public services include access to adequate housing on reserve, the absence of which inhibits the Plaintiffs and Class members from achieving equal opportunities as prescribed by section 36 of the *Constitution Act, 1982*.

19. Canada's breaches of its duties to Class members and their *Charter* rights are longstanding and ongoing. These breaches continue, despite having been repeatedly

drawn to Canada's attention for decades, and despite Canada repeatedly recognizing these breaches and pledging to remedy them.

20. In addition to directing Canada to take the necessary steps to ensure that Class members have adequate access to housing, this Honourable Court should reprimand Canada for its callousness in the face of the Plaintiffs' and Class members' suffering. In these circumstances, it is appropriate to award damages to the Class members under section 24(1) of the *Charter* and at common law, and to award punitive damages to condemn Canada's high-handed conduct.

THE PARTIES

St. Theresa Point First Nation

21. The members of St. Theresa Point First Nation ("**St. Theresa Point**") are Anishineewak people who live on a peninsula on the southwest shore of Island Lake in northeastern Manitoba. St. Theresa Point is a fly-in community located 465 kilometers north of Winnipeg. St. Theresa Point is only accessible by ice road for six weeks of the year.

22. In 1901, the community then known as Mithaynigaming or Maria Portage became the first permanent settlement in Island Lake. Shortly thereafter, in 1909, the First Nation adhered to Treaty 5, which promised to pay \$500 to the First Nation for its members to build new homes on reserve, in recognition of the fact that many members of the First Nation had to abandon their homes, which were located off of the newly created reserve. Later, in 1928, Mithaynigaming split into four nations, one of which was St. Theresa Point.

23. While the members of St. Theresa Point continued to live on reserve, advances in the standard of living were rare, and the community departed markedly from non-First Nations communities across Canada. It was not until 1972 that water pumps were installed in St. Theresa Point, and nearly a decade later, in 1981, satellite communications became available. Development remains slow. Some housing sub-

divisions in St. Theresa Point lack running water and sewage, forcing some residents to rely on slop pails and outhouses. Many residents in St. Theresa Point have to collect water from a communal pump at the side of the road or purchase jugs at steep prices in the local store.

24. Other homes have become so infested with insects, mold, mice, and cockroaches that they are inhabitable. In some cases, homes that have been condemned as structurally unfit and unhealthy continue to be occupied by members of St. Theresa Point because of the severity of the housing backlog. Ultimately, life in St. Theresa Point more closely resembles a developing nation than the rest of Canada.

25. Today, there are approximately 5,600 members of St. Theresa Point, approximately 5,200 of whom live on reserve. St. Theresa Point is a First Nation, as defined below, and its lands constitute First Nation Lands, as defined below. St. Theresa Point has had a longstanding housing crisis on reserve, which has only intensified in recent years.

26. Chief Elvin Flett is the Chief of St. Theresa Point. He was elected to this position on September 12, 2021. He previously served three terms as a Band Councillor and as the Health Director of St. Theresa Point. He brings suit on his own behalf, on behalf of St. Theresa Point, and on behalf of all of the members of St. Theresa Point with due authorization of the Band Council to act in a representative capacity. Chief Flett seeks authority to represent all members of the Class in this class proceeding.

27. Chief Flett is a 65-year-old father of four and grandfather of fifteen. He grew up in Thompson, where his father worked at the local mine, and returned to St. Theresa Point before moving to Winnipeg to complete high school. He studied in the Faculty of Arts at the University of Manitoba, and received a Diploma in Business Administration from Red River College. He returned to St. Theresa Point after completing his education, leaving only for brief periods to gain further work experience. This included spending two years in Fisher River Cree Nation while serving as their Health Director.

Chief Flett has personally experienced the consequences of living without adequate housing on reserve, as described below.

Sandy Lake First Nation

28. The members of Sandy Lake First Nation (“**Sandy Lake**”) are Anishinwuk who live in Northwestern Ontario along the Severn River. Sandy Lake is a fly-in community located 450 kilometers northeast of Winnipeg and 600 kilometers northwest of Thunder Bay. It is only accessible by a small plane, except for January through March, when it is accessible by seasonal winter road. Essential materials and equipment, including building supplies, are brought in the winter using this seasonal winter road.

29. Sandy Lake signed an adhesion to Treaty No. 5 as part of the Deer’s Lake East Band on June 9, 1910. Even before that time, however, Canada controlled the location and extent of the reserve and Sandy Lake’s access to resources in its lands. The reserve promised to Chief Robert Fiddler at Sandy Lake was not surveyed until 1938 and only approved by Order-in-Council in 1945. This was because the area – known as the Patricia District – was known to be rich in mineral resources, with a mine developed just 25 miles south of the selected reserve site. Before reserves were chosen in the Patricia District, aerial surveys were conducted to ensure that reserves were not situated in areas of mineral potential. When the reserve at Sandy Lake was finally granted, several areas were carved out and excluded from the reserve boundaries in order to exclude mineral claims and deprive Sandy Lake of resources.

30. In 1978, the Deer Lake Band was divided into the Deer Lake Band at Deer Lake, the North Spirit Lake Band at North Spirit Lake, and Sandy Lake Band at the Sandy Lake Reserve.

31. Today, there are approximately 3,223 registered members of Sandy Lake, approximately 2,661 of whom live on reserve. In addition to these registered members, approximately 300-400 members of other First Nations and 100 non-status people live on the reserve. All of these people require housing. Sandy Lake is a First Nation, as

defined below, and its lands constitute First Nation Lands, as defined below. Sandy Lake has had a longstanding housing crisis on reserve, which has only intensified in recent years. The shortage of housing in Sandy Lake leads to significant overcrowding, and much of the housing is in need of major repairs.

32. Chief Delores Kakegamic is the Chief of Sandy Lake. She is the first female Chief of the First Nation, having been elected on March 28, 2018 and now on her third consecutive term. She previously served as the Director of Finance, Band Administrator, and in various finance positions for Sandy Lake since 1992. She brings this suit on her own behalf, on behalf of Sandy Lake, and on behalf of the members of Sandy Lake with due authorization of the Band Council to act in a representative capacity. Chief Kakegamic seeks authority to represent all members of the Class in this class proceeding.

33. Chief Kakegamic is 54 years old, the oldest of five siblings, and married with four children and two grandchildren. She grew up in Sandy Lake, and also spent time in Mishkeegogamang Ojibway Nation where her mother was from. After graduating from high school in Sioux Lookout, Ontario, Chief Kakegamic returned home to Sandy Lake and started working for the Hudson's Bay Company. She experienced the challenges of living without adequate housing once she started a family. Her first home was a tiny log cabin. More recently, she has had to live with her adult children and grandchildren until they can find their own homes.

34. The Defendant, His Majesty the King in the Right of Canada is represented in this action by his designated Minister, the Attorney General of Canada.

35. The Plaintiffs bring this action pursuant to the *Federal Courts Act*, RSC, 1985, C. F-7 and the *Federal Court Rules*, SOR/98-106, including Part 5.1 and Rule 114 respectively, on their own behalf and on behalf of all other Class members.

36. The proposed members of the Class are:

(a) All persons who:

- (i) are members of a band, as defined in subsection 2(1) of the *Indian Act*, R.S.C. 1985, c. I-5 (“**First Nation**”), the disposition of whose lands is subject to that Act or the *First Nations Land Management Act*, S.C. 1999, c. 24 or a Modern Treaty, being a land claims agreement within the meaning of s. 35 of the *Constitution Act, 1982*, entered into on or after January 1, 1973 (altogether, “**First Nation Lands**”), and who ordinarily resided on First Nation Lands for at least one year from June 12, 1999 to present while those First Nation Lands were subject to the following conditions:
 - (A) at least half of the members of the First Nation ordinarily resident on reserve live in Band-Owned Housing with a shortfall of two bedrooms or more relative to the Canada Mortgage and Housing Corporation’s National Occupancy Standard; and
 - (B) at least half of the members of the First Nation ordinarily resident on reserve live in Band-Owned Housing that requires major repairs, including defective plumbing or electrical wiring, or structural repairs to walls, floors, or ceilings; and
 - (ii) had not died more than two years prior to the commencement of this action;
- (b) St. Theresa Point First Nation and Sandy Lake First Nation; and
 - (c) Any other First Nation that elects to join this action in a representative capacity, and which satisfied the conditions set out in (i)(A) and (B) for at least one year from June 12, 1999 to present.

THE STATE OF HOUSING IN ST. THERESA POINT FIRST NATION

37. St. Theresa Point's housing crisis dates back to the formation of their present-day reserve. All of the homes in St. Theresa Point are Band-Owned Housing. While homes were gradually constructed in St. Theresa Point, materials and construction were often substandard, and there was little funding available for maintenance and repairs. These issues have been compounded by housing infrastructure that failed to keep pace with the growing population, the technological advances generally available in non-Indigenous communities, and appropriate designs for living in Northern Manitoba.

38. In 2009, St. Theresa Point was hit particularly hard by an H1N1 flu outbreak, experiencing hundreds of flu cases, with high rates of infection among children. The intensity of the outbreak was attributable to the lack of running water and severely overcrowded housing conditions on reserve. Rather than meaningfully respond to the source of the crisis, Canada elected to send body bags to St. Theresa Point.

39. In 2011, a fire broke out in a home in St. Theresa Point that housed six children, killing a two-month old baby. The fire was caused by a wood-burning stove used for heat because the house lacked a furnace, despite its location in Northern Manitoba. The home, like many on reserve, did not have running water, requiring firefighters to extinguish the blaze using snow.

40. Internal reports between 2012 to 2014 from Canada's Department of Aboriginal Affairs and Northern Development predicted that St. Theresa Point required 379 new homes in 2012, and 949 by 2020. Despite the documented need, little was done in the subsequent years to address the well-known housing gap.

41. In 2015, the four Island Lake First Nations received funding for 18 new housing units, despite collectively requiring some 1,500 new homes. By that time, it was common for 18 people to live in a three-bedroom home in St. Theresa Point. Some lived in even more dire housing situations, with one two-bedroom home in St. Theresa Point housing 23 people who slept in shifts. St. Theresa Point's leadership repeatedly advised Canada that the inadequacy of its housing was a ticking time bomb.

42. In 2016, Canada's Community Well-Being Index confirmed the particularly poor state of housing in St. Theresa Point. St. Theresa Point received a housing score of 41, where the average housing score for First Nations was 70.6. By comparison, the Community Well-Being Index score for Ottawa was 86.

43. Only a few years later, the COVID-19 pandemic hit St. Theresa Point, where housing conditions made it impossible to comply with public health recommendations. Families were unable to maintain social distancing in their homes, which caused the virus to spread at an accelerated pace. The spread of the virus was further exacerbated by the need for in-person learning because poor internet service in the First Nation ruled out the possibility of remote learning, and the school on reserve is twelve classrooms short.

44. Unfortunately, little has been done to address St. Theresa Point's housing crisis, which continues to worsen. There are approximately 646 houses in St. Theresa Point. Twenty-five percent of these homes should be condemned due to severe decay and rotting. At least 185 of the remaining homes require major repairs averaging approximately \$86,000 each, and at least 92 others require repairs averaging approximately \$55,000 each. Canada's own data confirm that more than 53 percent of St. Theresa Point's on reserve population lives in housing in need of major repairs, and 64 percent lives in over-crowded housing. The actual statistics are far worse.

45. Today, it is common for multiple families to share a home in St. Theresa Point, and some small homes in the community house up to 32 people. Homes in St. Theresa Point are primarily single unit bungalows, with only a crawl space. This makes living conditions particularly tight because homes in St. Theresa Point do not have a basement or a garage. St. Theresa Point has been forced to build a shelter on reserve for some 50 unhoused members, as there is nowhere else for them to live. An additional 467 families require their own home, and a further 170 families are living in Winnipeg for dialysis treatment, waiting for a home on reserve to return to.

46. The problems of overcrowding are exacerbated by Canada's approach to constructing housing on reserve, which continues to be built with the cheapest materials, which are often damaged upon delivery. In St. Theresa Point, this has often resulted in poor framing, insulation, and moisture barriers, creating compromised living conditions. Residents face outsized health risks and financial costs in a community where access to healthcare and economic opportunities is already severely constrained.

47. Housing in St. Theresa Point has largely been designed and constructed by Canada without regard for the realities of the Northern Manitoba climate. Because Canada underfunds both construction and maintenance, homes deteriorate at an accelerated pace, which significantly reduces their lifespan. The cost of repairing deteriorating housing is often out of reach for residents. These issues are reinforced by Canada's deficient Capital Band Base funding for St. Theresa Point, which was capped in 1980 and had not increased for over thirty years despite the population having more than doubled in that period.

48. For many, upkeep and repairs to the home necessarily take a back seat to basic necessities including water and food. For example, homes in St. Theresa Point have largely been built for electric heating, which is expensive for residents to maintain through the long winters. Reliance on electric heating also leaves members of St. Theresa Point vulnerable to frequent power outages. Homes with sealed envelopes and mechanical ventilation are ill-equipped for power losses, and without passive ventilation, they grow mold and accumulate other toxins.

49. Additionally, the cost and poor reliability of electric heating drives some residents to riskier means of heating their homes, such as wood stoves, which the homes were not designed to accommodate. Poor ventilation causes health hazards, and inadequate fire barriers allow flames to spread rapidly in the event of an accident.

50. The lack of adequate housing in St. Theresa Point forces children and families into strained living conditions, which negatively impact their wellbeing. These living conditions impair mental, emotional, physical, and spiritual health. They also spark

family violence and abuse. The lack of adequate housing is particularly difficult for young and growing families, where parents need space to take up their distinctive and sacred responsibilities to their children. Additionally, the lack of adequate housing is frequently a basis for the removal of children from First Nations families and their placement in foster care.

51. Nurses employed by Canada working in the community have asked St. Theresa Point to provide suitable housing that meets the needs of residents with disabilities, diabetes, and breathing problems. However, Canada does not provide funding for this purpose, often making it impossible for St. Theresa Point to find suitable housing for residents with additional needs.

52. Despite its significant housing deficit, in 2022, St. Theresa Point received a one-time grant from Canada's stop-gap rapid housing initiative for only 20 two-bedroom housing units. At present, St. Theresa Point still requires more than 500 homes to fill its housing gap.

53. Ultimately, these housing conditions reinforce displacement off reserve, making crumbling and decrepit housing infrastructure another force to remove First Nations people from their own territory. This relocation off reserve comes at great cost, as it impedes the ability to nurture identity through immersion in language, teachings, ceremony, culture, and spirituality. Often, members who leave the reserve for urban centres become unhoused, where they are exposed to the pervasive harms facing unhoused First Nations people in Canada, including violence, illness, and death.

54. Canada's deliberate failure to remedy the housing deficiencies in St. Theresa Point has had fatal consequences. In November 2022, the leaders of the Island Lake First Nations, including Chief Flett, pleaded for greater mental health support and social services, following a series of suicides and attempted suicides in the region. These leaders stated that the housing crisis is inextricably linked to climbing substance misuse and suicide rates. Unfortunately, tragedies connected to the housing crisis continue in

St. Theresa Point. In March 2023, two fourteen year old girls froze to death on reserve, caught outside in the Northern Manitoba winter.

55. The housing crisis in St. Theresa Point has been an emergency for several years, and it only worsens as the population continues to grow, existing housing infrastructure continues to deteriorate, and residents' health continues to be compromised.

THE STATE OF HOUSING IN SANDY LAKE FIRST NATION

56. The housing in Sandy Lake is in poor condition and short supply. The vast majority of houses are Band-Owned, which are overcrowded and in need of major repairs. In 2016, Sandy Lake received a housing score of 48 in the Community Well-Being Index, below the average for other Ontario First Nations (59) and well below the national score for non-Indigenous communities (94.6). Sandy Lake's low score is due to the large proportion of the population living in overcrowded and dilapidated housing.

57. More than half of the 672 houses on the Sandy Lake reserve are in need of major repairs. These include major problems with houses' foundations failing, pervasive mold issues, leaking roofs, unsafe electrical systems, regular flooding, and sewage backups. The 2016 census reported that 54% of Sandy Lake's members lived in housing that was in need of major repairs. This situation has deteriorated further in recent years because of the limited funding available to build new houses and maintain existing ones.

58. Based on its funding constraints, Sandy Lake has a limited supply of housing designs and material to choose from. Soil and weather conditions also limit the choice of housing designs and material. Even new housing begins to rot at its foundations within years. Mold tends to grow in Sandy Lake homes as early as one to two years after they are built. Many homes have been condemned due to significant mold contamination, but the need for housing is so great that families — including those with young children — have no choice but to move back into condemned homes. Because there is no building supply store on reserve, families must use scrap material to patch up crumbling walls and structures.

59. New houses are designed to be mechanically ventilated and heated through electric baseboards. However, power outages are frequent and Sandy Lake members often cannot afford the high costs of electrical heating, which can be as much as \$900 per month. Instead, members primarily use wood stoves for heat, which create fire hazards and poor indoor air quality. To keep out the extreme cold in the winter, families have no choice but to wrap their houses in polyethylene tarps, which become a moisture trap and promote mold growth.

60. Fire safety risks are created by a lack of firewalls and fire retardant materials, use of wood stoves, annexation of porches and exit points, and sealing of windows during the winter to keep out the extreme cold. Families have little choice but to live in such conditions and Sandy Lake does not have the resources to change them.

61. Sandy Lake currently receives approximately \$1.2 million annually from Canada for housing — less than \$400 per member. This is insufficient to properly maintain the existing housing stock, let alone add new houses of acceptable quality. Nevertheless, funding has not increased over the past three decades, despite the rising cost of labour and materials. In fact, Canada has consistently reduced funding for housing by 2% each year. Meanwhile, Sandy Lake's population has grown rapidly. For instance, the number of people living on-reserve increased 51.9% from 2006 to 2011, owing to a high birth rate and members moving back to reserve.

62. Sandy Lake has little ability to raise revenue for housing from other sources to make up for deficient funding from Canada. Sandy Lake's employment rate is only 36%, significantly less than the national average of 62%. For those who do have work in Sandy Lake, the median income is \$18,000 – less than a third of the national average of \$68,000. Additionally, the *Indian Act* restricts Sandy Lake's ability to raise revenue from its traditional territory and constrains its use of reserve lands.

63. Each year, Sandy Lake attempts to add as much housing as it can with the limited budget available. Recently, this has meant six new units annually. However, the pent-up demand in the community quickly overwhelms any new supply. For instance, the

housing department received 260 applications for new housing in 2022, with only six new houses to allocate. The applications do not represent the full extent of demand, as many people no longer apply because supply is so limited.

64. As a result, the majority of Sandy Lake's members live in overcrowded housing. Some houses have as many as 25 people living in close quarters. It is common for four families to live in a single-family dwelling. Families are forced to seal off porches and storerooms to create bedrooms, and to add makeshift extensions — each of which increases risks of a fatal house fire.

65. Unsafe housing conditions at Sandy Lake have led to tragic fatal fires. One incident occurred in 2022 when a house fire broke out in temperatures below - 30 C and took the lives of three Sandy Lake children, aged nine, six, and four. The house was quickly engulfed in flames, as the poorly-suited building materials allowed the fire to spread quickly. A combination of overcrowding and poor conditions exacerbate these dangers.

66. The condition of the houses at Sandy Lake has led to elevated rates of illness, including lower respiratory tract infection, in children. A recent study of four First Nations in northern Ontario, including Sandy Lake, drew an association between poor housing conditions and high rates of lower respiratory tract infection in young First Nations children. This association between respiratory and other illnesses in children and on-reserve housing has also been documented in other studies.

67. Sandy Lake has felt the impacts of its overcrowding acutely during the COVID-19 pandemic. Canada provided nine isolation units for infected members to isolate themselves in, which was grossly insufficient. For instance, in the week of July 13, 2022, more than one-seventh of Sandy Lake's population had COVID-19. Due to overcrowding in homes, residents have had a limited ability to self-isolate and infections spread quickly.

68. Many members in Sandy Lake are forced to stay in unsafe domestic situations due to lack of alternative shelter, or they risk becoming homeless on-reserve. They face

domestic and sexual abuse, and the removal of their children by child welfare agencies because of the crowded and unsafe conditions.

69. Approximately 30 Sandy Lake members are homeless on the reserve. These members are forced to travel from house to house, hoping to find a place to sleep. Approximately 500 other Sandy Lake members have been forced to move off reserve and live in urban centres, where they are again placed in precarious situations, often becoming unhoused and facing the dangers of homelessness. As discussed above, relocation off reserve comes at great cost, both financially and personally, as it impedes the ability to nurture identity through immersion in language, teachings, ceremony, culture, and spirituality.

70. As described further below, the overcrowded and inadequate housing conditions in Sandy Lake adversely impact mental, emotional, physical, and spiritual health. It also impairs educational and economic outcomes and sparks family violence and abuse.

CANADA'S RESPONSIBILITY FOR ON-RESERVE HOUSING

Federal Responsibility over Housing on Reserve

71. Before European contact, First Nations occupied and flourished on the lands now known as Canada. First Nations cared for vast territories based on their ancestral connections, relationships, kinship ties, and cultural and spiritual practices.

72. Life changed for First Nations in the 19th century and onward when British authorities and later the Canadian government sought to remake the landscape. This effort included removing First Nations from their lands in favour of newcomer settlement and development.

73. In 1876, the advent of the *Indian Act* enabled Canada to deploy mass efforts to remove First Nations from their lands. Indian reserves accounted for only a fragment of the lands once occupied by First Nations. At Canada's election, many First Nations were displaced to areas far removed from their own settlements or migratory circuits.

74. Pursuant to the *Indian Act*, Canada implemented a pervasive legal regime to confine First Nations people to First Nation Lands and to force their assimilation. As part of Canada's efforts to keep First Nations persons on reserve, Canada undertook responsibility for the provision of housing on reserve.

75. Housing on reserve has been in a never-ending state of crisis. The Summary of the Final Report of the Truth and Reconciliation Commission recounted that through the 1950s, "[r]eserve housing was poor and crowded, sanitation was inadequate, and access to clean water was limited", creating conditions where "tuberculosis flourished", killing many and seriously compromising others.

76. In the 1960s, Canada's Department of Indian Affairs and Northern Development implemented a housing policy that provided subsidies to First Nations to assist with home construction and renovation on reserve.

77. In 1977, Canada adopted a strategy to develop infrastructure for First Nations that would "provide Indian homes and communities with the physical infrastructure that meets commonly accepted health and safety standards, is similar to that available in neighbouring, non-Indian communities or comparable locations, and is operated and maintained according to sound management practices". Despite its promise, this responsibility continues to be unfulfilled.

78. Through the 1980s, Canada sought to reduce the number of First Nations people by restricting Indian status and deterring residence on reserve. These policies were designed to reduce Canada's financial responsibilities to First Nations and encourage the assimilation of First Nations people. In particular, Canada relied on deficient housing in reserve communities to prevent First Nations women and others whose status had been restored from returning to their First Nations.

79. In 1985, briefing notes to then Minister of Indian Affairs and Northern Development David Crombie observed that people could not return to their reserve without having a home to live in, and stated that there was "already a housing shortage and long waiting lists". These briefing notes recommended that Canada

“ration...arbitrarily the additional funds available to provide on-reserve housing, land, and infrastructure to cope with those who want to move onto reserve”. In 1985, Cabinet committee minutes further developed these strategies to deter residency on reserve, including deficient funding for housing.

80. In 1996, Canada developed the On-Reserve Housing Policy which remains in place today. Under this protocol, First Nations receive annual capital allocations from Canada to support a wide-range of housing needs, including construction, renovations, maintenance, planning, and management. This protocol provides First Nations with funding based on a formula. First Nations that chose not to opt-in to the On-Reserve Housing Policy are largely located in British Columbia and Ontario, and continue to operate under the 1960s subsidy program. Those First Nations are required to submit proposals to Canada, which are assessed by Canada based on priority, and allocated subsidies at Canada’s discretion.

81. Today, Canada provides housing on reserve through the Canada Mortgage and Housing Corporation (“**CMHC**”) and Indigenous Services Canada (“**ISC**”). These programs target new builds, repairs and maintenance, special projects, and loan guarantees. Canada makes annual transfer payments to First Nations, which are intended to fund a portion of operation and maintenance costs for housing on reserve.

82. Canada has long known that its funding for housing on reserve is grossly deficient. Canada is also aware that many First Nations have no viable alternative to fill the housing gap created and maintained by Canada. This gap has only widened following the COVID-19 pandemic as costs of construction, maintenance, and materials have skyrocketed, and these costs were always far higher in remote and Northern communities.

83. Canada’s funding has never reflected the actual lifecycle cost of building and maintaining housing in reserve communities. More than ever, though, First Nations are forced to stretch their minor capital budgets, and housing expenses are increasingly covered by funds for other areas, including health and education. These problems are

exacerbated by the limited funding for housing managers, where minimum wage is often all that First Nations can afford to provide.

Canada Has Repeatedly Recognized the Housing Gap on Reserve and its Responsibility to Address it

84. Canada has repeatedly acknowledged the disparities in housing infrastructure on reserve, and the corresponding impacts on the health and safety of First Nations and their members. In doing so, Canada has repeatedly acknowledged that it has a responsibility to provide, or fund the provision of, adequate housing on reserve. Canada has taken this position against a backdrop of repeated condemnation from domestic and international bodies for its failure to address the housing crisis on reserve.

85. In 1991, the Treasury Board submissions and the Long-Term Capital Plan of the Department of Indian and Northern Affairs Canada (later Aboriginal Affairs and Northern Development, Indigenous and Northern Affairs Canada, and ISC, among others) pledged to assist First Nations to attain basic living conditions that were comparable to those in the rest of the country by 2001.

86. In 1996, the Royal Commission on Aboriginal Peoples (“**RCAP**”) found that “Aboriginal housing and community services are in a bad state, by all measures falling below the standards that prevail elsewhere in Canada and threatening the health and well-being of Aboriginal people”. The RCAP also confirmed that Canada had failed to provide for basic human needs on reserve, with specific reference to housing realities. RCAP urged Canada to take action to meet the adequate housing needs of First Nations persons within 10 years.

87. On January 7, 1998, Canada responded to the RCAP with the release of Canada’s Aboriginal Action Plan, which introduced a protocol that was intended to establish “a solid framework” to improve housing on reserve. Then Minister of Indian Affairs and Northern Development Jane Stewart acknowledged that “[f]ifty percent of dwellings on First Nations reserves require renovations or replacement”. Despite

Canada's promise, little changed to address the atrocious state of housing infrastructure on reserve.

88. In April 2003, the Office of the Auditor General released a report entitled *Federal Government Support to First Nations – Housing On Reserve*, where the Auditor General found that Canada's investments were "insufficient for many First Nations to sustain improvements and keep pace with the demand over the long term". The Auditor General identified a number of factors that impeded progress, including that Indigenous and Northern Affairs Canada and CMHC — the key institutions responsible for addressing on-reserve housing needs — disagreed on their respective roles and responsibilities, failed to determine what federal assistance was needed to address the critical housing shortage, and failed to create a timeframe to achieve it.

89. On April 19, 2004, Prime Minister Paul Martin recognized that Canada needed to "do better in the provision of adequate housing" and that it "must advance alternative models for housing development on reserve".

90. In 2005, the United Nations Office of the High Commissioner for Human Rights ("OHCHR") criticized Canada for its lack of response to the dire housing situation on reserve despite its longstanding knowledge of the crisis. The OHCHR released a report entitled *Indigenous Peoples' Right To Adequate Housing: A Global Overview* which confirmed that "[t]hough the Government has acknowledged the inadequate desperate housing and living conditions of Indigenous peoples on-reserve in Canada, to date it has not responded to these conditions with the urgency that many Indigenous groups believe is required to address their housing needs". The OHCHR expressly criticized the government for "social conditions facing Indigenous peoples, which are worse than national averages".

91. In 2005, the United Nations Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous People released a report on its mission to Canada. It confirmed that "[a] major problem confronting Aboriginal people concerns housing which, for First Nations, is principally the responsibility of [Indian and Northern Affairs

Canada]”. It highlighted the frequency of homes on reserve requiring repair and replacement, and that “[a]pproximately 55 percent live in communities where half of the houses are inadequate”. It further noted that these homes are “generally overcrowded”. It concluded that “[p]riority attention must be given to the persistent disparities between Aboriginal people and other Canadians as reflected in the higher poverty rates and lower than average ... housing ... for Aboriginal people, which continue to be among the most pressing issues facing Aboriginal people”. It further called on Canada to make “adequate housing ... a priority objective” for Aboriginal communities, and to “close the human development indicator gaps” on housing for Aboriginal peoples.

92. In 2006, the Canadian Census reported that 45 percent of First Nations persons on reserve lived in homes that they identified as needing major repairs. This figure was 36 percent a decade earlier — confirming that the housing conditions on reserve were continuing to worsen.

93. In 2007, the United Nations Special Rapporteur on Adequate Housing released a report on its mission to Canada. It observed that housing problems on reserve were highlighted in “every part of the country”. The Special Rapporteur confirmed that “[t]he federal government has accepted responsibility under the Indian Act and other legislation and programmes for Aboriginal people living on federally recognized reserves, including housing programmes”.

94. The United Nations Special Rapporteur on Adequate Housing further noted that “[o]vercrowded and inadequate housing conditions, as well as difficulties accessing basic services, including water and sanitation, are major problems for Aboriginal peoples. These challenges have been identified for many years but progress has been very slow leaving entire communities in poor living conditions for decades”. It also found that Aboriginal women “face some of the most severe housing conditions and challenges in the country”, including on reserve, where they are often “forced to relocate to urban areas as a result of circumstances beyond their control” including property laws on reserve, overcrowding, violence, and homelessness.

95. In February 2008, Indian and Northern Affairs Canada evaluated the 1996 on-reserve housing policy introduced by Canada's Aboriginal Action Plan. In its evaluation, Indian and Northern Affairs Canada acknowledged that "an overall implementation and monitoring strategy for the on-reserve housing policy has been lacking".

96. The 2011 Census revealed that 27 percent of First Nations people living on reserve were living in crowded conditions — approximately seven times more than non-Indigenous people. It also found that 43 percent of First Nations people living on reserve "reported living in homes that they identified as needing major repairs", compared to only 7 percent of non-Indigenous people.

97. In February 2011, Canada released a report entitled *Evaluation of INAC's On-Reserve Housing Support*, which confirmed the "continued need for federal support to on-reserve housing", and observed an "existing shortfall in housing and an ongoing concern for future shortfalls given the conditions of housing on reserve and projected population growth over the next 25 years". It acknowledged that "[a]t the outset of the introduction of the 1996 On-Reserve Housing Policy, there was a consensus between the government and First Nations that there was already a shortfall of adequate housing on reserve. Despite ongoing construction of new housing on-reserve, the shortfall still exists and appears to be growing rather than diminishing".

98. Given the pervasiveness of overcrowding on reserve, which is "six times higher than that of non-Aboriginal Canadians", Canada found that "[a]s quickly as new units come to stream, they require aggressive maintenance because of the overcrowding and heavy 'wear and tear' they take". It further noted that First Nations continue to lack capacity to perform maintenance and that they lack funds to pay someone to perform required work. It expressed that the "consequences are manifold: maintaining housing stock is costly, poorly maintained housing is unsafe and contributes to poor health, which in itself generates additional costs".

99. Canada also observed other significant problems with housing in its *Evaluation of INAC's On-Reserve Housing Support*, including that “[h]ouses are falling apart”, “many homes are not suitable for people with breathing problems”, and “young families have to live with their parents, which causes social problems”. It further noted that there were “two fatalities in [a] community related to wiring and lack of heat” as “[p]eople were using a dryer to help heat a home”.

100. In 2011, the Auditor General released a status report entitled *Programs for First Nations On Reserves*. The Auditor General found that the housing shortage on reserve had worsened since its 2003 audit, and that investments by Indian and Northern Affairs Canada and CMHC have “not kept pace with either the demand for new housing or the need for major renovations to existing units”. The Auditor General observed that Indian and Northern Affairs Canada’s own data show that “the housing shortage on reserves has worsened since our 2003 audit because of increases in the demand for housing, the number of housing units having to be replaced, and the number of units requiring significant renovations for health and safety reasons”. The Auditor General further concluded that federal organizations had not taken significant actions to remediate mold contamination, despite their commitment to do so in 2003.

101. On October 28, 2011, Attawapiskat First Nation declared a state of emergency — for the third time in three years — after a severe housing shortage forced families to live in tents and unheated trailers on reserve, some without access to running water and electricity. Shortly thereafter, on December 5, 2011, then Minister of Aboriginal Affairs and Northern Development John Duncan acknowledged that the federal government’s funding to Attawapiskat First Nation “has not generated the results that the people of Attawapiskat deserve and all Canadians expect”.

102. Between 2012 to 2014, internal reports from Aboriginal Affairs and Northern Development found that Manitoba was one of the worst places in the country for First Nations people to live, as they were more likely to live in poverty, require social assistance, live in dilapidated housing, and experience domestic violence, and their life expectancy is shorter than other Manitobans. These internal reports further

acknowledged that the quality of life of First Nations in Manitoba was the lowest in Canada.

103. In 2014, an internal report from Aboriginal Affairs and Northern Development further confirmed that one third of First Nations people living on reserve in Manitoba lived in homes requiring major repairs. It noted significant concerns with the housing backlog, overcrowding, and the poor conditions of homes on reserve. Additionally, it reported that Canada's funding for infrastructure on reserve was declining because resources were being shifted to other areas.

104. In January 2015, an internal report from Indigenous and Northern Affairs Canada found that transferring funding from infrastructure to other areas had resulted in "Manitoba First Nations continu[ing] to face further deterioration in infrastructure". The report concluded that "current estimates indicate a \$1.9B need to address existing overcrowding, replacement and major repairs related to mold and substandard conditions of housing units" and that "[k]ey challenges continue to include affordability, low income and high social assistance rates". Canada's own reports confirmed that one quarter of existing homes on reserve in Manitoba and Alberta require repair or replacement.

105. In February 2015, the Standing Senate Committee on Aboriginal Peoples released a report entitled *Housing On First Nation Reserves: Challenges and Successes*, which concluded that it was "undeniable that there is a serious housing situation in many First Nation communities throughout this country" where "[m]any communities face housing shortages" and "[e]xisting housing is often of poor quality and in need of major repairs, which is in part due to high levels of mold contamination". It found that it is an "unescapable fact that addressing the housing and infrastructure needs in many First Nation communities will require additional resources – both capital and human" and that "funding from the federal government is an important part of addressing the current housing situation". The Senate Standing Committee observed that the "housing shortage continues to grow, and the current housing stock continues to deteriorate".

106. In June 2015, the Standing Senate Committee on Aboriginal Peoples released a further report, entitled *On-Reserve Housing and Infrastructure: Recommendations for Change*, which found that the lack of funding for basic infrastructure such as roads and water services is “limiting the ability of First Nations to build much-needed housing”. It criticized the federal government’s approach to infrastructure funding as “cash-based, current-year funding” which makes it “impossible to catch up on the infrastructure deficit in First Nations communities”. It recommended that Canada remove the two percent cap on annual funding increases from Aboriginal Affairs and Northern Development Canada.

107. The report of the Standing Senate Committee on Aboriginal Peoples further observed that “the current levels of federal funding make it difficult for First Nations to construct, operate, and properly maintain housing and community infrastructure. This problem is particularly acute for those communities who do not have access to other sources of revenue to supplement federal government funding.” It also recognized that “without the needed investments, the current crisis in housing and infrastructure faced by First Nations communities, cannot adequately be addressed”.

108. In December 2015, then Minister of Indigenous Affairs Carolyn Bennett expressed in an interview that “there are far too many First Nations families living in homes that other Canadians wouldn’t be subjected to”. She further noted that “this is a goal for all of us and for all Canadians – they don’t think that First Nations people should be living in third-world conditions”.

109. On February 1, 2016, then Minister of Indigenous Affairs Carolyn Bennett, characterized the housing crisis on reserve as “a disgrace for Canadians to watch”, explaining “there is consensus in this country that we have got to get going on this”. Minister Bennett further noted that the “sticker shock on any of these things can’t get in the way of us beginning what has to happen”.

110. On April 26, 2016, Carolyn Bennett, Minister of Indigenous and Northern Affairs, stated that “for many Indigenous communities, transformational change is

needed to ensure basic infrastructure needs are met, and existing infrastructure can be repaired and improved”. On November 2, 2016, she recognized Canada’s essential role in “[c]losing the unacceptable gaps in quality housing.”

111. On June 7, 2016, Human Rights Watch released its report entitled *Make it Safe: Canada’s Obligation to End the First Nations Water Crisis*, which observed the “severe housing shortage” on reserve, where “[t]here are long waiting lists for housing, and overcrowding is common”.

112. On December 16, 2016, then Minister of Indigenous and Northern Affairs Carolyn Bennett, again recognized the “unacceptable housing gap” in response to a fire in Oneida First Nation that killed five family members. She admitted that Canada knows that “more needs to be done”, and that the wide-reaching need to improve housing is “a result of years of chronic under-funding”.

113. The same year, Canada’s Community Well-Being Index observed that the “housing scores for First Nations communities have remained fairly constant since 1996”. It found that the “average score for First Nations communities was 70.6 in 2016”, representing a “24-point housing gap between First Nations and non-Indigenous communities”.

114. In January 2017, Indigenous and Northern Affairs Canada reiterated that its approach to on-reserve housing had been deficient. In its report entitled *Evaluation of On-Reserve Housing*, it admitted that “[h]ousing programming initiatives led by [Indigenous and Northern Affairs Canada] as far back as the 1960s, and culminating in the current approach that has been implemented since 1996 have proven ineffective”. It found that that its overall approach to housing on reserve had been “short-sighted and non-strategic”, resulting in its failure to achieve long-term broad improvements. It identified the need for Canada to provide adequate support for First Nations in capacity-building and First Nation-driven initiatives, as without the federal department’s support “broad improvements remain elusive”.

115. On October 25, 2017, Statistics Canada released a report entitled *Census in Brief: The housing conditions of Aboriginal people in Canada*. It reported that 36.8 percent of First Nations persons on reserve with registered or treaty Indian status lived in a crowded dwelling. It further found that the proportion of the population living in crowded housing on reserve was virtually unchanged between 2011 to 2016, despite Canada's longstanding acknowledgement of poor conditions. Additionally, 44.2 percent of First Nations persons on reserve with registered or treaty Indian status lived in a dwelling that needed major repairs – an alarming rate which had only climbed since it was last reported in 2011.

116. In 2018, Employment and Social Development Canada's report entitled *Everyone Counts Highlights – Preliminary Results from the Second Nationally Coordinated Point-in-Time Count of Homelessness in Canadian Communities*, confirmed that Indigenous people, and particularly First Nations, are over-represented in the population experiencing homelessness. This conclusion was echoed by Statistics Canada's recent report, "Study: A portrait of Canadians who have been homeless".

117. On November 28, 2018, then Minister of Indigenous and Northern Affairs Carolyn Bennett, informed the Standing Committee on Indigenous and Northern Affairs that "[t]he issue of infrastructure is huge" and that there is a "huge lag" and "huge deficit" in housing infrastructure on reserve. Minister Bennett committed to "the type of success it's going to take to close those gaps".

118. On December 4, 2018, Prime Minister Justin Trudeau delivered a speech to the Assembly of First Nations Special Chiefs Assembly in Ottawa, where he stated that "[r]econciliation is about .. closing the gaps between Indigenous and non-Indigenous people, gaps in housing". He acknowledged the importance of "getting real results" so that "people don't have to sleep in shifts because there simply isn't enough housing".

119. In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls released its Final Report, which echoed concerns about the pervasiveness of

overcrowded homes and homes requiring repair on reserve, as well as the consequential impact on the health and safety of First Nations women and their children.

120. The Final Report highlighted that there have been seventeen reports between 1991 to 2016 calling for greater action on safe housing, which detail that “homelessness or overcrowded housing can put women at higher risk of violent interactions” and “the threat of homelessness or otherwise inadequate housing makes Indigenous women and children less able to leave violent living situations”. The Final Report further highlighted the links between inadequate housing and child apprehensions, targeted violence, illness, substance misuse, criminal activity, sex work, and gang involvement. It called on Canada to “immediately commence the construction of new housing and the provision of repairs for existing housing to meet the housing needs of Indigenous women, girls, and 2SLGBTQQIA people”.

121. On February 28, 2019, then Minister of Indigenous Services Seamus O' Regan advised the Indigenous and Northern Affairs Standing Committee that “Indigenous people are more likely to experience poor housing conditions than the general population”, and that “decades of neglect are challenging to reverse”.

122. On July 17, 2019, the Special Rapporteur on Adequate Housing released its report, entitled “Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context”. It found that Indigenous women “[l]acking secure, adequate housing ... often become the targets of further violence because of their gender and their Indigenous identity”, enabling a “spiral of violence” which “has profound roots in the extreme social and economic marginalization of Indigenous women and their communities”. It confirmed that these circumstances are “used by State authorities as a reason to apprehend Indigenous children and place them in State care”. It also noted the atrocious housing conditions on reserve, with “[m]ore than 10,000 on-reserve homes in Canada are without indoor plumbing”.

123. On November 19, 2020, then Minister of Indigenous Services Canada Marc Miller admitted to the Indigenous and Northern Affairs Standing Committee that overcrowding in housing has been a source of historic epidemics. He also acknowledged that risks of tuberculosis and pulmonary disease remain alongside the COVID-19 pandemic.

124. On February 15, 2021 at a news release, then Minister of Indigenous Services Marc Miller again acknowledged the connection between poor housing and health risks. He described the housing crisis in Eabametoong First Nation as “unacceptable”, and that “the housing shortage, the structural underfunding, under capitalization of communities is a real medical and health issue”. Minister Miller acknowledged that Canada “had difficulties as a matter of policy in the past thinking of it in those terms, but [that] clearly it isn’t new to Canada”. Minister Miller further confirmed that Canada “need[s] to act more swiftly specifically on housing as a government”.

125. On April 27, 2021, Minister Miller reiterated Canada’s knowledge of “the longstanding and unacceptable housing gaps that exist in Indigenous communities”. He emphasized that “[t]here is more work to do and we will make the necessary investments needed to support Indigenous housing throughout the country”.

126. On May 12, 2021, at a press conference then Minister of Indigenous Services Marc Miller affirmed that “[i]t is that gap, and the consistent underfunding and under capitalization of infrastructure that has driven that vulnerability that puts Indigenous communities three and a half times to five times more vulnerable to COVID, as well as the comorbidities that have driven up”. Minister Miller acknowledged Canada’s knowledge on this issue, noting that First Nations are “often ... more vulnerable to getting overwhelmed quickly through no fault of their own”.

127. On June 10, 2021, then Minister of Indigenous Services Marc Miller advised the Standing Committee on Indigenous and Northern Affairs of Canada’s continued shortcomings in addressing housing issues, explaining that “in terms of the 10-year plan,

the amounts in the budget are not sufficient to close that gap, and that is work we will have to be relentless in investing in over the future”.

128. The dire housing needs that Minister Miller readily acknowledged are reflected in the 2021 Census. Statistic Canada found that more than 37 percent of First Nations people with registered status on reserve lived in a dwelling in need of major repairs, and that over 35 percent of First Nations people with treaty or registered Indian status living on reserve lived in crowded housing. Despite Canada’s repeated recognition of the housing shortfall and its responsibility to rectify it, there has been little progress.

129. In May 2021, the House of Commons Standing Committee on Human Resources, Skills and Social Development, and the Status of Persons with Disabilities released a report entitled *Indigenous Housing: The Direction Home*, which found that First Nations people both on and off reserve experience a “shortage of safe, affordable, and culturally appropriate housing which impacts their health and wellbeing”. It reiterated that Indigenous peoples off reserve are over-represented in homelessness, and that the Indigenous population is “young and growing”, which “puts pressure on existing housing needs”.

130. In July 2021, the Institute of Fiscal Studies and Democracy completed a study for the Assembly of First Nations entitled *Cost analysis of current housing gaps and future housing needs in First Nations* (the “**AFN Study**”). It echoed that the “[g]aps in housing in First Nations communities are well-documented, as are their related social and economic repercussions”. It found that existing data confirmed that at least 34 percent of existing housing units require minor repairs and 31 percent require major repairs, noting that “gaps are likely much larger”.

131. The AFN Study also confirmed that the “human impacts of the housing shortage and inadequacy of housing in First Nations are significant”, reiterating that overcrowding “cascade[s] into challenges such as family violence, intimate partner violence, and education, growth, and development challenges for children”. It cautioned that “[h]ealth challenges emerge as the transmission of communicable

diseases are facilitated due to overcrowding, and due to poor structures”, including the effects of mold.

132. The AFN Study further observed that “[r]esources are insufficient to meet needs, with budgets stretched to cover repairs, maintenance, and salaries, let alone, new builds”. It concluded that based on 2021 prices, the “total capital cost for current and future housing needs is estimated to be \$59B[illion]” by 2040, which includes an estimated \$21 billion for migration on-reserve. The AFN emphasized that the “human impacts of inadequate housing are not one-time fixed costs but long-term challenges with social and fiscal repercussions for children, families, and communities”, and that the “significant fiscal shortfall that will require a large up-front investment with sustained funding increases for many years to address and mitigate large economic, social, health and environmental negative outcomes”.

133. Canada recently recognized this shortfall and promised to close the infrastructure gap by 2030. On December 16, 2021, Prime Minister Justin Trudeau’s mandate letter to Patty Hajdu, the incoming Minister of Indigenous Services, committed to “close the infrastructure gap by 2030, with a focus on building sustainable and affordable housing”. Prime Minister Trudeau directed Minister Hajdu to “focus on expediting investments in Indigenous housing, with over half of the funding available by the upcoming summer construction period” to achieve this promise.

134. However, that same day, Minister Hajdu publicly admitted that Canada’s housing strategy could not address existing needs. In an interview with APTN News, Minister Hadju expressed that “much more is needed” on Canada’s housing strategy.

135. In September 2021, ISC recognized the immediate need for 21,000 new homes on reserve, and repairs to an additional 50,000 homes. The Assembly of First Nations’ National First Nations Housing Strategy predicted a 130,000 housing unit backlog between 2010 to 2031.

136. Shortly thereafter, on January 27, 2022, Minister Hajdu informed APTN News that Canada has “a long way to go” to close the infrastructure gap by 2030. She described the infrastructure gap as “significant” for Indigenous communities.

137. Months later, Canada continued to confirm that its financial commitment for First Nations infrastructure investments remained insufficient. On March 4, 2022, Minister of Crown-Indigenous Relations Marc Miller confirmed that “[a]s to the quantum, both Minister Hajdu and I have said publicly that it is not adequate”. Minister Miller further stated that “Indigenous Peoples in Canada face the worst housing outcomes in the country”, describing these realities as “unacceptable”, and affirmed Canada’s obligation to “work harder and quicker to close the gap”. On the same occasion, Minister Hajdu described Canada’s current work on housing for First Nations as “just a start”, and highlighting that “[t]he need is great”.

138. The same day, Patricia Roset-Zuppa, the Vice-President of Policy Development and CMHC, informed the Standing Committee on Indigenous and Northern Affairs that Indigenous people are over-represented in experiences of homelessness in Canada, and that they are “more than twice as likely to experience hidden homelessness, especially in the north, compared to their non-Indigenous counterparts”. She confirmed that “Indigenous housing needs are complex and they are urgent”, observing that these needs are “most dire across the territories, where approximately one-third of the Indigenous population lives in unacceptable housing”.

139. On March 23, 2022, ISC Minister Patty Hajdu admitted in a media interview that housing in Indigenous communities is approaching a “state of crisis” and acknowledged the validity of AFN’s estimated \$60 billion gap.

140. On April 5, 2022, Minister Hajdu reiterated in a media interview the “huge gap” in housing on reserve. Minister Hajdu admitted that First Nations leaders and members have informed her about the dire need for housing. She further acknowledged that housing is “a foundation[al] component of a healthy community”, “a critical social determinant of health,” and linked to mental health and educational outcomes.

141. On May 20, 2022 Minister of Crown-Indigenous Relations Marc Miller again acknowledged the inadequacy of Canada's investments to close the infrastructure gap in First Nations by 2030 to the House of Commons Standing Committee on the Status of Women. Minister Miller characterized the investments in Budget 2022 as grossly deficient.

142. Canada's current pace of investment is destined to miss its 2030 target. This has been reiterated, over and over again, by its own ministers, with little change in its conduct. In June 2022, the Standing Committee on Indigenous and Northern Affairs released a report entitled *The Effects of The Housing Shortage on Indigenous Peoples in Canada*. It urged Canada to revise its strategy for housing investments, expressing that the 2030 target "will not be met if the current pace is maintained". The Standing Committee on Indigenous and Northern Affairs acknowledged that it was "made aware that Indigenous peoples are being deprived of their right to housing." It described the situation as "particularly concerning, since the housing shortage experienced by Indigenous peoples has been ongoing for decades". It emphasized that the severity of the housing crisis "needs to be urgently addressed".

143. Tragically, the conditions described above have only continued to worsen. Canada recognizes its responsibility to provide adequate housing on reserve, but continues to fail to take the meaningful action required to do so, trapping First Nations in the worst living conditions in the country, where their health, wellbeing, and life expectancy are compromised. This was recently evidenced by the COVID-19 pandemic, where First Nations were among the hardest hit, and housing conditions enabled the virus to flourish on reserve, compromising the health of residents, and in some cases, resulting in permanent injuries or death.

CANADA OWED THE PLAINTIFFS AND CLASS MEMBERS NON-DELEGABLE FIDUCIARY DUTIES, A DUTY OF CARE, AND A DUTY TO ACT IN ACCORDANCE WITH THE HONOUR OF THE CROWN

144. Canada has consistently assumed responsibility for the provision of on reserve housing to the Plaintiffs and Class members. Canada has created conditions where the

Plaintiffs and Class members have few, if any, option but to rely on Canada for housing on reserve. Canada has known about the grave shortfall and deficiencies of housing on reserve, and the consequences of these conditions for decades. Canada has repeatedly promised to provide adequate housing on reserve, but has instead allowed the problem to worsen. In these circumstances, it is clear that Canada owes fiduciary duties and a duty of care to the Plaintiffs and Class members, and it was, and is, bound to act in accordance with the honour of the Crown.

145. Under section 91(24) of the *Constitution Act, 1867*, Canada is responsible for “Indians and Lands reserved for Indians”. Only Canada may legislate over First Nation Lands, and Canada has maintained jurisdiction over housing on reserve. As a result, Canada has exclusive jurisdiction to ensure that First Nations are provided with adequate housing on reserve. At the same time, the *Constitution Act, 1867*, contained no revenue-raising powers for First Nations to derive benefits from their territories or reserve lands, unlike other orders of government.

146. Since 1876, Canada has asserted its jurisdiction over First Nations pursuant to the *Indian Act* and related statutes and regulations. Through the *Indian Act*, Canada restricted the ability of First Nations to exercise jurisdiction over land use and housing on reserve. Canada has, and continues to, insist on playing an active and central role in the design, implementation, and number of houses on reserve, often to the exclusion of Class members’ First Nations.

147. Canada has also pressured members of First Nations to live on First Nation Lands, repeatedly denying program funding for those who are not resident on First Nation Lands. At the same time, Canada has knowingly and arbitrarily underfunded housing available on reserve to discourage members who had moved away or later gained status from returning.

148. Canada’s commitment and responsibility to provide housing on First Nation Lands was recently described in the *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313, which reiterates that Canada must implement its housing policy, which includes:

- (a) recognizing that the right to adequate housing is a fundamental human right affirmed in international law;
- (b) recognizing that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- (c) supporting improved housing outcomes for the people of Canada; and
- (d) furthering the progressive realization of the right to adequate housing as recognized in the International Covenant on Economic, Social and Cultural Rights” (the “ICESCR”).

149. Canada’s obligations to First Nations and their members under the *National Housing Strategy Act* are informed by the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14 (the “*UNDRIP Act*”), which came into force on June 21, 2021.

150. The *UNDRIP Act* confirms Canada’s obligations to uphold the human rights of Indigenous peoples pursuant to the United Nations Declaration on the Rights of Indigenous Peoples (the “*UNDRIP*”). Section 5 of the *UNDRIP Act* requires Canada to take all measures necessary to ensure that federal laws are consistent with *UNDRIP*, and to do so in cooperation with Indigenous peoples. The *UNDRIP* specifically acknowledges a right to housing, including in article 21(1) which confirms that Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including housing. The *UNDRIP* also affirms the right to housing in article 21(2) which instructs that states must “take effective measures and, where appropriate, special measures to ensure continuing improvement of [Indigenous peoples’] economic and social conditions”. Importantly, article 43 of the *UNDRIP* makes clear that these are “minimum standards for the survival, dignity and well-being of ... Indigenous peoples”.

151. Moreover, Canada's commitments under section 36(1) of the *Constitution Act, 1982* require it to "promot[e] equal opportunities for the well-being of Canadians", "further economic development to reduce disparity in opportunities", and "provid[e] essential public services of reasonable quality to all Canadians". This commitment requires Canada to ensure that the Plaintiffs and Class members have access to adequate housing on reserve.

152. Canada is also bound by the honour of the Crown and, in particular, the promise to set aside First Nation Lands for the use and benefit of First Nations members. The honour of the Crown requires Canada to ensure that Class members residing on those lands have adequate housing.

153. In these circumstances, Canada has assumed non-delegable fiduciary duties to the Class to ensure that Class members have adequate housing on First Nation Lands. Furthermore, there is a relationship of proximity between Canada and the Class that gives rise to foreseeability of harm and Canada owes the Plaintiffs and Class a private law duty of care to ensure that the Plaintiffs and Class members have adequate access to housing on First Nation Lands.

154. The Plaintiffs' and Class members' right to access to adequate housing on reserve is also protected by the *Charter*, as described in further detail below.

155. Additionally, Canada has ratified numerous international treaties which affirm its obligations relating to the provision of adequate housing for the Plaintiffs and Class members, including, without limitation, the Universal Declaration of Human Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights; and the UNDRIP.

156. Canada's international commitments and implementing legislation, together with resolutions of the United Nations General Assembly and the United Nations

Human Rights Council, guarantee a right to adequate housing of reserve for the Plaintiffs and Class members.

CANADA'S DUTIES TO THE PLAINTIFFS AND CLASS MEMBERS ARE NOT ABATED BY ITS EFFORTS TO DEFLECT AND DOWNLOAD ITS RESPONSIBILITIES

157. Historically, Canada has attempted to deflect its responsibility for the provision of adequate housing on reserve. Canada has also sought to download responsibilities to First Nations. However, these acts of deflection and downloading do not absolve Canada of its obligations flowing from the Constitution, federal legislation, common law, and Canada's international commitments.

158. Canada knew, or should have known, that First Nations lacked the resources to remedy the housing crisis on reserve. Canada further undermined First Nations by failing to provide proper guidance and consistently underfunding the construction and maintenance of housing on reserve, despite its knowledge that First Nations were unable to meet the shortfall. In short, Canada understood that its program of downloading responsibility for housing to First Nations was destined to fail, with the attendant consequences described below.

159. Despite its efforts to download its responsibilities to First Nations, Canada continues to fund the provision of housing on reserve and Canada. This includes funding from CMHC and ISC for new builds, repair and maintenance, special projects, and loan guarantees, as well as annual transfer payments to First Nations. The amount and allocation of funding for these programs is determined by Canada in its sole discretion, which permits Canada to control the housing that is built on reserve. In exercising that control through defective protocols and procedures, Canada has consistently worked to ensure housing on reserve is deficient, with the attendant consequences for the Plaintiffs and Class members.

160. Additionally, Canada has consistently failed to provide First Nations with adequate funds to ensure that the maintenance of housing on reserve meets appropriate standards for safety and security. At all material times, Canada has been, or ought to

have been, aware that its protocols and procedures were deficient, and that First Nations were unable to correct the deficiencies with their own funds.

161. Ultimately, at all material times Canada has had a responsibility to approve, fund, and monitor housing on reserve. Where Canada purports to delegate any responsibility for the provision of housing, including to a First Nation, Canada remains responsible to the Plaintiffs and Class members, and it must ensure that its delegate has sufficient resources, training, and experience to adequately and appropriately deliver the service.

CANADA BREACHED ITS FIDUCIARY DUTIES AND ITS DUTY OF CARE TO THE PLAINTIFFS AND CLASS MEMBERS, BREACHED THEIR RIGHTS UNDER THE *CHARTER* AND THE CONSTITUTION, AND FAILED TO UPHOLD THE HONOUR OF THE CROWN

162. Canada has, with foreknowledge, systematically breached its duties to the Plaintiffs and Class members, including by failing to:

- (a) honour its promise to provide access to adequate housing on reserves to permit Class members to maintain their distinct ways of life on reserve;
- (b) fund, allocate funds, mandate, procure, and supervise the design and construction and maintenance of on-reserve housing plans and infrastructure to an appropriate standard;
- (c) adopt operational protocols and directives for the construction, operation, maintenance, and safety of housing on First Nation Lands; and
- (d) adequately enforce standards to ensure that Class members have access to adequate housing on reserves.

163. Additionally, where Canada has purported to download responsibility for the provision of adequate housing on reserve, Canada has systematically failed to remedy defects, or put in place measures to remedy defects, in on-reserve housing before

purporting to download responsibility to First Nations. It has also, with foreknowledge, systematically breached its duties to Class members, including by failing to provide:

- (a) adequate funding to appropriately construct, operate, and maintain housing on reserves;
- (b) appropriate and enforceable standards for housing structures and plans, together with appropriate accountability to ensure compliance; and
- (c) appropriate directives for the provision of housing to Class members, to be promulgated following proper consultation with First Nations.

164. Canada's breaches of its duties have denied Class members access to adequate housing on reserve. This crisis has been systemic and prolonged. Although Canada has repeatedly recognized the breach of its duties, it has failed to correct these deficiencies.

Breach of fiduciary duties, duty of care, and honour of the Crown

165. Through its systemic conduct, Canada has created, contributed to, and sustained inadequate and unsafe housing conditions on reserves. As set out above, Canada breached its fiduciary duty, duty of care, and its duty to uphold the honour of the Crown, all of which caused damages to the Plaintiffs and Class members, as set out below. In particular, given Canada's efforts to divest First Nations of their territories and congregate their members on reserves, the honour of the Crown required Canada to ensure adequate housing in First Nations.

166. The Plaintiffs and Class members expressly limit their claim in negligence to Canada's operational negligence in the implementation of its core policies, including its policy of ensuring that First Nations communities have adequate housing on First Nation Lands, as well as the making of non-core policies, protocols, and procedures.

Charter breaches

167. Canada has also breached the Plaintiffs' and Class members' rights under sections 15, 7, 2(a) and 2(c) of the *Charter*.

Canada breaches Section 15

168. Canada has breached Class members' equality rights. Class members are a recognized enumerated and analogous group identified by their race and residency on reserve. The decision to live on reserve is personal characteristic essential to the Plaintiffs' and Class members' identities, and it can only be changed at great personal cost – including loss of connection to their identity and their community – if at all. Canada's failure to provide the Plaintiffs and Class members with access to adequate housing creates a distinction based on their race and residency; this distinction creates and contributes to disproportionate impact on the Plaintiffs and Class members.

169. Canada's failure to provide the Plaintiffs and Class members with access to adequate housing also puts them at a disadvantage relative to similarly-situated Canadians who do not share their race and residency status and who enjoy access to adequate housing. The Plaintiffs and Class members suffer this disadvantage even when compared to members of First Nations who do not reside on reserve, and other groups for whom Canada has assumed responsibility for the supply of housing, including military bases and Canada's own employees who reside on reserve. The basis for the disadvantage of the Plaintiffs and Class members is their race and residency status, and this disadvantage serves to undermine their dignity and perpetuate, reinforce, and exacerbate longstanding prejudice, contrary to section 15 of the *Charter*.

170. Furthermore, Canada's discrimination against the Plaintiffs and Class members has created or contributed to their suffering, including the adverse health effects described below, and has barred them from developing First Nation Lands to advance economic prosperity. Canada's mistreatment has left the Plaintiffs and Class members to live in poverty, often without a viable economic future. Canada has done all of this because the Plaintiffs and Class members are First Nations people who live on reserve.

Canada's actions disproportionately impact the Plaintiffs and Class members with the result of reinforcing, perpetuating, or exacerbating their disadvantage.

171. The deprivation of substantive equality for Class members is particularly serious for minors. In accordance with Jordan's Principle, Canada has an obligation under section 15 of the *Charter* and the honour of the Crown to take the necessary steps to ensure that First Nations children on reserve have an equal chance to live and prosper. Without adequate access to housing on reserves, minor Class members begin life at a distinct disadvantage, thereby perpetuating intergenerational inequality. Canada's failure to discharge its obligations to these Class members constitutes a further breach of section 15 of the *Charter*.

Canada breaches Section 7

172. Canada has also breached the Plaintiffs' and Class members' rights to life and security of the person. By choosing the location of First Nation Lands and limiting the authority and ability of First Nations to manage their own housing needs, Canada rendered First Nations unable to provide adequate housing to their members. Canada further restricted the Plaintiffs' and Class members' ability to obtain housing for themselves, thereby crafting a system where the Plaintiffs and Class members must rely on Canada for housing.

173. By denying the Plaintiffs and Class members access to adequate housing, Canada has, and continues to expose the Plaintiffs and Class members to a host of serious illnesses, as well as serious psychological harm, some of which is caused by fear and uncertainty about the safety and security of the Plaintiffs and Class members' homes. This deprivation of security of the person, and in some cases life, is not in accordance with the principles of fundamental justice, including arbitrariness, overbreadth, and gross disproportionately. Canada's actions in depriving the Plaintiffs and Class members of adequate access to housing on reserve constitutes a breach of section 7 of the *Charter*.

Canada breaches Section 2(a)

174. Additionally, by denying the Plaintiffs and Class members access to adequate housing, Canada has breached their right to freedom of religion, which includes traditional ceremonies and spiritual practices. The ability to live alongside one's family, community, and nation and practice culture and spirituality together is sacred in the Plaintiffs' and Class members' distinct traditions. It is a critical aspect of the Plaintiffs' and Class members' spirituality and it has a strong nexus with their spiritual practices.

175. The lack of adequate housing has precluded the Plaintiffs and Class members from exercising their traditional and spiritual practices and from passing on those sacred rites from one generation to another. These losses are aggravated when members of the community must leave to find adequate housing. Canada has also deprived the Plaintiffs and Class members of their ability to effectively discharge their culturally and spiritually significant obligations to the land, water, animals, and their people and community. These are serious interferences with the Plaintiffs' and Class members' ability to act in accordance with their freedom of religion, and they constitute a breach of the Plaintiffs' and Class members' rights under section 2(a) of the Charter.

Canada breaches Section 2(c)

176. Canada has also breached the Plaintiffs' and Class members' right to freedom of assembly by driving members of First Nations to abandon their reserve communities on account of the poor state of housing. Like St. Theresa Point, Class members' First Nations are often remote and isolated, forcing First Nations people to relocate to towns and urban centres. This prevents them from spending time in their community and assembling for the purpose of traditional community activities, including ceremonies, harvesting, medicine picking, feasts, and governance meetings. Canada's deliberate

efforts to promote assimilation have spread First Nations people to the four winds and represent a serious and unreasonable impediment to meaningful assembly.

Canada's breaches are not saved by Section 1

177. None of the *Charter* breaches set out above can be justified in a free and democratic society. On the contrary, they are a stain on the conscience of this nation, and they cannot be saved by section 1.

Canada breaches Section 36

178. Canada has breached section 36 of the *Constitution Act, 1982*, which requires it to (a) promote equal opportunities for the well-being of Canadians; (b) further economic development to reduce disparity in opportunities; and (c) provide essential public services of reasonable quality to all Canadians. These essential public services include access to adequate on-reserve housing. Furthermore, lack of access to adequate on-reserve housing inhibits Class members from achieving equal opportunities for wellbeing, hinders economic development, and increases and perpetuates disparity in opportunities.

Nuisance

179. Additionally, Canada's breaches of its duties, as set out above, by commission and omission, have caused a substantial and unreasonable interference with the Plaintiffs' and Class members' use and enjoyment of their First Nation Lands. Canada is liable to the Plaintiffs and Class members for this nuisance.

RESTITUTIONARY RELIEF

180. In the alternative, Canada realized cost savings from the breaches of its duties described above (the "**Unjust Gains**"). Canada was unjustly enriched to the extent of the Unjust Gains. The Unjust Gains resulted from expenditures that Canada was obligated to make on behalf of the Plaintiffs and the Class members, and these cost savings were realized only through Canada's unlawful conduct.

181. The Plaintiffs and the Class members suffered a corresponding deprivation when they were denied adequate access to housing on First Nation Lands. There is no juristic reason that Canada should be entitled to retain the Unjust Gains, and they must be disgorged to the Plaintiffs and the Class members. The Plaintiffs and the Class members are entitled to a constructive trust over these monies.

VICARIOUS LIABILITY

182. Canada's breaches of its duties were perpetrated by its servants and agents, for whom Canada is responsible. These individuals made, and continue to make, decisions with respect to the provision of adequate housing on reserve to the Plaintiffs and the Class members. Canada's delicts were the misconduct of its servants and agents, each of whom breached duties owed to the Plaintiffs and the Class members and infringed Plaintiffs' and the Class members' rights. The identities of the particular servants and agents who perpetrated Canada's breaches of its duties are known only to Canada.

183. Canada is vicariously liable for the impugned acts of its servants and agents. There is a sufficiently close relationship between Canada and its servants and agents that it would be fair and just to hold Canada vicariously liable for their tortious conduct. Further, the wrongs of Canada's servants, officers, employees, and agents were perpetrated in the course of their employment by Canada, such that Canada introduced the risk of the wrong.

184. To the extent that relief is sought in tort, it is expressly limited to relief for the vicarious liability of Canada's servants and agents. The Plaintiff pleads and relies on section 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

185. Canada and its servants and agents knew or ought to have known that their breaches of its duties were unlawful and contrary to the rights of Class members under the *Charter* and *Constitution Act, 1982*. In the alternative, the conduct at issue constitutes operational decision making by Canada, rather than core policy decisions, or was irrational, and Canada is not immune from suit in this regard.

CLASS MEMBERS SUFFERED DAMAGES

186. As a result of Canada's breaches of its duties to the Plaintiffs and Class members, its breaches of their *Charter* and constitutional rights, its failure to uphold the honour of the Crown, and its nuisance, the Plaintiffs and Class members have and continue to face:

- (a) lack of access to adequate housing on First Nation Lands;
- (b) severe overcrowding;
- (c) sustained exposure to unsafe living conditions; and
- (d) illness and death.

187. As a result of the foregoing, the Plaintiffs and Class members have and continue to suffer severe adverse effects, including:

- (a) adverse health effects, including pulmonary disease, tuberculosis, COVID-19, respiratory symptoms and infections, asthma, cough and wheeze, bronchitis, skin conditions such as eczema, and allergic reactions;
- (b) adverse psychological effects including severe anxiety, severe depression, suicidal ideation, and suicide;
- (c) adverse health effects particular to infants, including asthma, respiratory tract infections, and negative impacts on cognitive development;
- (d) adverse impacts on their physical, emotional, mental, and spiritual wellbeing;
- (e) diminished educational and economic outcomes;
- (f) higher incidents of family violence;

- (g) higher rates of poverty;
- (h) higher rates of targeted violence;
- (i) higher rates of substance misuse and addiction;
- (j) higher rates self-harm and suicide;
- (k) higher rates of being unhoused; and
- (l) shorter life expectancy and death.

188. As a consequence, the Plaintiffs and Class members have suffered injury and damages, including:

- (a) serious physical, mental, emotional, and spiritual harm, including illness and death;
- (b) loss of income and loss of advantage;
- (c) significant out-of-pocket expenses to repair and obtain shelter;
- (d) lack of access to culturally appropriate housing and an inability to practice language, culture, and spirituality, with intergenerational impacts;
- (e) loss of opportunity to live on First Nation Lands, with some Class members having left reserve communities to live in places with access to adequate housing and others being unable to return home to First Nation Lands;
- (f) loss of opportunity to develop First Nation Lands for economic benefit; and
- (g) substantial pain and suffering.

PUNITIVE AND EXEMPLARY DAMAGES

189. Canada, including its ministers, senior officers, directors, and senior staff, had, or should have had, specific and complete knowledge of the widespread damage to the Plaintiffs and Class members that resulted from the breaches set out above. Despite this knowledge, Canada continued to, and continues to breach its duties to the Plaintiffs and Class members, who were profoundly vulnerable to its delicts, with devastating consequences.

190. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada has conducted its affairs with wanton disregard for the Plaintiffs and Class members' interests, safety and well-being.

191. Over a lengthy period, the Plaintiffs and Class members were treated in a manner that could only result in aggravated and increased mental and physical suffering for an already vulnerable population. Canada's violations of the Plaintiffs and Class members' rights have, in some instances, irreparably damaged their lives.

MISCELLANEOUS

192. Full particulars respecting Canada's breaches of its duties are within Canada's knowledge, control, and possession.

193. The Plaintiffs plead and rely upon the:

- (a) *Federal Courts Rules*, SOR/98-106, including Part 5.1;
- (b) *Federal Courts Act*, RSC., 1985, c. F-7;
- (c) *National Housing Strategy Act*, S.C. 2019, c. 29, s. 313;
- (d) *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14;
- (e) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.);

- (f) Common law; and
- (g) such other statutes and instruments as counsel shall advise.

194. The Plaintiffs propose that this action be tried at Toronto.

June 12, 2023



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