CV-25-00747522-0000 CP

Court File No. ____________

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KIASHKE ZAAGING ANISHINAABEK (GULL BAY FIRST NATION), CHIEF WILFRED N. KING, suing on his own behalf and on behalf of all members of KIASHKE ZAAGING ANISHINAABEK (GULL BAY FIRST NATION), KENNETH KING, WAYNE KING, and STACEY BARRY

Plaintiffs

- and -

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and THE ATTORNEY GENERAL OF CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $100,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: Issued by ______________________________
Local registrar

Address of court office 330 University Ave.
Toronto ON M5G 1R7

TO: **HIS MAJESTY THE KING IN RIGHT OF ONTARIO**
Crown Law Office – Civil
720 Bay Street, 8th Floor
Toronto, Ontario M7A 2S9

TO: **ATTORNEY GENERAL OF CANADA**
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1

CLAIM

1. The Plaintiffs claim on their own behalf and on behalf of the other members of the proposed class:

    a) an order pursuant to section 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the "***CPA***") certifying this action as a class proceeding and appointing Kiashke Zaaging Anishinaabek (Gull Bay First Nation) and Chief Wilfred N. King, suing on his own behalf and on behalf of all members of Kiashke Zaaging Anishinaabek (Gull Bay First Nation) (together, "**KZA**"), Kenneth King, Wayne King, and Stacey Barry as representative plaintiffs for the Class (defined below);

    b) declarations that the Defendants, individually and/or together:

        i. violated the rights of the Plaintiffs and the Class under section 15 of the *Canadian Charter of Rights and Freedoms* ("***Charter***") in relation to the discriminatory provision of inadequate and/or inequitable policing services to the Plaintiffs and the Class, in a manner that is not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*;

        ii. failed to uphold the honour of the Crown in negotiating, implementing, and/or renewing the Service-Level Agreements (defined below) with KZA and the First Nation Subclass (defined below);

        iii. breached their contractual obligations towards KZA and the First Nation Subclass by failing to perform the Service-Level Agreements in good faith; and

        iv. breached their *sui generis* fiduciary duties to the Plaintiffs and Class in relation to the provision of policing services On Reserve (defined below);

    c) in addition or in the alternative, a declaration that Ontario violated the rights of the Plaintiffs and the Class pursuant to section 1 of the *Human Rights Code*, RSO 1990,

c H-19 ("***Human Rights Code***") by providing policing services to the Class in a discriminatory manner without justification;

d) in addition or in the alternative, a declaration that the Defendants have violated the rights of the Plaintiffs and the Class under section 36(1)(a) and (c) of the *Constitution Act, 1982* by:

    i. failing to promote equal opportunities for the well-being of the Plaintiffs and the Class in the area of public safety; and/or

    ii. failing to provide the essential public service of policing of a reasonable quality to the Plaintiffs and the Class;

e) an order pursuant to section 24(1) of the *Charter* that the Defendants pay damages to the Plaintiffs and the Class, in such amount as the Plaintiffs will particularize prior to trial, for the Defendants' breaches of the *Charter* rights of the Plaintiffs and the Class;

f) in the alternative, an order pursuant to section 46.1(1) of the *Human Rights Code* that Ontario pay monetary compensation to the Plaintiffs and the Class, in such amount as the Plaintiffs will particularize prior to trial, for Ontario's breaches of the *Human Rights Code* rights of the Plaintiffs and the Class;

g) an order that the Defendants pay reconciliatory damages to KZA and the First Nation Subclass, in such amount as the Plaintiffs will particularize prior to trial, for the Defendants' failure to uphold the honour of the Crown in negotiating, implementing, and/or renewing the Service-Level Agreements;

h) an order that the Defendants pay damages to KZA and the First Nation Subclass, in such amount as the Plaintiffs will particularize prior to trial, for the Defendants' breaches of contract;

i) an order that the Defendants pay equitable compensation to the Plaintiffs and the Class, in such amount as the Plaintiffs will particularize prior to trial, in respect of their breaches of fiduciary duties owed to the Plaintiffs and the Class;

j) an order that the Defendants pay special damages to the Plaintiffs and the Class in such amount as the Plaintiffs will particularize prior to trial;

k) an order that the Defendants pay aggravated damages to the Plaintiffs and the Class in such amount as the Plaintiffs will particularize prior to trial;

l) an order that the Defendants pay punitive and exemplary damages to the Plaintiffs in the amount of $100 million or such other amount as the Plaintiffs will particularize prior to trial;

m) an order directing a plan for the resolution of any individual issues, including awards of damages, following the determination of the common issues and any award of aggregate damages;

n) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c 43;

o) costs of this action on a substantial indemnity basis, together with HST if applicable, or other applicable taxes, thereon; and

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

I. DEFINITIONS

2. The following defined terms are referenced in this Statement of Claim:

    a) “**Canada**” means His Majesty in right of Canada, defendant in this proceeding, as represented by the Attorney General of Canada pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

    b) “**Class**” or “**Class Members**” mean:

        i. All Indigenous communities that have, or have had, policing services or policing infrastructure funded through an agreement that includes as parties Canada, Ontario, and an Indigenous government or other Indigenous entity, between 1991 and the present (the “**First Nation Subclass**” or “**First**

Nation Subclass Members", and each a "**First Nation Subclass Member**"); and

ii. All Indigenous individuals who are or were ordinarily resident On Reserve at the time that the First Nation in question had policing services or policing infrastructure funded through an agreement that includes as parties Canada, Ontario, and an Indigenous government or other Indigenous entity, between 1991 and the present (the "**Resident Subclass**" or "**Resident Subclass Members**", and each a "**Resident**");

c) "**Class Period**" means the period from June 1991 to the date of certification of this action as a class proceeding;

d) "***CPSA***" means the *Community Safety and Policing Act, 2019*, SO 2019, c 1, Sched 1;

e) "**Contribution Agreement**" means an agreement under the FNIPP between Canada and Ontario setting terms for each government's funding responsibilities under the FNIPP (defined below);

f) "**First Nation Subclass**" is defined at paragraph 2(b)(i) herein;

g) "**FNIPFP"** means the First Nations and Inuit Policing Facilities Program, a non-statutory federal program currently operated by Public Safety Canada (formerly the Department of the Solicitor General);

h) "**FNIPP**" means the First Nations and Inuit Policing Program, formerly known as the First Nations Policing Program and before that as the Indian Policing Program, a non-statutory federal program currently operated by Public Safety Canada (formerly the Department of the Solicitor General), and previously operated by the Department of Indian Affairs;

i) "**GBFN Police**" means the police force of KZA, the Gull Bay First Nation police force;

j) “**Gull Bay 55**” means the lands set apart for KZA and recognized as reserve lands within the meaning of the *Indian Act*;

k) “***Indian Act***” means the *Indian Act*, RSC 1985, c I-5;

l) “**KZA**” means the plaintiff Kiashke Zaaging Anishinaabek (Gull Bay First Nation);

m) “**OPP**” means the Ontario Provincial Police;

n) “**OFNPA**” means the Ontario First Nations Police Agreement;

o) “**OFNPA Stream**” means the FNIPP funding model in which Indigenous police forces On Reserve are significantly integrated with the OPP;

p) “**On Reserve**” means located on lands that are designated as a “reserve” within the meaning of the *Indian Act*; or located on lands that are designated as “First Nation land” within the meaning of the *Framework Agreement on First Nation Land Management Act*, SC 2022, c 19, s 121; or located on lands that have not to date been formally designated as a “reserve” pursuant to the aforementioned provision, but are recognized as an “Indian settlement” under the *Indians and Bands on Certain Indian Settlements Remission Order*, SI/92-102;

q) “**Ontario**” means the Crown in right of Ontario, defendant in this proceeding as represented by His Majesty the King in right of Ontario pursuant to the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sched 17;

r) “***PSA***” means the *Police Services Act*, RSO 1990, c P.15 (now repealed);

s) “**Policy**” means the federal First Nations Policing Policy, first developed by the Department of the Solicitor General in or around 1991 (the “**Policy (1991)**”) and later amended in 1996 (the “**Policy (1996)**”), that sets out the framework of the FNIPP;

t) “**RCMP**” means the Royal Canadian Mounted Police;

u) “**Resident Subclass**” is defined at paragraph 2(b)(ii) herein;

v) “**Resident Plaintiffs**” means the plaintiffs Kenneth King, Wayne King, and Stacey Barry;

w) “**Self-Administered Stream**” means the FNIPP funding model through which the participating First Nation(s) administer their own police forces, either individually or as a collective;

x) “**Service-Level Agreement**” means an agreement under the FNIPP between Canada, Ontario, one or more First Nations, and sometimes an additional Indigenous entity (or additional Indigenous entities) for the provision of policing services On Reserve to a First Nation; and

y) “**Terms and Conditions**” means the federal policy instrument developed by Public Safety Canada and/or the Department of the Solicitor General, as it has existed from in or around 1992 to the present, which describes the terms and conditions that purportedly constrain contributions by Canada under the FNIPP.

II. OVERVIEW

3. Over the Class Period, Canada and Ontario have structured and implemented the provision of policing services to the First Nation Subclass and the Residents in a discriminatory, inadequate, and culturally inappropriate manner.

4. As a result of action and inaction by both Defendants, Indigenous reserve communities in Ontario, together with their Indigenous residents, receive policing services that are inadequate and non-responsive to their cultural and public safety needs, and that are of a materially inferior standard to the services provided to similarly situated non-reserve communities and their residents. These Indigenous communities and residents’ experience of inadequate, non-responsive, and materially inferior policing is compounded by their remoteness, their cultural and linguistic difference from non-reserve communities, and the public safety crises disproportionately affecting them.

5. The Defendants have chosen to implement policing On Reserve in Ontario through the FNIPP. For decades, the Defendants have known that their implementation of policing On

Reserve under the FNIPP is under-funded, inadequate, and harmful to the Class Members, but have perpetuated this failure.

6. Ontario and Canada share responsibility, jurisdiction, and liability in respect of policing services provided to Indigenous communities On Reserve and their residents in Ontario. Both are responsible for the harms caused by the discriminatory provision of policing services to the Class Members.

7. In their provision of policing services On Reserve and their implementation of the FNIPP:

    a) the Defendants have violated, and continue to violate, the equality rights of the Class Members under section 15 of the *Charter*, in a manner that cannot be justified under section 1 of the *Charter*;

    b) in addition or in the alternative, Ontario has discriminated, and continues to discriminate, against the Class Members on prohibited grounds under section 1 of the *Human Rights Code*;

    c) the Defendants have failed, and continue to fail, to uphold the honour of the Crown in contractual relations with the First Nation Subclass Members;

    d) the Defendants have breached, and continue to breach, their contractual obligations to the First Nation Subclass Members for the provision of police services On Reserve; and

    e) the Defendants have breached, and continue to breach, their fiduciary duties owed to the Class Members.

8. The Defendants' persistent, ongoing failure to provide On Reserve policing services in an equitable and honourable manner has harmed the Class Members and is corrosive to the goals of reconciliation.

III. THE PARTIES

A. The Plaintiffs

9. KZA is an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*, a signatory to the Robinson Superior Treaty of 1850, and an Indian Band within the meaning of the *Indian Act*. KZA is comprised of its members. KZA's traditional territory is located north of Lake Superior, in and around Lake Nipigon, and its reserve, Gull River 55, is located on the west side of Lake Nipigon. KZA is a member of the First Nation Subclass. Chief Wilfred N. King is the Chief of KZA, elected pursuant to the *First Nations Election Act*, SC 2014, c 5.

10. The Resident Plaintiffs (consisting of Kenneth King, Wayne King, and Stacey Barry) are members of KZA and are ordinarily resident on KZA's reserve, Gull River 55. Each of the Resident Plaintiffs is a member of the Resident Subclass.

B. The Defendants

11. The Attorney General of Canada is the chief law officer of the federal Crown and the representative of His Majesty the King in right of Canada, in whose name proceedings against the Crown in right of Canada may be brought in accordance with the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

12. His Majesty the King in Right of Ontario is designated as the representative of the Crown in right of Ontario pursuant to the *Crown Liability and Proceedings Act, 2019*, SO 2019, c 7, Sch 17.

IV. FACTS

A. The recognized need for culturally appropriate police services On Reserve

13. In Ontario, police institutions have been implicated in a long and continuing history of governmental efforts to suppress Indigenous ways of life and force assimilation. Police forces have enabled and participated in government programs limiting Indigenous rights guaranteed by section 35 of the *Constitution Act, 1982*, as well as removing Indigenous children from their families and enforcing attendance at residential schools, confining Indigenous people to reserves, and enforcing bans on Indigenous cultural and spiritual practices. Indigenous peoples' need for culturally appropriate policing is reinforced by the traumatizing and difficult relationship that Indigenous peoples continue to have with the mainstream policing institutions that have been imposed upon them.

14. This legacy of policing is within living memory of Class Members and continues to generate profound mistrust of police forces and institutions. It is compounded by Indigenous people's contemporary experience of systemic discrimination within policing institutions and across the criminal legal system, as well as the dire and well-identified overrepresentation of Indigenous people among those who are victims of crimes, accused of crimes, and incarcerated for crimes in Ontario.

15. The circumstances described above underscore the profound need for the delivery of culturally appropriate and accountable police services in Indigenous communities On Reserve.

B. Historical policing arrangements On Reserve

16. For decades prior to the 1960s, Canada assumed control of the provision of policing services On Reserve, and directly installed police institutions in Indigenous communities On Reserve without regard for the needs or preferences of the Indigenous communities being policed. During that time, the main police force in Indigenous communities On Reserve was the RCMP.

17. The former federal Department of Indian Affairs and Northern Development created and implemented a band constable system in or around 1965-66, following which band constables largely replaced the RCMP as the main policing presence On Reserve. Band constables working in the band constable system were not fully credentialized, but rather operated under special authorization from the RCMP or a provincial police service. They did not carry weapons, could not lay charges, and were expected to rely on mainstream policing support to carry out full policing services in their area. The band constable system was ineffective, as it did not allow for robust or culturally appropriate policing, and ultimately fell out of favour.

18. It became increasingly accepted in the 1960s and 1970s that provincial laws of general application were applicable On Reserve, and as a result the sphere of operation of provincial jurisdiction expanded in practice. Beginning in or around the mid-1970s, Canada gradually shifted from directly providing policing On Reserve in Ontario, either through the RCMP or band constables, to contributing funding for On Reserve policing by and/or under the supervision of provincial police forces.

19. Until Canada's creation of the Policy (1991) and the Defendants' implementation of the FNIPP in the early 1990s, the Defendants had no consistent or formalized structure for the provision of policing On Reserve within Ontario.

20. Between the 1970s and the 1990s, it became known to, and recognized by, Canada and Ontario that the execution of policing services On Reserve was unresponsive to the needs of Indigenous people and that substantial inequities existed in the policing services available On Reserve compared with off-reserve counterparts. A series of reports prepared

by Canada found that policing On Reserve was being delivered in an inequitable manner, compared with policing in off-reserve communities, and that policing arrangements throughout the country were makeshift, unaccountable to the First Nations they served, ineffective, and unresponsive to the needs of the First Nations. These reports also found that the personal security of the reserve residents was lower than that of other Canadians.

21. The Policy (1991) describes itself as "the outcome of review completed in early 1991, which included two rounds of extensive consultations with a large cross-section of First Nations communities across Canada, many existing First Nations police forces and all provincial/territorial governments" and confirms that "the review revealed a growing demand for improved First Nations policing services". In recognition of, and response to, this demand, Canada created, and Canada and Ontario implemented, the Policy (1991) and the FNIPP.

C. The Defendants' policy and funding framework for the provision of policing services On Reserve in Ontario

(i) The Policy

22. Since 1991, the Defendants have chosen to implement policing On Reserve under the rubric of the Policy, a federal instrument. Canada amended the Policy once in 1996, in part (as the Policy (1996) explains) to "highlight a commitment to supporting First Nations to become self-sufficient and self-governing, and to maintaining partnerships with First Nations based on trust, mutual respect and participation in decision-making".

23. The Policy sets out Canada's plan for the provision of policing services On Reserve and articulates the principles that are intended to apply to On Reserve policing. The Policy is common to the Class Members. The stated purpose of the Policy is "to contribute to the improvement of social order, public security and personal safety in First Nations communities" through the "establishment of First Nations police services that are professional, effective, and responsive to the needs of the community". In the Policy, Canada also commits to providing First Nations across Canada with access to police services that are culturally appropriate.

24. More specifically, the Policy sets out the following underlying principles and commitments made by Canada:

    a) "Quality and Level of Service", requiring that Indigenous communities have access to policing services that are both responsive to their particular needs and equal in quality and level of service to policing services found in similar off-reserve communities in the region;

    b) "Responsibilities and Authorities", requiring that front-line officers have authority to enforce all applicable federal and provincial laws, as well as First Nation bylaws;

    c) "Police Service Options", requiring that Indigenous communities have access to at least the same police service models available to similar off-reserve communities in the region, as well as input in determining which model is best for the particular Indigenous community; and

    d) "Cost-shared Arrangements", recognizing that the federal and provincial governments share jurisdiction in respect of On Reserve policing, and requiring each of Canada and the provincial government to provide the funding necessary to promote national standards and the Policy's principles on the basis of consistent and equitable funding arrangements within the allocated budget.

25. The Policy also contemplates the existence of a robust legislative framework and systems for accountability, independence, and oversight of On Reserve police forces. It expressly requires that police services On Reserve meet the relevant provincial or territorial standards.

26. The Policy contemplates that Canada will fund Indigenous On Reserve policing in the provinces within a budget unilaterally set by Canada and/or the provinces. In practice, the Defendants fund the FNIPP by agreeing amongst themselves to a hard funding cap for FNIPP policing in Ontario.

(ii) The implementation of the Policy via the FNIPP and the FNIPFP

27. Canada has, since in or around 1991, implemented the Policy through the FNIPP. The FNIPP is a program through which policing is delivered On Reserve to the Class Members.

Responsibility for the Policy and the FNIPP was transferred from the Department of Indian Affairs and Northern Development to the Solicitor General of Canada (now Public Safety Canada) in or around February 1992.

28. The Policy describes the FNIPP as "a practical means to support the federal policy on the implementation of the inherent right and the negotiation of self-government". According to the Policy, the FNIPP is intended to operate on the basis of a principle of partnership, with federal, provincial, and Indigenous governments working together to negotiate Service-Level Agreements to "meet the particular needs of each community".

29. The FNIPP operates through a series of bilateral, trilateral, and multilateral agreements across the country, including in Ontario. Canada and Ontario have entered into a series of Contribution Agreements that set out annual maximum amounts for FNIPP funding over the term of the Contribution Agreement, with Canada responsible for 52% of the costs and Ontario responsible for 48% percent of the costs. These agreements are developed, signed, implemented and renewed without the input of First Nations, and function to establish caps on the funds provided by the Defendants for On Reserve policing. Canada and Ontario have entered into a number of such agreements since 1991.

30. When a First Nation elects to participate in the FNIPP, it does so by entering into a Service-Level Agreement, which is a trilateral or multi-lateral agreement with Canada and the relevant province or territory setting out the terms for the provision of policing to the First Nation.

31. The Policy provides that the parties to the Service-Level Agreements will determine "[w]ithin the funds available" (that is, the amount established by the Defendants in their Contribution Agreements) the number of police officers and civilian staff required, having regard to a) the demographic characteristics of the population to be served, b) the size and nature of the geographic area to be covered, and c) the police workload in the community, based on both crime statistics and crime prevention activities. Notably, the Policy limits the FNIPP to "funds available," and does not consider the funding made available to comparable non-reserve communities for policing services, the actual costs of providing

the services contemplated by the Policy in remote reserve communities, or the relevant First Nation's perspective on the funds required.

32. Service-Level Agreements often have short terms, generating funding insecurity and unpredictability for the Plaintiffs and the Class, and inhibiting long-term planning.

33. At various times during the existence of the FNIPP, Canada has issued versions of a policy directive describing the terms and conditions that purportedly constrain federal contributions under the FNIPP (defined in paragraph 2(h) as the "Terms and Conditions"). The Terms and Conditions purport to list the categories of expenses that are eligible for FNIPP funding, and to list others that are ineligible. The Defendants rely on the Terms and Conditions to further limit the funding available for the provision of policing services On Reserve and to further constrain the manner in which available funds may be spent for the provision of policing services On Reserve.

34. The times at which, and extent to which, Canada has enforced the Terms and Conditions in allocating funding under the FNIPP are known to the Defendants and unknown to the Plaintiffs.

35. The Defendants fund some policing infrastructure On Reserve through the First Nations and Inuit Policing Facilities Program . Under the FNIPFP, as under the FNIPP, Canada is responsible for 52% of the program costs and Ontario is responsible for 48% percent of the program costs.

(iii) Provincial policing legislation and the implementation of the FNIPP in Ontario

36. Ontario generally regulates the provision of policing services and associated standards for policing services through provincial legislation of general application: prior to April 1, 2024, the *Police Services Act*, RSO 1990, c P.15 (now repealed), and since April 1, 2024, the *Community Safety and Policing Act, 2019*, SO 2019, c 1, Sched 1. This provincial legislation generally requires that policing services be provided "throughout Ontario" in accordance with certain principles, and that such policing services must meet legislated standards of "adequacy and effectiveness". Under provincial legislation, municipalities are

required to ensure that adequate and effective policing is provided in the areas over which they have policing responsibility (via a municipal police service board, via an agreement for provision of police services by the OPP, or via another approved method), and the OPP is responsible for ensuring that adequate and effective policing is provided for every area of Ontario that is outside the areas for which police service boards have policing responsibility.

37. Provincial policing legislation provides for various institutional mechanisms for and regulatory provisions respecting the oversight and management of the OPP, municipal police forces, and their member police officers. Prior to April 1, 2024, when the *PSA* was in force, these aspects of Ontario provincial policing legislation were, by design, largely inapplicable to On Reserve police forces (and their member police officers) that are funded under the FNIPP. The *CSPA*, in force since April 1, 2024, now provides for the constitution of "First Nation boards", which may be created by the Minister upon request by one or more First Nation band council(s) in order to provide policing services On Reserve.

38. Under the *CSPA*, an On Reserve police force has responsibility for providing adequate and effective policing only if it is maintained by a police service board that has been constituted by the Minister as a "First Nation board" under the *CSPA*; otherwise, the OPP (or, exceptionally, a municipal police service board) retains the statutory responsibility to ensure the provision of adequate and effective policing On Reserve.

39. To date, one "First Nation board" has been constituted by the Minister under the *CSPA*, the Nishnawbe Aski Police Service Board, established under O Reg 515/24 (effective December 10, 2024) and assigned policing responsibility for the reserve lands of 34 First Nations.

40. Unless they are employed by a police service that is maintained by a "First Nation board" constituted under the *CSPA*, the police officers of On Reserve police forces that are funded under the FNIPP obtain their powers as police officers by virtue of individual appointments by the OPP Commissioner (prior to April 1, 2024, as "First Nations Constables" pursuant to section 54 of the *Police Services Act*, and since April 1, 2024, as "First Nation Officers" pursuant to section 101 of the *CPSA*).

41. There are currently two main mechanisms or streams through which the FNIPP operates in Ontario. Each of the First Nation Subclass Members participates in one of these two streams, and both streams operate through the FNIPP and the series of contractual arrangements between the Defendants and the First Nations Subclass Members described above:

   a) Self-Administered Stream: Some Indigenous communities, acting on their own or in groups, operate self-administered police forces with FNIPP funding. In general, each of these self-administered police forces is governed by a legal entity established as a not-for-profit corporation, that employs the force's member police officers, and that participates as a party in the Service-Level Agreement along with the relevant First Nations(s) and the Defendants. The Nishnawbe Aski Police Service Board—the only "First Nation board" that has to date been constituted under the *CSPA*—operated under the same name as a not-for-profit corporation prior to its constitution under the *CSPA*.

   b) OFNPA Stream: Some Indigenous communities are funded through a framework agreement called the Ontario First Nations Police Agreement. The OFNPA contemplates a number of different arrangements for the provision of policing services On Reserve, including First Nations police forces that are established by First Nations but "administered" by the OPP. The First Nations police forces that operate under the OFNPA Stream have a significant degree of integration with the OPP.

D. The Defendants' discriminatory and dishonourable provision of policing On Reserve

42. The Defendants' provision of policing services On Reserve falls far short of meeting either provincial standards or the actual needs of the Class Members. The policing services that the Defendants have implemented On Reserve have not, at any material time, been adequate and effective within the requirements of the former *PSA* or the current *CSPA*. The policing services that the Defendants have implemented On Reserve have not, at any material time, met the physical or cultural safety needs of the Class Members.

43. The policing services On Reserve provided by the Defendants are materially inferior to those provided in similarly situated off-reserve communities. Compared with their similarly situated off-reserve counterparts, the Class Members experience longer wait times for police assistance following emergency calls, receive lower levels of staffing, receive policing from less well-equipped front-line service providers, and go without certain types of policing services.

44. The Defendants' failure to provide adequate, effective, and/or equitable policing services On Reserve is perpetuated, reinforced, and exacerbated by the structural limitations of the FNIPP. The budgets of the Service-Level Agreements are subject to hard caps fixed by the Defendants in the Contribution Agreements. The budgetary constraints that the Defendants impose on the FNIPP bear no relation to the policing required On Reserve. The Defendants design and implement the FNIPP in a manner that results in the gross underfunding of On Reserve policing services, having regard to provincial policing standards, the actual needs and circumstances of the Class Members, and the level of policing services provided to similarly situated off-reserve communities.

45. Since nearly the inception of the FNIPP, the Defendants have actually known, or constructively known, of the Defendants' insufficient and inequitable provision of On Reserve policing services through the FNIPP and the resulting harms (described below in Part IV(E)). Throughout the duration of the FNIPP to date, First Nations have repeatedly raised the issue of insufficient and inequitable policing On Reserve and sought improvements to the FNIPP and/or the Service-Level Agreements. Starting at least as early as the 2000s, a series of authoritative and independent bodies—including courts, tribunals, commissions of inquiry, auditors general, and academic experts—have reported upon the inadequacies and inequities of the Defendants' provision of On Reserve policing services, and the associated harms.

46. In light of the Defendants' failures to provide appropriate policing On Reserve, and actual or constructive knowledge of such failures, the Defendants' conduct in negotiating Service-Level Agreements under the FNIPP has at all material times been dishonourable. Since the inception of the FNIPP, the Defendants have drafted the Service-Level Agreements

without providing the First Nation Subclass with meaningful, or any, opportunity for input. The Defendants present the Service-Level Agreements to the First Nation Subclass on a take-it-or-leave it basis, on tight deadlines and on threat of cutting funding for an essential public service.

47. In presenting the Service-Level Agreements to the First Nation Subclass, the Defendants are intransigent with respect to the budgetary limits and the terms, including the Terms and Conditions, excluding funding certain necessary elements of policing services. In renewing the Service-Level Agreements with KZA and with the First Nation Subclass, the Defendants have consistently repeated their high-handed and intransigent conduct by failing to engage meaningfully and in good faith with the needs of the First Nations or the commitments set out in the Policy.

48. Although the First Nation Subclass Members appear to exercise a choice that triggers the FNIPP's application, that choice is one in name only. The conduct of the Defendants places First Nation Subclass Members in a double bind: they must either choose to accept the inadequate funding and terms imposed upon them by the Defendants or choose to be policed in a culturally inappropriate manner by the OPP. The latter choice is not a viable option for the First Nation Subclass. The Class Members continue to experience systemic discrimination in mainstream criminal justice systems, including policing, which have long proven deeply unsuited to the needs and circumstances of the Class.

49. The Defendants' approach of non-negotiation with the First Nation Subclass has resulted in the Defendants' failure live up to the principles of the Policy, including with respect to:

    a) *Quality and level of service*. The Class Members do not have access to policing services that are responsive to their particular needs. They do not have access to policing services that are equal in quality to those received by similarly situated off-reserve communities and their residents;

    b) *Responsibilities and authorities*. The Class Members do not receive policing from front-line officers with properly delineated authority under provincial and First Nations laws;

c) *Police service options*. The Class Members do not have access to the same range of police services as similarly situated off-reserve communities and their residents, because, *inter alia*, a) the FNIPP does not fund specialized units and b) the Service-Level Agreements do not provide funding for sufficient front-line staff; and

d) *Cost-shared arrangements*. In circumstances in which the existing inadequacies of On Reserve policing services are well known, the Defendants persistently allocate budgets that they know are insufficient to allow for the provision of policing services On Reserve that meet applicable service standards and/or promote the Policy's principles.

50. The Defendants do not provide the Class Members with effective, culturally appropriate policing that is accountable to the First Nation Subclass Members. The Defendants do not treat the First Nation Subclass Members as partners and do not work with the First Nation Subclass Members to negotiate Service-Level Agreements that meet the particular needs of each of them. The Defendants obstinately refuse to genuinely negotiate with the First Nation Subclass Members, and breach their obligations as set out herein, causing harm to the First Nation Subclass Members and the Residents alike.

E. The Defendants' conduct in the provision of On Reserve police services harms the Class Members

51. The harms caused by the Defendants' conduct in the provision of On Reserve police services include, but are not limited to:

a) *Safety and security of First Nation Subclass Members and Residents is compromised*. The insufficiency of police services On Reserve results in persistent failures to provide responsive and effective policing interventions to the public, which results in the endangerment of personal safety and security. The Residents suffer long response times amounting to inhumane delays, which can last many hours even in cases of life-threatening emergencies;

b) *Dangerous, deadly and/or culturally inappropriate police interventions*. The insufficiency of policing infrastructure and equipment, and the lack of funding for

Indigenous-led policy and programming, contributes to and exacerbates the existing crisis of discriminatory policing;

c) *Chronic under-presence of police On Reserve*. The First Nation Subclass Members have insufficient numbers of front-line officers and civilian staff to meet provincial standards for adequate and effective policing, such as 24/7 policing. The front-line officers and civilian staff who provide police services On Reserve do not have adequate supports in the performance of their roles. The Residents are left with patchy, unreliable and inadequate access to police assistance. The officers providing policing services are required to operate under highly difficult working conditions, and under-staffing is exacerbated by inadequate funding for programs to supply temporary coverage during vacancies or leaves. Police personnel On Reserve often operate out of rundown or grossly inadequate detachments that lack key policing features such as firearm storage, secure vehicle parking, and adequate communications networks, or even basic fire prevention measures. They also operate with missing or low-quality equipment, including vehicles and communications technology. The poor resourcing of frontline officers compounds the problem of under-presence of police On Reserve;

d) *Insufficient access to culturally appropriate community-developed programs and policies.* No funding is provided to support the development of tailored programs to suit the specific needs of the Class Members. Consequently, the First Nation Subclass Members have been prevented from realizing on the promise of culturally safe and appropriate policing, for instance through the development of policies for bylaw enforcement, diversion programs, or restorative justice programs, and the Residents have been prevented from experiencing such policing; and

e) *Failure to support First Nation Subclass Members' governmental roles*. FNIPP funding is grossly inadequate in resourcing the First Nation Subclass Members' capacity to exercise organizational autonomy and governmental authority in relation to policing, including in recruitment and management of staff, exercise of

oversight of police forces, negotiation of FNIPP Agreements, and collection and management of relevant data.

52. The deficiencies described above leave the Class Members under-protected and without the promised benefit of culturally appropriate policing.

53. The Defendants' under-funding of the FNIPP perpetuates and exacerbates the disadvantages the First Nation Subclass Members and/or Residents have experienced in 1) having colonial legal frameworks and policing institutions imposed upon them, 2) being deprived of an avenue of exercising self-governance in the area of community safety and well-being, and 3) experiencing inferior essential service programming than similarly situated neighbours who are not Indigenous.

F. The Representative Plaintiffs' experiences with policing On Reserve

(i) KZA

54. Like many First Nations across Canada, KZA has suffered the harms of colonial policing. KZA was one of the earliest First Nations in Canada to create its own police force in the early 1970s, and has participated in the FNIPP since the program's inception in or around 1992.

55. KZA operates a police force funded under the OFNPA Stream of the FNIPP, known as the GBFN Police. KZA views the maintenance of the GBFN Police as a key aspect of its self-governance and as an important tool in promoting community safety and well-being.

56. Since in or around 1992, KZA has been party to a series of short-term Service-Level Agreements with the Defendants. The Defendants have presented each Service-Level Agreement to KZA on a take-it-or-leave-it basis, on threat of cutting funding and with no time or support for meaningful negotiation.

57. Throughout its participation in the FNIPP, KZA has experienced insufficient and culturally inappropriate policing, and has suffered resulting harms as particularized herein.

58. Non-exhaustive illustrations of such harms include the following:

a) Under the OFNPA funding formula, KZA receives funding for three police officers. Even when all three positions are filled and no officers are on leave, this complement of three officers is insufficient to provide for adequate and effective police services. There are many days when no GBFN Police officer is available to the community and emergency police assistance must be provided by OPP officers who travel to Gull River 55 from off reserve detachments. KZA Residents are thus frequently subjected to inappropriate wait times and, often, culturally inappropriate policing.

b) For many years, KZA operated its police service out of small office spaces without appropriate policing features. After a hard-fought negotiation, KZA obtained special funding for the construction of a new detachment, which opened in 2024. However, there is no funding for its maintenance and operation.

c) Due to lack of funding for administrative management, the GBFN Police officers report to, and are subject to, direct supervision and oversight by the OPP chain of command via the OPP Armstrong Detachment. Often, they are instructed to remain in Armstrong to cover shortages there, and their policing assignments and priorities are managed and determined by Armstrong OPP supervisors.

59. Like other First Nation Subclass Members, KZA had no meaningful opportunity to negotiate the terms of its Service-Level Agreements. Typically, the Defendants provided a pre-written contract, advised KZA what the funding and officer allocation will be, and provided a few weeks to sign under threat that the funds would be withheld if the agreement was not renewed.

60. KZA has repeatedly faced the difficult decision either to receive inequitable funding for its own police force, or to choose to forego its own police force and be policed solely by the OPP, a police force that has demonstrated discrimination and violence toward KZA and its members, and that has consistently disregarded its particular policing needs.

(ii) Residents

61. Kenneth King is a member of KZA. He was born in 1962 and has resided in Gull Bay 55 for his entire life. In addition to his personal experiences with the inadequacy of policing

in Gull Bay 55, Kenneth is also a KZA Councillor and the Fire Chief for KZA. In those capacities, he has become aware of many other instances and aspects of the inadequacy of policing in Gull Bay 55, which has caused and continues to cause harm to Gull Bay residents.

62. Wayne King is a member of KZA. He was born in 1957 and has resided in Gull Bay 55 for his entire life. Wayne has had many years of personal experiences with the inadequacy of policing in Gull Bay 55, which has caused harm to him and his loved ones.

63. Stacey Barry is a member of KZA. She was born in 1996 and has resided in Gull Bay 55 for much of her life, including continuously since 2013. Stacey has had many years of personal experiences with the inadequacy of policing in Gull Bay 55, which has caused harm to her and her loved ones.

64. Each of the Resident Plaintiffs has experienced insufficient and culturally inappropriate policing while residing in Gull Bay 55, including but not limited to:

    a) unavailability of police services, with emergency calls resulting in no police attendance or police attendance delayed by hours or even days;

    b) wait times approaching or exceeding an hour even during situations of life-threatening emergency;

    c) lack of police availability for information gathering, follow-up and/or investigation in the aftermath of an incident;

    d) the absence of KZA- or Indigenous-led programming, exacerbating persistent experiences of culturally inappropriate police services; and

    e) the absence of police presence in Gull Bay 55, resulting in persistent experiences of anxiety and fear for personal safety.

V. BREACHES BY THE DEFENDANTS

A. Joint jurisdiction, responsibility, and liability of the Defendants

65. Canada and Ontario bear joint liability for failures to provide equitable policing services to Indigenous reserve communities and Indigenous reserve residents in Ontario.

66. The Defendants each have constitutional jurisdiction in relation to On Reserve policing services pursuant to the division of powers enshrined in the *Constitution Act, 1867*: pursuant to section 91(24), Canada has exclusive jurisdiction over "Indians, and Lands reserved for the Indians", and pursuant to section 92(14), Ontario retains jurisdiction over the administration of justice, which includes policing services.

67. On Reserve policing is a subject matter with a double aspect in which concurrent federal and provincial jurisdiction exists and in respect of which concerted and coordinated action by both levels of government is required and/or has been adopted by the Defendants.

68. Both Defendants have in fact exercised, and continue to exercise, their subject-matter jurisdiction in respect of the provision of policing services On Reserve in Ontario. The funding arrangements established in the FNIPP are premised on such an understanding of shared jurisdiction: the Policy provides that "[t]he federal and provincial governments, because they share jurisdiction, should share the cost of First Nations policing services."

69. Both Defendants are liable for the discriminatory and dishonourable provision of policing service On Reserve, as set out below.

B. The Defendants have unjustifiably infringed the Class Members' section 15 equality rights

70. The Defendants' provision of On Reserve policing services is discriminatory on its face and in its impact, contrary to section 15(1) of the *Charter*.

(i) The Defendants' conduct contributes to a distinction on the basis of protected grounds

71. The Resident Subclass Members are identified by enumerated and analogous grounds under section 15(1) of the *Charter* by virtue of their Indigeneity and Aboriginality-residence On Reserve. The First Nation Subclass Members are a recognized analogous group identified by their Indigeneity and residence On Reserve. The decision to live On Reserve is a personal characteristic essential to Class members' identities and can only be changed at great cost, if at all.

72. The Defendants have created and/or operationalized a separate stream for the provision of policing services to the Class, specifically tied to the Indigeneity and Aboriginality-residence of the First Nations Subclass Members and the Residents, including the Plaintiffs. Through the FNIPP, the Contribution Agreements, the Service-Level Agreements and provincial policing legislation, the Defendants provide police services to the First Nations Subclass Members and the Residents in a manner that is distinct from how policing services are delivered to similarly situated non-reserve communities and their residents. By design, the Defendants draw a distinction in the provision of policing services because these services are delivered On Reserve and because the First Nations Subclass Members and the Residents are Indigenous – that is, on the basis of protected grounds.

73. In the alternative, the distinction arises indirectly. The Defendants deliver policing On Reserve to the First Nations Subclass Members and the Residents, including the Plaintiffs, to a standard not equivalent to that provided to comparable off-reserve communities and their residents. This differential treatment disproportionately impacts communities and individuals that are Indigenous and On Reserve.

74. The Class Members, whether they receive policing under the OFNPA Stream or the Self-Administered Stream, receive access to policing services that are formally unequal, compared with the policing services delivered to similarly situated off-reserve communities and their residents in Ontario. The Defendants' provision of lesser policing services to the Class Members results in, *inter alia*:

    a) the Residents' emergency calls attracting longer wait times;

b) the First Nation Subclass Members' police detachments having fewer staff;

c) the First Nation Subclass Members' On Reserve police forces having less access to infrastructure and equipment, and/or having access to inadequate infrastructure and equipment; and

d) the unavailability of police services, and/or of certain police services.

75. Additionally or in the alternative, the Defendants provide the First Nations Subclass Members and the Residents with policing services that are *substantively inequitable*, and that do not adequately correspond to their actual needs and circumstances. As a result of their Indigenous difference, as well as the history of colonial policing and continuing pervasive systemic discrimination in the criminal legal system, the Class Members have unique and different policing needs, and they experience disproportionate and differential adverse effects from the imposition of culturally-inappropriate mainstream policing approaches.

76. The Class Members have a particular and greater need for certain policing services, including as a result of higher incidences of crime in their communities and systemic overrepresentation of Indigenous individuals in the criminal legal system. The Class Members have a particular and greater need for preventative policing programming as well as culturally appropriate policing strategies, including to counteract and respond to their systemic disadvantage and existing alienation from the criminal legal system.

77. Each of the Defendants participates in the provision of the benefit of policing services to the First Nations Subclass Members and the Residents, including the Plaintiffs. Each has materially contributed to the discriminatory manner in which these services are provided. Together and individually, the Defendants are responsible for the discriminatory manner in which these services are provided to the Class, including the Plaintiffs.

78. At all material times, Ontario has failed to meet its responsibility to ensure that the policing services provided to the First Nations Subclass Members and the Residents satisfy the provincial statutory standards of adequacy and effectiveness. In similarly situated off-reserve communities, Ontario supplies policing services that satisfy the applicable

provincial standards and/or that are of a materially higher service standard than the policing services available to the Class Members. By contrast, with respect to the provision of policing services On Reserve, Ontario has adhered rigidly to the terms of the federal FNIPP, including restrictive funding caps that bear no relationship to what is required to provide policing services that meet provincial standards and/or that are substantively equivalent to those available to similarly situated off-reserve communities. Ontario has allowed the FNIPP regime to dictate policing programming and funding On Reserve, despite having actual or constructive knowledge that the policing services delivered to the Class under the terms of the FNIPP persistently fail to achieve provincial standards and/or are of materially lesser standard than the services available in similarly situated off-reserve communities in Ontario.

79. Canada participates in the provision of policing services to the Class Members, through its role in the development and implementation of the Policy and the FNIPP, through its participation in Contribution Agreements and Service-Level Agreements, and through its provision of funding. In creating and implementing the FNIPP, Canada has contributed to the circumstances by which the First Nations and the Residents, including the Plaintiffs, receive policing services that are of materially inferior standard to the services available in similarly situated off-reserve communities. Canada's imposition of arbitrary funding caps and limits on the categories of permissible expenditures render it impossible for the Class Members to receive adequate and appropriate policing services.

80. Additionally, or in the alternative, Canada has failed to ensure that the policing services provided to Class Members under the FNIPP meet provincial standards, as required by the Policy. Canada's imposition of a hard budget cap on the FNIPP has rendered the program incapable of providing the Class Members with policing services that satisfy the provincial legislative standards.

(ii) The Defendants' conduct denies a benefit in a manner that perpetuates and exacerbates disadvantage

81. In providing policing services to the Plaintiffs and the Class, and in implementing the FNIPP, the Defendants have denied a benefit to the Plaintiffs and the Class with the effect

of reinforcing and perpetuating the existing disadvantages they face, as Indigenous reserve-based communities and as Indigenous individuals residing On Reserve. The myriad ways in which the Defendants' conduct in the provision of substandard and culturally inappropriate policing services to the Plaintiffs and the Class worsens their situation and reinforces their profound historical and systemic disadvantage include, *inter alia*:

a) increasing their existing alienation from policing institutions, the criminal legal system, and mainstream justice institutions;

b) increasing their experiences of systemic discrimination in interactions with police and/or of culturally inappropriate policing practices;

c) exacerbating the political and social exclusion of Indigenous reserve communities and their residents;

d) exacerbating the existing and historical political exclusion and suppression of Indigenous governance institutions and Indigenous legal orders; and

e) continuing and reinforcing historical and colonial pressures aimed at the assimilation of Indigenous peoples and their migration away from their traditional lands, including through governmental failure to provide essential social services On Reserve.

(iii) The infringement is not justified

82. The Defendants' infringements of the *Charter* rights of the Plaintiffs and the Class cannot be justified under section 1 of the *Charter*. The infringements are not prescribed by law.

83. In addition or in the alternative, the Defendants' objectives are not pressing and substantial, there is no rational connection between any objectives and any infringements, the infringements are not minimally impairing, and any alleged benefits of the infringements are outweighed by the harms caused by the infringements.

C. The Defendants have violated the Plaintiffs and Class Members' rights pursuant to the Ontario *Human Rights Code*

84. In addition or in the alternative, through the implementation of the FNIPP, Ontario has breached the right of the Plaintiffs and the Class, under section 1 of the *Human Rights Code*, to equal treatment with respect to the provision of police services and facilities.

85. The Plaintiffs and the Class have characteristics protected from discrimination under the *Human Rights Code* by virtue of their Indigeneity, engaging the protected grounds of race, ancestry, and ethnic origin. In addition or in the alternative, the First Nations Subclass Members are protected because of their relationship, association, and/or dealings with the Indigenous members who comprise them, pursuant to section 12 of the *Human Rights Code*.

86. The Plaintiffs and the Class have experienced adverse impacts with respect to policing services, as set out herein in Parts IV(E) and (F).

87. The Indigenous identity of the Plaintiffs and the Class was a factor in the adverse impacts. In implementing a program for the provision of policing services that treats the Plaintiffs and the Class differently by virtue of their protected characteristics, Ontario has delivered and resourced the program in a discriminatory manner that factors directly into the adverse impacts the Plaintiffs and the Class suffer. The Plaintiffs and the Class receive lesser access to policing services, infrastructure, and equipment than their similarly situated counterparts off reserve.

88. Ontario has also failed to provide substantively equal policing: the Plaintiffs and the Class are policed in a manner that is unresponsive to their needs, preferences, and circumstances. The Indigeneity of the Plaintiffs and the Class is the dominant factor leading to the Plaintiffs and the Class being policed under the FNIPP and experiencing the adverse impacts of under-funding and substandard police service provision.

89. Ontario's provision of police services On Reserve is discriminatory and infringes the Class Members' right to equal treatment with respect to services and facilities. The infringement is not justified.

D. The Defendants have violated the rights of the Plaintiffs and the Class under section 36(1) of the *Constitution Act, 1982*

90. Additionally or in the alternative, in the provision of policing services On Reserve, both Defendants have failed to uphold their constitutional commitments enshrined in subsections 36(1)(a) and (c) of the *Constitution Act, 1982*. In implementing On Reserve policing services through the FNIPP, the Defendants have neither promoted equal opportunities for the well-being of the Plaintiffs and the Class, nor provided this essential public service at a level of reasonable quality.

E. The Defendants have failed to uphold the honour of the Crown in their contractual dealings with the First Nation Subclass

91. The Defendants have failed to uphold the honour of the Crown in negotiating, performing, and renewing the Service-Level Agreements. In the negotiation, performance, and renewal of the Service-Level Agreements, the Defendants have failed to act with honour and integrity, and to foster the overarching goal of reconciliation. In so doing, the Defendants have breached their public law contractual obligations to the First Nation Subclass Members.

92. The Service-Level Agreements are entered into by reason of, and on the basis of, the First Nation Subclass Members' Indigenous difference. The stated purpose of the FNIPP and the contracts through which it operates is to remedy the harm resulting from the imposition of settler policing institutions on Indigenous peoples, and the difficulties Indigenous communities face in managing public safety.

93. The Service-Level Agreements are related to the First Nation Subclass Members' established or credibly claimed Indigenous right to self-governance. The First Nation Subclass Members opt into the FNIPP for the very purpose of reclaiming self-governance in the area of public safety. The Policy, which creates the framework for the Service-Level Agreements, is intended to be a "practical means to support the federal policy on the implementation of the inherent right and the negotiation of self-government". Additionally, certain amendments to the Policy in 1996 were designed in part to "highlight a commitment

to supporting First Nations to become self-sufficient and self-governing, and to maintaining partnerships with First Nations based on trust, mutual respect and participation in decision-making”.

94. In negotiating the Service-Level Agreements, the Defendants failed to avoid the appearance of sharp dealing; they have been consistently intransigent in their approach to setting arbitrary funding caps without due regard for the actual needs of the Plaintiffs and the Class.

95. In performing the Service-Level Agreements, the Defendants have failed to construe generously their contractual obligations to provide adequate and culturally responsive policing, and have failed to collaborate with the First Nation Subclass Members on policing needs and strategies.

96. In renewing the Service-Level Agreements, the Defendants have behaved dishonourably by failing to renegotiate funding levels despite the First Nation Subclass Members’ requests, despite having actual or constructive knowledge of the chronic under-funding and resulting substandard service levels, and despite understanding that the First Nation Subclass Members would accept inadequate funding levels to avoid resorting to mainstream policing that has wrought deep and enduring harm to the First Nation Subclass Members and the Residents.

F. The Defendants have failed to perform their contractual obligations towards the First Nation Subclass in good faith

97. In addition or in the alternative, the Defendants have breached their contractual obligation to negotiate funding with the First Nation Subclass in a manner consistent with their duty to exercise their contractual discretion in good faith. In addition or in the alternative, they have breached their contractual obligation to negotiate funding with the First Nation Subclass Members, or, in the further alternative, to adequately fund police services On Reserve, in a manner consistent with their duty to refrain from acting in a manner that defeats the purpose of the Service-Level Agreements.

98. The Defendants have breached their duty to exercise in good faith their contractual discretion to determine funding in the context of renewal of the Service-Level Agreements. They have exercised their discretion to determine and renegotiate funding in a manner that is unreasonable, capricious and arbitrary, and not consonant with the purposes underlying the discretion. The Defendants' exercise of discretion nullifies and eviscerates the fundamental contractual benefit sought to be granted by the funding regime – that is, the provision of culturally sensitive policing services On Reserve that are at least equivalent in standard and quality to policing services provided in similarly situated non-Indigenous communities.

99. Despite real or constructive knowledge of the inadequacy of the funding they have been providing to the First Nation Subclass, the Defendants have repeatedly adopted – and continue to adopt – an uncompromising position and intransigent attitude in their refusal to negotiate adequate funding levels. In the renewal of the Service-Level Agreements, the Defendants have demonstrated a persistent and cavalier indifference to the legitimate interests of the First Nation Subclass and have exercised their contractual discretion for extraneous and/or improper purposes and/or in a manner that is unreasonable in light of the bargain between them, any and all of which is contrary to the requirements of good faith.

100. In addition or in the alternative, by refusing to engage in good faith negotiations regarding funding upon the renewal of the Service-Level Agreements—or, in the further alternative, by failing to adequately fund policing services On Reserve—the Defendants have breached their specific duty of good faith by acting, and continuing to act, in a manner that defeats the purpose and objectives of the agreements.

101. The Defendants have real or constructive knowledge that the inadequate level of funding provided by them renders it impossible for On Reserve policing services to be delivered in a culturally appropriate manner that meets the standard of adequacy and effectiveness set by provincial law and/or that is at least equivalent to the services received in similarly situated non-Indigenous communities. By refusing to negotiate adequate funding levels and/or by failing to adequately fund policing services On Reserve, the Defendants'

conduct eviscerates the entire purpose of the Service-Level Agreements in a manner contrary to this specific duty of good faith.

G. The Defendants have breached their fiduciary duties to the Plaintiffs and the Class

102. The Defendants bear *sui generis* fiduciary obligations to the Plaintiffs and the Class in the delivery and funding of On Reserve policing services, and specifically obligations of loyalty, good faith, and full and diligent disclosure. In their delivery and funding of On Reserve policing, the Defendants have breached, and continue to breach, their *sui generis* fiduciary obligations to the Plaintiffs and the Class.

103. The First Nation Subclass Members have a specific and cognizable Aboriginal interest in maintaining public safety On Reserve in accordance with their distinctive Indigenous cultures and in a manner that furthers their self-governing autonomy. This interest is distinctly Aboriginal, collective in nature, and integral to the nature of each First Nation Subclass Member's Aboriginal distinctive society. The Defendants have undertaken discretionary control over public safety On Reserve, as set out above in Part IV(B).

104. Through their conduct in implementing On Reserve policing services, including their decisions to under-fund the policing services provided under FNIPP and the Service-Level Agreements, the Defendants continue to breach their fiduciary obligations to the Plaintiffs and the Class. The Defendants, who have assumed discretionary control over the Plaintiffs and the Class Members' interest in On Reserve community safety, do not act in good faith, or with loyalty, in unilaterally establishing and enforcing arbitrary funding caps for policing services. Equally, their opacity and obstinacy in their funding process does not satisfy their fiduciary obligations of loyalty, good faith, and full disclosure with regard to public safety On Reserve.

VI. MONETARY DAMAGES AND EQUITABLE REMEDIES

105. The Defendants are jointly liable for, and are obliged to compensate the Plaintiffs and the Class in respect of, the Defendants' breaches of the Plaintiffs and the Class's *Charter* rights.

106. Ontario is liable for, and obliged to compensate the Plaintiffs and the Class in respect of, its breaches of their rights pursuant to the *Human Rights Code*.

107. The Defendants are each liable for, and are obliged to compensate KZA and the First Nation Subclass in respect of, the Defendants' failure to uphold the honour of the Crown and for breaches of the Defendants' contractual obligations to KZA and the First Nation Subclass.

108. These breaches and wrongs by the Defendants directly caused the Plaintiffs and the Class damages, including, but not limited to:

   a) lack of access to culturally safe policing, and corresponding material reduction in their experience of public safety in their communities;

   b) physical, mental, emotional, and spiritual harm;

   c) injury to dignity, feelings and self-respect;

   d) substantial pain and suffering; and

   e) out-of-pocket costs.

109. KZA and the First Nation Subclass further claim reconciliatory damages for breaches of the Defendants' obligation to act honourably in their contractual dealings with the First Nation Subclass Members.

110. The Plaintiffs and the Class further claim equitable remedies and/or remedies in the nature of disgorgement for the Defendants' breaches of their fiduciary obligations owed to the Plaintiffs and the Class.

111. The Plaintiffs and the Class also seek various declarations regarding the Defendants' breaches as set out herein. These declarations are warranted in the circumstances: the Court has the jurisdiction to hear the issues set out herein; the disputes between the parties are real and not hypothetical; the declarations will have practical utility; the Plaintiffs have

a genuine interest in the resolution of the disputes; and the Defendants have an interest in opposing the issuance of such declarations.

112. The Defendants have had actual or constructive knowledge of the persistent and profound harms caused by their inadequate and culturally inappropriate provision of policing services On Reserve. Despite this knowledge, the Defendants have continued, year after year, to breach their duties to the Plaintiffs and the Class Members. The Defendants' high-handed and callous conduct warrants an award of punitive and/or exemplary damages, or in the alternative, aggravated damages, in favour of the Plaintiffs and the Class Members.

VII. APPLICABLE LEGISLATION

113. The Plaintiffs plead and rely on, *inter alia*:

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

b) *Class Proceedings Act, 1992*, SO 1992, c 6;

c) *Community Safety and Policing Act, 2019*, SO 2019, c 1, Sch 1

d) *Constitution Act, 1982,* Schedule B to the *Canada Act 1982*, 1982, c 11 (UK);

e) *Courts of Justice Act*, RSO 1990, c C.43;

f) *Crown Liability and Proceedings Act*, *2019*, SO 2019, c 7, Sch 17;

g) *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

h) *Department of Public Safety and Emergency Preparedness Act*, SC 2005, c 10;

i) *First Nations Election Act*, SC 2014, c 5;

j) *Indians and Bands on Certain Indian Settlements Remission Order*, SI/92-102;

k) *Ontario Human Rights Code*, RSO 1990, c H.19, including sections 1, 9, 12, and 46.1; and

l) *Police Services Act*, RSO 1990, c P.15 [repealed].

July 15, 2025

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Court File No. _________________

KIASHKE ZAAGING ANISHINAABEK (GULL BAY FIRST NATION) ET AL
Plaintiffs

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO and **ATTORNEY GENERAL OF CANADA**
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM
Proceeding under the *Class Proceedings Act, 1992*

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