

THE QUEEN'S BENCH
WINNIPEG CENTRE

BETWEEN:

MANITOBA METIS FEDERATION INC.,

Applicant,

- and -

**BRIAN PALLISTER, PREMIER OF MANITOBA,
CLIFF CULLEN, MINISTER OF CROWN SERVICES,
THE EXECUTIVE COUNCIL FOR THE GOVERNMENT OF MANITOBA,
THE GOVERNMENT OF MANITOBA,
THE MANITOBA HYDRO-ELECTRIC BOARD**

Respondents.

**NOTICE OF APPLICATION
HEARING DATE: JUNE 25, 2018, AT 10:00 A.M.
BEFORE THE PRESIDING JUDGE**

Manitoba Metis Federation Inc. v Brian Pallister, Premier of Manitoba, and others

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File No.

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APPLICATION UNDER: *Queen's Bench Rules* 14, 38 and 68.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing before a judge, on Monday, June 25, 2018, at 10:00 a.m., at the Law Courts, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba Lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June 4, 2018

Digitally signed by Cheryl Laniuk, Deputy Registrar
DN: c=ca, o=ldrc, cn=Cheryl Laniuk, Deputy Registrar
Date: 2018.06.04 10:53:03 -05'00'

Issued by
Deputy Registrar
Court of Queen's Bench
Winnipeg Centre
408 York Avenue
Winnipeg, MB R3C 0P9

TO: **Mr. Brian Pallister**
Premier of the Province of Manitoba
204 Legislative Building
450 Broadway Avenue
Winnipeg, MB R3C 0V8

AND TO: **Mr. Cliff Cullen**
Minister of Crown Services
314 Legislative Building
450 Broadway Avenue
Winnipeg, MB R3C 0V8

AND TO: **Government of Manitoba and the Executive Council**
c/o Minister of Justice and Attorney General
104 Legislative Building
450 Broadway Avenue
Winnipeg, MB R3C 0V8

AND TO: **Manitoba Hydro-Electric Board**
360 Portage Avenue
Winnipeg, MB R3C 0G8

APPLICATION

1. This is a case of first instance about the honour of the Crown—as the constitutional imperative that advances reconciliation with Indigenous peoples—and its application in Manitoba. This case will impact reconciliation in this province for generations to come.
2. The Manitoba Metis Federation Inc. (the “**MMF**”) seeks judicial review of a March 21, 2018, decision made by the Executive Council (the “**Cabinet**”) of the Government of Manitoba (“**Manitoba Government**”), on behalf of the Crown, to direct the Manitoba-Hydro Electric Board (“**Manitoba Hydro**”) “to not proceed with the agreement [the “**July 2017 Agreement**”] with the Manitoba Metis Federation at this time” (the “**Decision**”). Under the auspices of *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336 (the “**Crown Corporations Act**”), the Cabinet then authorized Order-in-Council #0082/2018 (the “**OIC**”) that purported to provide “approval” to the Minister of Crown Services (the “**Minister**”) to “issue” a directive under section 13 of the *Crown Corporations Act* entitled: “*A Directive to Manitoba Hydro Electric Board Respecting Agreements with Indigenous Groups and Communities*” (the “**Directive**”). The Decision is included within the Directive and was issued to Manitoba Hydro.
3. The MMF seeks to have the Decision, the OIC, and the Directive, in whole or in part, quashed or set aside based upon the Turning the Page Agreement that was executed by the MMF, the Manitoba Government, and Manitoba Hydro on November 26, 2014 (the “**TPA**”), breaches of the constitutional and legal duties owing to the MMF, and the improper use of section 13 of the *Crown Corporations Act* in relation to the Decision. The MMF also seeks declaratory relief against the Respondents flowing from the Decision, the OIC, and the Directive, including, the Premier of Manitoba and the Minister specifically.

THE APPLICANT MAKES APPLICATION FOR:

4. The MMF makes this Application for the following relief:
- a) An order in the nature of *certiorari* setting aside or quashing:
 - i. the Decision;
 - ii. the OIC and the Directive in whole or in part; and
 - iii. the Minister's issuance of the Directive, in whole or in part, to Manitoba Hydro;
 - b) An interim injunction restraining and enjoining the Manitoba Government, the Cabinet, the Minister, and Manitoba Hydro from taking any further action based on the Decision, the OIC, or the Directive, in whole or in part, pending the disposition of this Application;
 - c) A declaration that the Manitoba Government, the Cabinet, and/or the Minister have breached Articles 4.1.1, 4.1.2, 4.1.3, 4.3.1, 4.3.2 of the Turning the Page Agreement, and, in doing so, have not acted in accordance with the honour of the Crown by making the Decision, approving the OIC, and/or issuing the Directive to Manitoba Hydro;
 - d) A declaration that the Manitoba Government, the Cabinet, and/or the Minister, in making the Decision, approving the OIC, and/or issuing the Directive to Manitoba Hydro, without following the dispute resolution processes agreed to in the Turning the Page Agreement, breached their respective obligations under said agreement, and, in doing so, have not acted in accordance with the honour of the Crown;
 - e) A declaration that the Manitoba Government, the Cabinet, and/or the Minister, in making the Decision, approving the OIC, and/or issuing the Directive to Manitoba Hydro, without any advance notice to, or prior consultation with, the MMF, breached their respective legal and constitutional duties and obligations owing to the MMF, including, but not limited to:
 - i. acting in accordance with the honour of the Crown in relation to the implementation of the Turning the Page Agreement;
 - ii. fulfilling the Crown's duty to consult and accommodate flowing from the honour of the Crown and section 35 of the *Constitution Act, 1982*;

- iii. advancing the constitutionally-mandated process of reconciliation consistent with the honour of the Crown and section 35 of the *Constitution Act, 1982*; and
 - iv. advancing the principles and meeting the commitments set out in *The Path to Reconciliation Act*, C.C.S.M. R30.5 (the “**Reconciliation Act**”);
- f) A declaration that the Manitoba Government, the Cabinet, and/or the Minister, in making the Decision, approving the OIC, and issuing the Directive to Manitoba Hydro under the auspices of section 13 of the *Crown Corporations Act*, were acting outside of their jurisdiction and lawful authority as provided for in said section of the *Crown Corporations Act* thereby invalidating the Decision, the OIC, and the Directive in whole or in part;
- g) A declaration that the Manitoba Government, the Cabinet, and/or the Minister had a duty or obligation owing to the MMF, and breached said duty or obligation, flowing from the honour of the Crown, the reconciliation process mandated by section 35 of the *Constitution Act, 1982*, and the *Reconciliation Act* to inform the MMF in a timely and diligent manner that they intended to breach the Turning the Page Agreement or would no longer honour the commitments, processes, and delegated authorities in said agreement;
- h) A declaration that the Manitoba Government, the Cabinet, and/or the Minister owed the MMF legal and constitutional duties, including, but not limited to, a duty of procedural fairness that required the Crown to communicate the Decision to the MMF in advance or in a direct and timely manner following the Decision being made, including providing the MMF with reasons for the Decision;
- i) A declaration that, with respect to negotiations conducted under the auspices of the Turning the Page Agreement and the implementation of any “negotiated agreements” reached under said agreement, Manitoba Hydro is a Crown actor, as designated by the Manitoba Government, and was obligated to and remains obligated to, fulfill all legal and constitutional duties and obligations owing to the MMF, including, but not limited to:
- i. the Crown’s duty to negotiate owing to Aboriginal peoples;
 - ii. the duty of honest performance;
 - iii. interpreting and implementing the Turning the Page Agreement and any “negotiated agreements” reached thereunder in a manner that upholds the honour of the Crown;
 - iv. acting in a way that accomplishes the intended purpose of the Turning the Page Agreement and any “negotiated agreements” reached thereunder;

- v. the duty of diligent implementation of the Turning the Page Agreement and any “negotiated agreements” reached thereunder; and
- vi. advancing the constitutionally-mandated process of reconciliation consistent with the honour of the Crown and section 35 of the *Constitution Act, 1982*;
- j) A declaration that the Premier of Manitoba breached the honour of the Crown in communicating the Decision to the public wherein he referred to the MMF as a “special interest group” and that the “agreement” in place between the MMF and Manitoba Hydro was merely a “proposal” as opposed to being an “agreement” and that it constituted “persuasion money”;
- k) A declaration that the Minister breached the honour of the Crown in repeatedly communicating to the public that the agreement in place between the MMF and Manitoba Hydro was merely a “proposal” as opposed to being an “agreement”;
- l) An order for such direction and ancillary relief as this Honourable Court may deem necessary so as to facilitate compliance with the Turning the Page Agreement and the “negotiated agreements” reached thereunder;
- m) An order directing case management of this Application;
- n) An order for advance costs against the Respondents in this Application;
- o) Costs of the Application; and
- p) Such further and other relief as the nature of the Application may require and that this Honourable Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

A. The Parties

i. The Manitoba Metis Federation

5. The Applicant, the MMF, is a body corporate incorporated under the laws of Manitoba. As set out in its corporate bylaws and constitution, it is the “democratic and self-governing representative body of the Manitoba Métis Community.” It was created by and is authorized by

the members of the Manitoba Métis Community in order to represent their collectively-held rights and interests. It is a party to the TPA.

ii. The Crown Respondents

6. The Respondent, the Manitoba Government, known as “The Government of Manitoba,” is named pursuant to section 10 of *The Proceedings Against the Crown Act*, C.C.S.M. c. P140. It is that emanation of the Crown that provides advice to “Her Majesty the Queen in Right of the Province of Manitoba” and holds the beneficial interest in the lands and waters in the province relevant to the issues that underlie this Application, subject to the constitutional rights and interests of the Applicant. It is a party to the TPA.

7. The Respondent, the Cabinet, is the executive council of the Manitoba Government and is established pursuant to section 2(1) of *The Executive Government Organization Act*, C.C.S.M. c. E170 (the “**Government Organization Act**”). It is composed of ministers responsible for presiding over the departments and functions of the Manitoba Government, including how the Manitoba Government discharges its duties and exercises its powers on behalf of the Crown. It made the Decision and issued the OIC that provided “approval” to the Minister to issue the Directive to Manitoba Hydro.

8. The Respondent, the Premier of Manitoba (the “**Premier**”), is the President of the executive council and discharges such duties, exercises such powers, and performs the functions for the Manitoba Government as prescribed by the Lieutenant Governor in Council pursuant to section 2(1) of the *Government Organization Act*. The Premier communicated the Decision to the public.

9. The Respondent, the Minister, is the Minister of Crown Services as well as the Minister responsible for Manitoba Hydro. The Minister has statutory powers as set out in the *Crown Corporations Act*, including, *inter alia*, the ability to issue directives to Manitoba Hydro pursuant to section 13 of that legislation. The Minister signed the TPA on behalf of the Manitoba Government. The Minister issued the Directive to Manitoba Hydro and also communicated the Decision to the public.

10. The Respondent, Manitoba Hydro, is a Crown corporation established pursuant to the *Manitoba Hydro Act*, C.C.S.M. c. H190 with the duties, powers, and functions as set out in that legislation. It “is an agent of Her Majesty” and its affairs are administered by a board appointed by “order of the Lieutenant Governor in Council” as set out in said legislation. It is a party to the TPA.

B. The Manitoba Métis Community’s Rights, Interests, and Claims and the Manitoba Metis Federation

i. The Manitoba Métis Community

11. The Manitoba Métis Community is a distinct “indigenous” and “aboriginal” community that emerged in the Red River Valley in the early 1800s. It has its own origin story, identity, language (Michif), national symbols, art, dance, music, self-government, laws, and traditional territory. It has been acknowledged and recognized as a distinct Métis community by the Supreme Court of Canada, Manitoba courts, and by other governments.

12. The Manitoba Métis Community is a part of a larger Métis people—the Métis Nation. The Métis Nation is one of the “aboriginal peoples of Canada” within section 35(2) of the *Constitution Act, 1982*. The Métis Nation is also an “indigenous” peoples. The Métis Nation has

been acknowledged and recognized by other governments and the Supreme Court of Canada as one of the “aboriginal” and “indigenous” peoples of Canada.

13. Based on its emergence prior to the Crown’s assertion of sovereignty or settler governments effecting political or legal control in the Red River Valley and the ‘Old Northwest,’ the Manitoba Métis Community holds pre-existing and communal Aboriginal rights and interests in and over lands throughout its traditional territory. The descendants of the historic Manitoba Métis Community, who form the modern day Manitoba Métis Community, continue to collectively-hold these rights today.

14. These Métis rights and interests in specific lands are protected as “aboriginal rights” by section 35(1) of the *Constitution Act, 1982*. These Métis section 35 rights have not been modified, exchanged, or “extinguished” by way of a negotiated agreement with the Crown or by any other agreement or legislative means, including, but not limited to, the *Natural Resources Transfer Agreement, 1930*.

15. Some aspects of the Manitoba Métis Community’s harvesting rights have been judicially recognized throughout southern Manitoba (*e.g., R. v. Goodon, 2008 MBPC 59*). In addition, the MMF-Manitoba Points of Agreement on Métis Harvesting executed on September 29, 2012 (the “**MMF-Manitoba Harvesting Agreement**”), further recognizes the Manitoba Métis Community’s harvesting rights throughout most of southern and central Manitoba (the “**Recognized Métis Harvesting Area**”). This agreement also accommodates the Manitoba Métis Community’s credible harvesting rights claims throughout the entire province.

16. In addition to these Métis harvesting rights that exist as Aboriginal communal interests over 169,584 km² of lands within Manitoba, the Manitoba Métis Community also asserts:

i) commercial and trade related rights within Manitoba and beyond; ii) exclusive use and occupation of specific locations and areas of Manitoba prior to the Crown's assertion of sovereignty that gives rise to Aboriginal title; and iii) other outstanding land related claims flowing from the *Rupert's Land and North-Western Territory Order, 1870*, the *Dominion Lands Act*, and the resulting Métis land scrip system.

17. In *Manitoba Metis Federation Inc. v. Canada*, [2013] S.C.R. 623 (“*MMF*”), the Supreme Court of Canada recognized the Manitoba Métis Community's outstanding land related collective claim against the federal Crown flowing from section 31 of the *Manitoba Act, 1870* and issued the following declaration to the MMF: “[t]hat the federal Crown failed to implement the land grant provision set out in s. 31 of the *Manitoba Act, 1870* in accordance with the honour of the Crown.” The Court also held that as this “constitutional grievance” remains outstanding, “the ongoing rift in the national fabric that s. 31 was adopted to cure remains unremedied.”

18. On November 15, 2016, the MMF and the Government of Canada (“**Canada**”) signed a framework agreement establishing a formal negotiation process to: “jointly develop a renewed nation-to-nation, government-to-government relationship between the Crown and the Manitoba Métis Community...and arrive at a shared solution that advances reconciliation between the Parties consistent with the purpose of section 35...and the Supreme Court of Canada's decision in [*MMF*].” These ongoing negotiations include, *inter alia*, the following subject matters:

- a) “An agreement that recognizes the role, functions, and jurisdictions of the Manitoba Métis Community government”;
- b) “Quantum, selection, and management of potential settlement lands”; and
- c) “Clarity on the Manitoba Métis Community's Aboriginal Rights and Claim(s).”

19. The negotiations between the MMF and Canada under this framework agreement are ongoing.

ii. The Manitoba Metis Federation

20. The MMF is an “indigenous” and “aboriginal” government created by and for the Manitoba Métis Community. It is the modern day manifestation of the Métis Nation’s inherent right to self-government and self-determination as an Indigenous people within Manitoba.

21. In 1967, the MMF Inc. was incorporated under *The Corporations Act*, C.C.S.M, C225 “as a body corporate in order to conduct financial and administrative affairs relating to the Manitoba Métis Community and to otherwise carry out its objectives” as set out in the bylaws and constitution adopted by the MMF’s members.

22. The MMF maintains a centralized registry of its members who are citizens of the Métis Nation and members of the Manitoba Métis Community based on the processes set out in its bylaws and constitution. The MMF maintains the only provincial Métis registry in Manitoba that is recognized and funded by Canada, as the level of government that has jurisdiction for “Indians, and Lands reserved for the Indians,” pursuant to section 91(24) of the *Constitution Act, 1867*.

23. The MMF is authorized by its members “to provide responsible and accountable governance on behalf of the Manitoba Métis Community,” including, *inter alia*, advancing the recognition of the community’s rights protected by section 35(1) of the *Constitution Act, 1982*, and ensuring the “community is fully consulted and accommodated when a decision or project is contemplated that may affect [those] collective Métis rights.”

24. The MMF has also been repeatedly recognized as representing the Manitoba Métis Community by the courts as well as other governments. In *R. v. Goodon*, the Manitoba Provincial Court recognized the MMF “as the governing body of Métis people in Manitoba.” In *MMF*, the Supreme Court of Canada held that the outstanding “collective claim [related to section 31 of the *Manitoba Act, 1870*] merits allowing the body representing the collective Métis interest to come before the Court. We would grant the MMF standing.”

25. As noted above, Canada, as the level of government with jurisdiction for these issues, has committed to formal negotiations with the MMF to, *inter alia*, arrive at “an agreement that recognizes the role, functions, and jurisdiction of the Manitoba Métis Community government” as well as to “work, on a nation-to-nation, government-to-government basis, with the Métis Nation, through bilateral negotiations with the MMF.”

26. Manitoba has recognized the MMF’s representative role in its Provincial Métis Policy (2010), the MMF-Manitoba Harvesting Agreement (2012), the TPA (2014), as well as in provincial legislation, including, *The Child and Family Services Authorities Act*, C.C.S.M. c. C90 and *The Louis Riel Institute Act*, C.C.S.M. c. L230.

C. The Honour of the Crown, its Related Duties and Obligations, and the Reconciliation Process Mandated by Section 35 of the *Constitution Act, 1982*

27. The Supreme Court of Canada has repeatedly held that the relationship between the Crown and Aboriginal peoples is “fiduciary in nature” and “trust-like.” The honour of the Crown—as a constitutional principle—informs and guides this relationship. It emerges from the Crown’s “assertion of sovereignty over Aboriginal peoples in the face of prior Aboriginal

occupation” and “refers to the principle that servants of the Crown must conduct themselves with honour when acting on behalf of the sovereign” in their dealings with Aboriginal peoples.

28. The honour of the Crown is always at stake in the Crown’s relationship with Aboriginal peoples. As a constitutional principle, it “is not a mere incantation, but rather a core precept that finds its application in concrete practices.” It “gives rise to different duties in different circumstances” and these duties are legally enforceable and can be relied upon by Aboriginal peoples.

29. The honour of the Crown, along with its related duties and obligations, cannot be delegated to third parties. However, designated Crown actors, including Crown corporations like Manitoba Hydro, can have this constitutional precept imposed on them where these entities have been expressly delegated responsibilities by the Crown to negotiate with Aboriginal peoples and/or implement agreements reached between the Crown and Aboriginal peoples. Governments cannot avoid the honour of the Crown by claiming expressly delegated actors or agents are not in fact acting on behalf of the Crown.

30. The Supreme Court of Canada has also recognized that the fundamental objective of the modern law of Aboriginal and treaty rights is the reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests, and ambitions. Reconciliation is not a final legal remedy in the usual sense. It is a process that flows from the rights guaranteed by section 35 that gives rise to duties that are “concerned with the ethic of ongoing relationships” and “promotes ongoing negotiations,” as opposed to unilateralism and self-help remedies.

31. As a constitutionally-mandated process, reconciliation requires Crown commitments and processes developed to advance it, and in particular those committed to in negotiated agreements

reached with Aboriginal peoples, to be interpreted and implemented honourably. Courts have recognized that these types of agreements are not mere “commercial contracts” and Crown actors have heightened obligations to ensure the terms and processes committed to in them are met:

As a general matter, where the legal and practical interests of a party may be affected by a discretionary decision, the decision-maker must afford procedural fairness [...] A higher level of procedures is often accorded where the legal and practical interests are higher [...] Where the decision-maker has undertaken that certain procedures will be followed, for example in an agreement, the decision-maker will be held to them [...] And where Aboriginal peoples are concerned, the concepts of honour, reconciliation and fair dealing—matters of constitutional import—may bear upon the matter, sometimes significantly, affecting the level of procedures to be afforded (*Canada v. Long Plain First Nation*, 2015 FCA 177).

32. The Manitoba Government has also passed the *Reconciliation Act* that imposes both individual and collective duties, requirements, and obligations on the Cabinet, the Premier, and the Minister to promote reconciliation. The principles of respect, engagement, understanding, and action are to guide government actors with respect to their interactions with Indigenous peoples generally, including the MMF and the Manitoba Métis Community specifically.

D. The Relevant Projects

33. There are six Manitoba Hydro projects that are relevant to this Application (collectively, the “**Projects**”). The following section describes the Projects, their current status with respect to being approved or seeking approval from the Crown, as well as their construction status.

i. The Bipole III Transmission Line Project

34. The Bipole III Transmission Line Project (“**Bipole III**”) is an approved transmission line project that includes approximately 1,385 km of new 500 kV high-voltage, direct-current lines

connecting the Keewatinoow Converter Station in northern Manitoba (near Gillam) to the Riel Converter Station near Winnipeg, proceeding along the west side of the province.

35. Manitoba Hydro's proposal for Bipole III was reviewed by the Clean Environment Commission (the "CEC") through public hearings held between October 2012 to March 2013. The CEC recommended that a licence for the project be issued by Manitoba's Ministry of Conservation and Water Stewardship ("MCWS") on June 18, 2013. The MCWS issued a licence to Manitoba Hydro for Bipole III on August 14, 2013. Bipole III is currently under construction and is scheduled to be completed in the spring of 2018.

ii. The Keeyask Hydropower Project

36. The Keeyask Hydropower Project ("Keeyask") is an approved hydro project that includes a 695 megawatt hydroelectric generating station and associated supporting infrastructure (including a spillway, dams, dykes, transmission tower, reservoir, roads, etc.), located near Gull Rapids on the Nelson River. The total reservoir area of the project is approximately 93 km², with about 45 km² of flooded land.

37. Manitoba Hydro's proposal for Keeyask was reviewed by the CEC through public hearings held between September 2013 to January 2014. The CEC recommended that a licence for the project be issued by MCWS on April 17, 2014. Keeyask was issued a licence by MCWS on July 2, 2014. Keeyask is currently under construction and is scheduled to be completed in 2020.

iii. The Lake Winnipeg East System Improvement Transmission Project

38. The Lake Winnipeg East System Improvement Transmission Project (the “**LWESI**”) is an approved transmission project that involves new construction and system upgrades in the region east of Lake Winnipeg. It includes three components: i) the construction of approximately 75 km of new 115 kV transmission line that connects the Pine Falls Station to a new Manigotagan station; ii) the construction of a new transmission station near Manigotagan; and iii) equipment additions at the existing Pine Falls station.

39. A proposal for the LWESI was submitted to MCWS on January 2, 2013. MCWS issued a licence to Manitoba Hydro for the LWESI on April 28, 2015. The LWESI is currently under construction and is scheduled to be completed in the summer of 2018.

iv. The St. Vital Transmission Complex

40. The St. Vital Transmission Complex (the “**St. Vital Complex**”) is an approved transmission project that consists of the construction of two new 230 kV transmission lines, both starting at St. Vital Station in southeast Winnipeg and one running 119 km south to the Letellier Station (just outside Letellier, Manitoba) and the other running 37 km west to the La Verendrye Station (located southwest of Winnipeg near the community of Oak Bluff). The project also involves upgrades and modifications to the stations at St. Vital, La Verendrye, and Letellier.

41. A proposal for the St. Vital Complex was submitted for approval to MCWS on May 30, 2014. The MCWS issued a licence to Manitoba Hydro for the St. Vital Complex on January 30, 2017. Construction on the project is anticipated to start in summer 2019.

v. The Manitoba-Minnesota Transmission Line Project

42. The Manitoba-Minnesota Transmission Line Project (the “**MMTP**”) is a proposed transmission project that consists of a new 213 km, 500 kV transmission line from the Dorsey Converter Station near Rosser (northwest of Winnipeg) to the Manitoba-U.S. border, near Piney in southeastern Manitoba, as well as upgrades to three existing electrical stations and modifications to two existing powerlines in southern Manitoba.

43. Manitoba Hydro’s proposal for the MMTP was reviewed by the CEC through public hearings held in 2017. It was recommended by the CEC to the Manitoba Government on September 12, 2017. It has not yet been issued a licence by the Manitoba Government. It is currently being reviewed by the National Energy Board under section 58.11 of the *National Energy Board Act*, RSC 1985, c N-7. Manitoba Hydro has targeted the MMTP’s in-service date to be May 2020.

vi. The Birtle Transmission Line Project

44. The Birtle Transmission Line Project (the “**Birtle Project**”) is a proposed project consisting of a 46.2 km, 230 kV transmission line from Birtle Station (south of the community of Birtle) to the Manitoba-Saskatchewan border, including station modifications and the replacement of the current transformers.

45. A proposal for the Birtle Project was submitted to MCWS on January 30, 2018. The project is currently under review by the Manitoba Government and has not yet been issued a licence.

E. The Turning the Page Agreement (November 26, 2014)

i. The History and Context of the Turning the Page Agreement

46. Prior to finalizing the TPA on November 26, 2014, the relationship between the MMF, the Manitoba Government, and Manitoba Hydro was extremely challenging and often adversarial when it came to Métis consultation and accommodation issues.

47. These challenges flowed from a history where Métis rights were often denied and where both the Manitoba Government and Manitoba Hydro previously questioned whether there was any requirement to consult with the Métis in a manner similar to First Nations and whether the MMF was an appropriate entity to even consult with.

48. The Manitoba Government's denial of, or a lack of clarity in relation to, the Crown's duty to consult and accommodate obligations owing to the MMF, on behalf of the Manitoba Métis Community, which then informed Manitoba Hydro's engagement with the MMF in relation to its proposed hydro and transmission developments, led to situations where consultation with the MMF was denied or delayed and led to mistrust and conflicts.

49. This challenging history, combined with increasing judicial recognition of Métis section 35 rights and claims by the Supreme Court of Canada generally and in Manitoba specifically, as well as clarifications in relation to the Crown's duty to consult and accommodate, came to a head in the development and regulatory reviews of Bipole III and Keeyask.

50. Based on this increasing judicial and Crown recognition of Métis rights, interests, and claims in Manitoba, the MMF was able to demonstrate what it had always known; that the longstanding treatment of Métis rights as "less than" First Nation rights or questions with respect

to the MMF's role in relation to consultation with the Manitoba Métis Community were unsupportable as well as constitutionally and legal unsound. In particular, in the regulatory review of Bipole III, the CEC highlighted Manitoba Hydro's deficiencies in meaningfully engaging and consulting with the MMF.

51. The Manitoba Government's own consultation process with the MMF did not fill the significant Métis consultation and accommodation gaps left by Manitoba Hydro's engagement approach and its environmental assessments for Bipole III and Keeyask. Based on these failings, the MMF filed the following statutory appeals in relation to the licences issued by MCWS for Bipole III and Keeyask:

- a) The MMF's appeal of the Bipole III licence was filed on September 11, 2013;
- b) The MMF's appeal of the Environmental Protection Plans approved for segments N1, N2, and N3 of Bipole III was filed on February 12, 2014; and
- c) The MMF's appeal of the Keeyask licence was filed on August 30, 2014.

52. The MMF's challenges to these licences were based on the Crown failing to assess or properly determine the scope of consultations required with the MMF or meaningfully identifying, assessing, and accommodating the impacts of these two projects on the Manitoba Métis Community's section 35 rights, interests, and claims. The MMF claimed the Crown's duty to consult and accommodate the Manitoba Métis Community had not been met.

53. In order to advance a claim based on the Manitoba Government's failure to discharge the duty to consult and accommodate vis-à-vis Bipole III and Keeyask, the MMF needed to initiate a court action following MCWS's rejections of its statutory appeals, since the duty does not allow for collateral attacks of Crown approvals. Instead of proceeding to the courts, however, the

MMF, the Manitoba Government, and, eventually Manitoba Hydro began discussions with a view to arriving at a mutually agreeable way forward.

54. Ultimately, the above-noted appeals, along with the MMF's potential judicial reviews of the licences issued for Bipole III and Keeyask, were addressed through the commitments and processes set out in the TPA, which bound the MMF, the Crown, and Manitoba Hydro, in its own right and as a delegated Crown actor. In exchange for these TPA commitments and processes, the MMF agreed to not pursue the legal remedies—flowing from the Crown's duty to consult and accommodate—available to it in 2014.

55. The Manitoba Métis Community's section 35 rights, along with the constitutional duties owing to those rights, underlie the TPA and inform its implementation. The potential remedies flowing from the unaddressed impacts of Bipole III and Keeyask on these section 35 rights were replaced with the legally enforceable reconciliation commitments and processes in the TPA.

56. Based on this context, the MMF's foregone legal interests and remedies flowing from the Manitoba Métis Community's section 35 rights, the honour of the Crown and the reconciliation process mandated by section 35 inform the interpretation and implementation of the TPA.

ii. The Commitments and Processes in the Turning the Page Agreement

57. This history and context explained above is captured in the title of the TPA and its preamble. The Kwaysh-kin-na-mihk la paazh Agreement, which means “turning the page” in Michif—the Métis Nation's unique language—was meant to do just that between the TPA's signatories; namely, the MMF, the Manitoba Government, and Manitoba Hydro (collectively, the “**Parties**,” in the TPA).

58. The TPA's preamble states that "[t]he Parties want to build a forward-looking, productive and non-adversarial working relationship" and then sets out the respective roles of the Parties, which had previously caused so much confusion:

Manitoba recognizes that the Crown has a duty to consult with Métis when any proposed Crown decision or action might adversely affect the exercise of the Aboriginal Rights of Métis and to reasonably accommodate concerns about the effects of the decision or action raised in the consultation by attempting to substantially address those concerns.

Hydro is committed to avoiding, minimizing, and, where appropriate, mitigating and offsetting the effects of its Existing Developments and Operations and Future Developments on the Aboriginal Rights of the Métis.

MMF is committed to collectively representing Métis at the local, regional and provincial levels in relation to the Aboriginal Rights of the Métis and the Crown's duty to consult as well as working to address any potential effects from Existing Developments and Operations and/or Future Developments on Métis rights, interests and way of life.

59. The preamble of the TPA goes on to state that: "[t]he Parties also desire to secure the MMF's support for Hydro's Existing Developments and Operations as well as the Bipole III and the Keeyask Projects through this Agreement and the processes set out in this Agreement."

60. In order to "secure the MMF's support" in relation to Bipole III and Keeyask as well as "build a forward-looking, productive and non-adversarial working relationship" between the Parties, the TPA sets out various commitments, collaborative processes, and delegated authorities in relation to Bipole III (Articles 4.1.1 & 4.1.3), Keeyask (Articles 4.1.2 & 4.1.3), as well as other Future Developments (Articles 4.3.1 & 4.3.2) pursued by Manitoba Hydro.

61. Specifically, with respect to Bipole III, Keeyask, as well as Future Developments, the TPA sets out a series of bilateral MMF-Manitoba Hydro processes that expressly delegated authority to Manitoba Hydro to reach "negotiated agreement(s)" with the MMF:

Article 4.1.1 (Bipole III): “Notwithstanding the support provided by the MMF for Bipole III and the payment to be made under Article 2, if subsequently Hydro and the MMF agree that any impact is identified that has not been addressed through the existing planning, design, construction, and mitigation of Bipole III, such impacts may be address through a variety of additional offsetting, mitigation, or, if necessary, compensation measures through negotiated agreement(s).”

Article 4.1.2 (Keeyask): “Notwithstanding the support provided by the MMF for the Keeyask Project and the payments to be made under Article 2, if there is an impact that has not been addressed through the existing planning, design, construction, and mitigation of the Keeyask Project, such impact may be addressed through the processes described in the Joint Keeyask Development Agreement, as the Keeyask Project is owned by the Keeyask Hydropower Limited Partnership. Resolution of any such impacts may include a variety of additional offsetting, mitigation, or, if necessary, compensation measures but same must be negotiated through negotiated agreement(s) with the Keeyask Hydropower Limited Partnership.”

Article 4.3.2 (Future Developments): “If, based on the work undertaken pursuant to Article 4.3.1 [engagement/consultation with MMF members about Future Developments], Hydro and the MMF agree that impacts are identified that have not been addressed through the existing planning, design, construction, and mitigation of a Future Development, such impacts may be addressed through a variety of additional offsetting, mitigation, or, if necessary, compensation measures through negotiated agreement(s).”

62. Article 4.1.3 sets out the agreed to process for resolving disputes between the Parties regarding the existence of unaddressed impacts or whether additional offsetting, mitigation, or compensation measures—including through reaching “negotiated agreements”—are required. This provision only contemplates the Manitoba Government becoming involved if the MMF or Manitoba Hydro had a “dispute...about the existence of an impact or in relation to whether additional offsetting, mitigation, or compensation measures are required” in relation to Bipole III or Keeyask:

Dispute. If there is a dispute between under Article 4.1.1 or 4.1.2 about the existence of an impact or in relation to whether additional offsetting, mitigation, or compensation measures are required, Hydro and the MMF will endeavour to resolve that dispute by referring it first to the Tripartite Steering Committee to be

established as contemplated in Article 5, and then, if required to senior representatives of the Parties, being the President of the MMF, the President of Hydro and the Deputy Minister to the Minister responsible for Manitoba Hydro. If the dispute cannot be resolved by the consensus of the representatives of the Parties, it may ultimately be referred to the courts for resolution. The Parties acknowledge that any dispute that is referred to this process in relation to the Keeyask Project shall respect the processes set out in the Joint Keeyask Development Agreement and that any resolution of said dispute must ultimately be agreed to by the Keeyask Hydropower Limited Partnership as the owner of the Keeyask Project.

63. In exchange for the legally enforceable and expressly delegated commitments in the TPA, the MMF agreed to the following actions and covenants in Articles 3.1.1 (a)–(d) that impacted its legal rights and interests as well as remedies it would have available to it:

- a) [I]t shall on or before the Closing Date withdraw its appeals of the decisions of Manitoba's licence to the Bipole III and Keeyask Project;
- b) It will not subsequently challenge the Crown approval processes for Bipole III and the Keeyask Project, including the Crown consultation processes with the MMF that informed the issuance of the licence as well as other decisions related to those projects that were undertaken or made by Manitoba or Canada prior to the Closing Date, and including decisions relating to allocations of Crown land by Manitoba for the project, whether or not the relevant permits providing land allocation are issued before the Closing Date;
- c) During the Term of this Agreement, the MMF will not sue, initiate or proceed with any litigation, claim or legal action, or support any suit, litigation, claim or legal action by any other party, against Manitoba or Hydro with respect to any impacts of Existing Developments and Operations on the exercise of the Aboriginal Rights of the Métis, regardless of when those impacts may have arisen, provided that nothing in this covenant prevents the MMF from taking or supporting such actions with respect to an impact that was caused by a material change in operations during the Term of this Agreement; and
- d) Provided there is no material change in the operations of Existing Developments and Operations during the Term of this Agreement, it will not, subsequent to the expiry of the Term of this Agreement, initiate any such action for impacts on the exercise of the Aboriginal Rights of the

Métis that were caused by Existing Developments and Operations, during the Term of this Agreement.

64. Given the significance of the interests and obligations addressed and embedded in the TPA it “is legally binding and enforceable against the Parties” (Article 7.1.6) and “the Agreement may only be amended by written agreement of the Parties” (Article 7.1.1).

65. In order to ensure the effective implementation of the commitments and processes set out in the TPA, a Tripartite Steering Committee (the “TSC”), consisting of appointed representatives from each of the Parties, was established under the agreement. The TSC’s stated purpose is outlined in Article 5.1.1 as to “provide oversight for the implementation of this Agreement; and address issues constructively as they may arise.”

66. In addition, the TPA establishes a dispute resolution process wherein the Parties agreed that “[a]ll issues or matters in dispute among the Parties will be referred to the Steering Committee, and the Parties agree that the Steering Committee is to consider the issue before any Party takes any other action about that issue as outlined in this Article 5.1.” Article 5.1.3 of the TPA further sets out the dispute resolution process as follows:

In the event of written notice being served on all Parties regarding a dispute relating to the interpretation or implementation of this Agreement, the Parties will:

- a) Convene a meeting of the Steering Committee and make a good faith effort to amicably resolve such dispute;
- b) At the meeting of the Steering Committee referenced in subsection 5.1.3(a), if the Parties are unable to either resolve such dispute or agree to a process to resolve such dispute, the Steering Committee will properly define the issue to be resolved and refer the matter in dispute to the President of the MMF, the Minister responsible for Manitoba Hydro and the President and Chief Executive Officer of Hydro who will meet to

endeavour to resolve, or establish a process to resolve, such dispute, which may include third party mediation or arbitration.

67. Following the execution of the TPA, the MMF withdrew its appeals in relation to the Bipole III and Keeyask licences.

68. Manitoba Hydro has made all payments owing to the MMF under the TPA and the agreement remains in place between the Parties today.

F. Implementing the Turning the Page Agreement (November 2014 to March 2018)

i. Identifying and Addressing Outstanding Impacts and Future Developments

69. Between November 2014 to December 2016, the MMF and Manitoba Hydro representatives met a multitude of times in relation to implementing the TPA, including holding meetings on identifying and addressing the outstanding impacts related to Bipole III as well as establishing engagement processes related to Future Developments.

70. With respect to Bipole III specifically, detailed analysis, charts, and proposals were formulated based on identified outstanding impacts, previous Manitoba Hydro agreements with First Nations, as well as Bipole III's Community Development Initiative that was made available to First Nations and other communities proximate to the transmission line.

71. In addition, the MMF and Manitoba Hydro representatives discussed how engagement and consultation on Future Developments could be improved, including avoiding delays with respect to the development of mutually agreeable consultation workplans and increasing early input by the MMF into transmission planning and routing to avoid potential impacts on Métis section 35 rights and interests.

72. Over this same two year period, meetings of the TSC were also held amongst the Parties. At these meetings, the Manitoba Government's representatives were made aware of the ongoing meetings and negotiations between the MMF and Manitoba Hydro. At various TSC meetings, the Manitoba Government's representatives enquired in relation to the status of those negotiations relevant to Crown approvals of specific projects (*e.g.*, LWSEI and St. Vital), however, they also conveyed they were not involving themselves in those bilateral processes.

73. At no time during this period did the Manitoba Government's TSC representatives, the Minister, nor or any representative from the Manitoba Government, indicate to the MMF that the processes and authorities within the TPA were no longer acceptable to the Crown.

ii. The MMF-Manitoba Hydro Negotiations Process MOU (December 2016 to June 2017)

74. Based on the work and efforts from over two years of meetings between MMF and Manitoba Hydro officials, and consistent with the processes agreed to in the TPA for reaching "negotiated agreements," on December 12, 2016, the MMF President and Manitoba Hydro's President and CEO met and agreed to enter into time-limited, confidential, and without prejudice negotiations with a view to achieving agreement on the outstanding issues related to some of the Projects.

75. On March 1, 2017, a Memorandum of Understanding was executed between the MMF President and the Manitoba Hydro President and CEO (the "MOU") to establish a "...confidential and without prejudice Negotiation Process for a six (6) month period starting March 1, 2017," to "address issues, including issues associated with the Manitoba-Minnesota

Transmission Project, St. Vital Transmission Complex, and Bipole III, through a comprehensive agreement or agreements” (the “**Negotiations Process**”).

76. The MOU expressly connected itself to the TPA. It also acknowledged that nothing in the MOU altered the “commitment of legal obligations” set out in the TPA and that all of the defined terms within the TPA “are applicable to this MOU.” Consistent with the TPA, the MOU stated that “[a]ny agreement or agreements reached must ultimately be approved by the Principals and may require subsequent authorizations or approvals from the MMF and Hydro.” The “Principals” in the MOU were defined as the MMF and Manitoba Hydro—not the “Parties” to the TPA, which would have included the Manitoba Government.

77. Between March 2017 and June 2017, the MMF President and the Manitoba Hydro President and CEO met several times under the auspices of the MOU and undertook negotiations with a view to achieving the purpose of the MOU and TPA. In addition, representatives and legal counsel from the MMF and Manitoba Hydro had various exchanges in order to support the Negotiations Process.

78. At no time during this Negotiation Process did the Manitoba Government’s TSC representatives, the Minister, nor or any representative from the Manitoba Government, indicate to the MMF that the processes and authorities within the TPA were no longer valid or acceptable to the Crown.

iii. The July 2017 Agreement

The Approvals of the July 2017 Agreement

79. Flowing from the Negotiations Process established under the MOU and as contemplated in the TPA, on June 29, 2017, the MMF President and the Manitoba Hydro President and CEO concluded a document entitled, “The Major Agreed Points.”

80. Article 1 of the Major Agreed Points reads that the “Proposal [as set out in the document] is subject to Manitoba Hydro Electric Board (MHEB) approval.” On July 5, 2017, the Manitoba Hydro Board approved the “proposal” as a “recommendation” from the Manitoba Hydro’s President and CEO. The extract of the Manitoba Hydro Board’s meeting minutes reads:

...the President reviewed a Recommendation dated June 29, 2017, dealing with a new form of relationship with the MMF. There was a lengthy discussion of the proposal. It was noted that in light of recent Supreme Court of Canada judgements, and negotiations between Canada and the MMF, the MMF is moving towards the status of a form of government. The Board then resolved as follows: That the corporation be authorized to negotiate and sign a Relationship Agreement with the MMF, substantially in accordance with the terms set out in the above Recommendation, including a lump sum payment of \$37.5 million for a Fund to be used by the MMF on behalf of the Métis People of Manitoba, and annual payments, adjusted by CPI, of \$1.5 million for 20 years. Government is to be briefed, and the Relationship Agreement is to be fully fleshed out and reviewed by legal counsel.

81. Importantly, the Manitoba Hydro Board’s approval of the July 2017 Agreement as well as the finalization of the further agreement “substantially in accordance with the terms set out in [the July 2017 Agreement]”, did not require the Manitoba Government’s authorization in any way, however, its Board minute notes that “Government is to be briefed.”

82. Following the Manitoba Hydro Board's July 5, 2017, approval, Manitoba Hydro's President and CEO conveyed to the MMF President that the "agreement" had been concluded (the "**July 2017 Agreement**"). There were no additional points or terms to be negotiated, since the Major Agreed Points were comprehensive and detailed.

83. Pursuant to section 17(2) of the *Crown Corporations Act*, the Chair of the Manitoba Hydro Board would have made the Minister aware of the Board's approval soon after the Manitoba Hydro Board's July 5, 2017 meeting.

84. At no time following July 5, 2017, did the Manitoba Government's TSC representatives, the Minister, nor or any representative from the Manitoba Government, indicate to the MMF that the processes and authorities within the TPA were no longer valid or acceptable to the Crown until the Decision was announced on March 21, 2018.

85. Following July 5, 2017, the MMF Board of Directors also approved the Major Agreed Points that constitute the July 2017 Agreement. This was conveyed to Manitoba Hydro.

The Elements of the July 2017 Agreement

86. The July 2017 Agreement includes specific payments by Manitoba Hydro (Article 2), support commitments by the MMF (Article 8) and legal covenant (Article 3) provisions that are similar to those in the TPA with respect to Bipole III and Keeyask as well as provisions in other agreements Manitoba Hydro has concluded with First Nations. More specifically, the agreement addresses the following projects:

- a) "Existing Transmission Lines" (*e.g.*, those already licenced);

- b) Bipole III, the MMTP, St. Vital, the LWESI, and the Birtle Project specifically (the “**Identified Projects**”); and
- c) “Future Transmission Projects” that are in excess of 66 kW, less than 250 km in length, and that do not cross the Manitoba border.

87. Similar to the TPA, the July 2017 Agreement does not prevent the MMF from participating in regulatory hearings related to the projects covered by the agreement, including, by making recommendations with respect to licensing conditions, monitoring, etc. This regulatory participation, however, must be consistent with the MMF’s overall “support” for the projects. These types of “support” provisions are included in many impacts and benefits agreements that are in place with Aboriginal communities across the country.

88. In addition, in order to eliminate the previous prolonged discussions that often delayed the MMF and Manitoba Hydro reaching an engagement workplan in order to inform planning, developments, and routing, Article 5 the July 2017 Agreement provides a set formula for engagement and studies for Future Transmission Projects, including, *inter alia*, the MMF collecting traditional land use information from its members. Significantly, in the context of transmission projects, planning and routing are the most effective ways to avoid impacts to Métis rights, interests, and claims.

Implementation of the July 2017 Agreement

89. Based on the mutual approval of the Major Agreed Points by the respective boards of the MMF and Manitoba Hydro, the MMF and Manitoba Hydro began to rely on and implement the July 2017 Agreement as a “negotiated agreement” between them—consistent with the processes agreed to in the TPA and the MOU—that was enforceable, including recognition that both the

MMF and Manitoba Hydro had legal duties and obligations to abide by the terms of and implement the July 2017 Agreement.

90. Since July 2017, both the MMF and Manitoba Hydro have relied on and implemented their respective obligations under the July 2017 Agreement, as a TPA-authorized “negotiated agreement.”

91. Article 9 of the July 2017 Agreement provides that “[t]he Parties agree to expedite the drafting of a binding legal agreement once the terms of this “Term Sheet” have been agreed to by the MMF and MH [Manitoba Hydro] and in any case, such binding legal agreement shall be completed by the legal teams within 30 days of an agreement to the “Term Sheet.”

92. Immediately following the July 2017 Agreement being reached between the MMF and Manitoba Hydro, discussions began around implementing this Article of the agreement.

93. Manitoba Hydro conveyed to the MMF that its legal counsel had been instructed to complete an initial draft of a “binding legal agreement” to further implement the July 2017 Agreement in place between the MMF and Manitoba Hydro, however, prior to sharing this draft Manitoba Hydro wanted an opportunity to “brief” the Manitoba Government.

94. In the intervening months, the MMF repeatedly followed up with Manitoba Hydro on finalizing the further agreement contemplated under Article 9 of the July 2017 Agreement.

95. In the Fall of 2017, in response to one of the MMF’s enquiries, Manitoba Hydro informed the MMF that it had not been able to secure a meeting to “brief” the Manitoba Government.

96. Between July 2017 and December 2017, Manitoba Hydro repeatedly assured the MMF that the Major Agreed Points had been approved by its Board, that the MMF and Manitoba Hydro had an “agreement,” and that the “briefing” of the Manitoba Government was solely to advise the government, and not to seek its approval or consent, consistent with the TPA.

97. Throughout this period, the MMF and Manitoba Hydro therefore, continued to rely on the July 2017 Agreement as a binding, legal agreement in force between them.

iv. The MMF’s Meeting Request under the Turning the Page Agreement (January 2018)

98. As described above, Article 5.1.2 of the TPA states that “[a]ll issues or matters in dispute among the Parties will be referred to the Steering Committee, and the Parties agree that the Steering Committee is to consider the issue before any Party takes any other action about that issue.”

99. On January 4, 2018, the MMF wrote to Manitoba Hydro and the Manitoba Government requesting a meeting of the TSC in order to address the further implementation of the July 2017 Agreement, since the agreement flows from the commitments and processes under the TPA.

v. The Meetings of the Tripartite Steering Committee (February and March 2018)

100. Based on the MMF’s January 4, 2018, letter, meetings of the TSC were held on February 5 and 15, 2018. Representatives from the MMF, the Manitoba Government, and Manitoba Hydro attended these meetings.

101. At both of these February 2018 meetings, the Manitoba Government’s representatives indicated that they “did not have instructions” with respect to the government’s position in

relation to the July 2017 Agreement, but that they were attending for “information gathering” purposes.

102. The TSC held a third meeting on March 8, 2018. At this meeting, the Manitoba Government’s representative—for the first time—conveyed that the province was “not supportive” of the July 2017 Agreement, however, when they were questioned by other TSC members on what that meant in relation to the July 2017 Agreement—as a TPA-authorized “negotiated agreement” between the MMF and Manitoba Hydro—they were unable to explain or further elaborate.

103. Following the March 8, 2018, meeting, the MMF wrote to Manitoba Hydro and the Manitoba Government on March 13, 2018, to formally trigger the dispute resolution process under Article 5.1.3 of the TPA and request a meeting of the Parties. The MMF framed its understanding at the time of the issues and dispute as follows:

From the MMF’s perspective, based on the position brought forth by Manitoba’s TSC representatives on March 8th, 2018, the “dispute” at issue under the TPA has significantly changed from the implementation issue originally identified in the MMF’s January 4th, 2018 letter. Initially, the MMF’s purpose to convene the TSC was to “ensure the prompt and diligent further implementation of the [July 2017 Agreement]” under the TPA. Now, based on the position brought forth by Manitoba’s TSC representatives on March 8th, the MMF believes that Manitoba has or is going to breach the TPA by undermining, ignoring or unilaterally altering the processes, commitments and delegated authorizations set out in the TPA. As set out above, the TPA, as a justiciable and legally binding agreement, led to the July 2017 Agreement. The MMF is also extremely concerned that Manitoba’s newly stated position constitutes provincial interference into Hydro’s “statutory authority and obligation to oversee the management of the business and affairs of the Corporation and to ensure the Corporation fulfills its statutory objectives in the public interest.

104. The MMF received no formal response from the Manitoba Government with respect to its March 13, 2018, request to trigger the dispute resolution process under the TPA and convene the prescribed meeting guaranteed under Article 5.1.3(b) until after the Decision was made and the OIC and the Directive were issued.

G. The Crown Decision, the Constitutional and Legal Breaches, and the Aftermath

i. The Decision, the OIC, and the Directive (March 21, 2018)

105. On March 21, 2018, the Premier held a press conference to respond to the resignations of nine of the ten members of the Manitoba Hydro Board. These Board members resigned by way of a letter to the Minister dated March 21, 2018.

106. It was during this press conference that the Premier conveyed the Decision had been made by the Cabinet and that an OIC had been issued. The Premier also conveyed that the July 2017 Agreement was “the reason” for the resignations of the nine Manitoba Hydro Board members.

107. The Decision, the OIC, and the Directive were made and issued without any formal notice, advance or otherwise, or any consultation with the MMF. The MMF only became aware of the Crown’s actions and decisions through the media.

108. Neither the Premier, the Minister, nor any representative from the Manitoba Government made the MMF formally aware of the Crown’s actions or decisions or officially provided a copy of the Decision, the OIC, or the Directive to the MMF until April 19, 2018—a month following the Decision.

109. The Minister issued the Directive, which included the Decision within it, to the newly-appointed Chair of the Manitoba Hydro Board by way of letter dated March 23, 2018.

This letter was not copied or provided to the MMF.

ii. Completing the Dispute Resolution Process after the Decision, the OIC and the Directive

110. On March 23, 2018, after the Decision, the OIC, and the Directive had been issued, the Minister wrote to the MMF in response to its March, 13, 2018, letter requesting a meeting under Article 5.1.3(b) of the TPA. The Minister indicated he was willing to meet, but made no mention of the Decision, the OIC, or the Directive in his letter.

111. In early April 2018, the MMF and the Minister's office confirmed that a meeting between the Parties was scheduled for April 20, 2018.

112. On April 17, 2018, the MMF wrote to the other Parties outlining its concerns that the upcoming meeting did not meet the requirements of Article 5.1.3(b) of the TPA because the TSC had not had an opportunity to "properly define the dispute," and that the MMF still did not fully understand what the Manitoba Government had done. The MMF conveyed that it looked forward to meeting on April 20 "in order to understand what [the Manitoba Government] has unilaterally done," so a subsequent meeting in compliance with Article 5.1.3(b) could be convened.

113. On April 19, 2018, the Deputy Minister of Crown Services wrote to the MMF indicating that the April 20 meeting would need to be rescheduled in order to provide an opportunity for the TSC to "properly define the dispute." This letter also provided to the MMF—for the first time—the "publicly available" Decision, the OIC, and the Directive. The letter provided no written reasons for the Decision, the OIC or the Directive in relation to the July 2017 Agreement.

114. To date, the MMF has never been provided reasons, written or otherwise, from the Manitoba Government, the Cabinet, or the Minister explaining the basis, rationale, or justification for the Decision specific to the MMF's July 2017 Agreement with Manitoba Hydro.

115. On April 20, 2018, the MMF President was informed by the media that the Minister or his office, had indicated the MMF was unwilling to meet. Rather than explaining that the MMF's concerns with respect to holding the meeting flowed from the Parties' failing to meet the requirements of Article 5.1.3(b) of the TPA, the impression was left that the MMF was cancelling the meeting. In order to refute this misleading information, the MMF attended at the office of the Minister at the time previously scheduled. As a result, the MMF President and the Minister met privately on April 20, without Manitoba Hydro being present.

116. At this April 20, 2018, meeting, the MMF President agreed to the Minister's request for a "two week reset" in order for him to look at the issue with "fresh eyes." During this "reset" period, the TSC also held a series of meetings and prepared a document, entitled, "Turning the Page Agreement Definition of the Matter in Dispute" that was finalized on May 8, 2018, and provided to the Parties.

117. On May 15, 2018, the MMF President, the Minister, and Manitoba Hydro's President and CEO met and were unable to resolve the dispute, or agree to a process to resolve the dispute. In particular, the Minister conveyed that the Decision, the OIC, and the Directive would not be changed in any way.

iii. The Crown's Constitutional and Legal Breaches

118. Firstly, the Decision constitutes a breach of the TPA because it directs Manitoba Hydro to not proceed with the July 2017 Agreement in direct contravention of the terms of the TPA, which can only be amended by mutual consent of the Parties. Further, the Decision was made without regard to the dispute resolution process as set out in the TPA, which was formally triggered by the MMF on March 13, 2018. As such, the Decision should be quashed or set aside based on the TPA being a legally binding agreement that binds and constrains the Crown.

119. Secondly, the Decision, the OIC, and the Directive were made without any formal notice, advance or otherwise, or any consultation with the MMF. Given the Decision's known, direct, and adverse impact on the MMF, this unilateral Crown action constituted a breach of various constitutional and legal duties and obligations owing to the MMF based on:

- a) The honour of the Crown as a constitutional principle and the enforceable duties and obligations flowing from it, including, but not limited to;
 - i. the duty to consult and accommodate the Métis rights and interests underlying the TPA and the July 2017 Agreement, including the requirement for consultation on the Decision, the OIC, and the Directive that specifically engaged the MMF's rights and interests;
 - ii. the duty to negotiate and the obligation of conducting honourable negotiations under the TPA and the July 2017 Agreement, including following agreed to dispute resolution processes, ensuring transparent, direct and respectful communications, *etc.*;
 - iii. the duty of honourable and diligent implementation of the TPA and the July 2017 Agreement, including understanding its commitments in its agreements with the MMF, the obligation of demonstrating intellectual honesty, making the MMF aware of potential changes to the Crown's position in a timely manner and the avoidance of sharp dealing; and
 - iv. the duty of clarity in relation to the Crown actors and designates that owe and must uphold the honour of the Crown in their engagement, negotiations, and implementation activities with the MMF.

- b) The reconciliation process mandated by section 35 of the *Constitution Act, 1982* that required strict adherence to the terms of the TPA, including, respecting the bilateral MMF-Manitoba Hydro negotiations processes established under the TPA and the resulting “negotiated agreements,” following the TPA’s dispute resolution process prior to making the Decision, *etc.*
- c) Sections 2, 3(1) and 3(2) of the *Reconciliation Act*; and
- d) the administrative law principles of procedural fairness and natural justice, including, *inter alia*, the right to be provided notice, an opportunity to be heard, and reasons.

120. Based on any or all of these constitutional and legal duties owing to the MMF being breached by the Crown, the Decision, the OIC, and/or the Directive, in whole or in part, should be quashed or set aside.

121. Thirdly, the OIC states that it is made under the “authority” of section 13 of the *Crown Corporations Act* and “approves” the Minister to issue the Directive, which includes the Decision. Section 13 of the *Crown Corporations Act* states,

The minister may—with the approval of the Lieutenant Governor in Council—issue a directive to a corporation

- (a) respecting
 - (i) matters of policy and the accounting policies and practices for the corporation,
 - (ii) standards to be complied with in respect of advertising done by the corporation, and
 - (iii) the conduct of special organizational reviews to be conducted by the corporation;
- (b) to ensure that practices of two or more corporations are consistent; and
- (c) to ensure that two or more corporations act in concert with each other or with government departments or agencies when doing so will further efficiency and effectiveness.

122. The Decision does not fall within the scope of section 13 of the legislation because it expressly directs Manitoba Hydro to not proceed with an “agreement” with the MMF, which is outside “matters of policy” and also attempts to retroactively apply a policy to a “negotiated agreement” already approved by the Manitoba Hydro Board. Accordingly, the Decision, the OIC, and the Directive, in whole or in part, should be quashed or set aside.

iv. Constitutional and Legal Claims for Other Declaratory Relief Sought

123. In communicating the Decision, the OIC, and the Directive to the public, on March 21, 2018 and in subsequent public statements, the Premier and/or the Minister made statements that they knew or ought to have known were inaccurate, misleading, and would damage the relationship between the Crown and the MMF in contravention of the honour of the Crown as well as sections 2, 3(1) and 3(2) of the *Reconciliation Act*, including:

- a) referring to the MMF as “a special interest group”;
- b) characterizing the July 2017 Agreement as “persuasion money”;
- c) repeatedly referring to the July 2017 Agreement as a “proposal” or “discussion document” even though they knew, or ought to have known, it had been approved by the Manitoba Hydro Board on July 5, 2017, and the Decision, including the Directive refer to it as an “agreement”; and
- d) publicly repudiating an agreement negotiated between the Crown and an Aboriginal community without informing the Aboriginal community in advance (*e.g.*, “it’s...not an agreement, we won’t be bound by it.”).

124. The Applicant pleads and relies on:

- a) *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336;
- b) *The Executive Government Organization Act*, C.C.S.M. c. E170, s. 10(2);
- c) *The Manitoba Hydro Act*, C.C.S.M. c. H190;
- d) *The Path to Reconciliation Act*, C.C.S.M. c. R30.5;

- e) *The Louis Riel Institute Act*, C.C.S.M. c. L230;
- f) *The Child and Family Services Authorities Act*, C.C.S.M. c. C90;
- g) *The Proceedings Against the Crown Act*, C.C.S.M. c. P140;
- h) *The Interpretation Act*, C.C.S.M. c. I80;
- i) *Court of Queen's Bench Rules*, M.R. 533/88, Rules 14.05, 38, and 68.01;
- j) applicable constitutional and administrative law principles;
- k) the inherent jurisdiction of this Court; and
- l) such further and other authorities as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE REFERRED TO AT THE HEARING OF THIS APPLICATION:

125. The following documentary evidence will be referred to at the hearing of the Application:

- a) The Affidavit of David Chartrand, MMF President, to be filed.
- b) The Affidavit of Marci Riel, MMF Director of Energy and Infrastructure, to be filed.
- c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

126. The Applicant estimates that the hearing of the Application will take two (2) days.

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