File No: CI 12-01-77146

THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE

BETWEEN:

CLIFFORD J. ANDERSON, KURVIS ANDERSON, BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE, MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG, NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.,

Plaintiffs

- and –

THE GOVERNMENT OF MANITOBA,

Defendant

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C130

AMENDED STATEMENT OF CLAIM

McKENZIE LAKE LAWYERS LLP
300 Dundas Street
London, ON N6B 1T6
(519) 672-5666 telephone
(519) 672-2674 fax

Russell M. Raikes (LSUC# 24544O)
William Jenkins (LSUC# 10055D)
Michael Saelhof (LUSC# 59701O)

TRONIAK LAW
1000 – 444 St. Mary Avenue
Winnipeg, MB R3C 3T1
(204) 947-1743 telephone
(204) 947-0101 fax

Dennis Troniak, LSM #1977074

File No: CI 12-01-77146

THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE

BETWEEN:

CLIFFORD J. ANDERSON, KURVIS ANDERSON, BERTHA TRAVERS, PRISCILLA ANDERSON, LILLIAN TRAVERSE, MATHEW TRAVERSE, MELLONEY FRANCOIS, MARY STAGG, NORMAN STAGG, DAUPHIN RIVER FISHERIES COMPANY LTD.

Plaintiffs

and

THE GOVERNMENT OF MANITOBA

Defendant

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C130

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the Plaintiffs' LAWYER OR, WHERE THE Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it in this court office, WITHIN 20 DAYS after this Statement of Claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $10,000.00 for costs, within the time for serving and filing your Statement of Defence, you may move to have this proceeding dismissed

Issued by: 1st day of October
2012

"L. Ranville"

by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and $10,000.00 for costs and have the costs assessed by the court.

Date: April 3, 2012

Issued by: P. Check-Manek
Deputy Registrar
Court of Queen's Bench
For Manitoba

TO: The Government of Manitoba
c/o The Honourable Andrew Swan
Minister of Justice and Attorney General
of Manitoba
104 Legislative Building
450 Broadway
Winnipeg, Manitoba R3C 0V8

CLAIM

1. The Plaintiffs claim, on their own behalf and on behalf of the members of the classes of persons described in paragraph 7 of this pleading, the following:

    a. An Order certifying this action as a class proceeding and appointing the Plaintiffs as the Representative Plaintiffs for the classes herein described and any appropriate subclass thereof;

    b. General non-pecuniary damages for negligence, nuisance, breach of fiduciary duty, and breach of or interference with treaty rights in the amount of $500,000,000.00;

    c. Pecuniary damages for out-of-pocket expenses incurred including, but not limited to, loss of personal property, evacuation expenses, relocation costs, loss of income, loss of future income, business losses and the cost of repair and remediation of real and personal property in the amount of $250,000,000.00;

    d. Diminution and loss of property value in the amount of $150,000,000.00;

    e. Punitive, exemplary and/or aggravated damages in the amount of $50,000,000.00;

    f. Prejudgment and postjudgment interest, where applicable, pursuant to *The Court of Queen's Bench Act*, C.C.S.M., c. C280, as amended;

    g. Their costs of this action on a lawyer and client basis; and,

    h. Such further and other relief as may to this Honourable Court seem just.

THE PARTIES

2. The Plaintiffs, Clifford J. Anderson and Kurvis Anderson, are members of the Pinaymootang (Fairford) First Nation who resided on Reserve in the Spring of 2011 and who were forced to evacuate their homes as a result of the flooding on Reserve which is the subject of this action.

3. The Plaintiffs, Bertha Travers and Priscilla Anderson, are members of the Little Saskatchewan First Nation who were resident on Reserve in the Spring of 2011 and who were forced to evacuate their homes as a result of the flooding on Reserve which is the subject of this action.

4. The Plaintiffs, Lillian Traverse and Mathew Traverse, are members of the Lake St. Martin First Nation who resided on Reserve and who were forced to evacuate their homes as a result of the flooding on Reserve in the Spring of 2011 which is the subject of this action.

5. The Plaintiffs, Melloney Francois, Mary Stagg and Norman Stagg, are members of the Dauphin River First Nation who resided on Reserve and who were forced to evacuate their homes as a result of the flooding on Reserve in the Spring of 2011 which is the subject of this action.

6. The Plaintiff, Dauphin River Fisheries Company Ltd. is a company duly incorporated pursuant to the laws of the Province of Manitoba which carries on business in the Community of Dauphin River which is situate nearby the Dauphin River First Nation. This Plaintiff is a member of the Dauphin River business community and like other businesses

near the Reserves was adversely affected by the flooding in the Spring of 2011 which is the subject of this action.

7. The Plaintiffs propose that the Plaintiff classes be defined as follows:

   a. The **"Pinaymootang (Fairford) Class"**: all members of the First Nation

      i. whose property on Reserve, real or personal, was flooded in 2011; or,

      ii. who were evacuated, displaced or were unable to reside on Reserve because of the flooding on Reserve in 2011; or,

      iii. who were unable to work and thereby earn income because of the flooding on Reserve in 2011,

      including the estates of any persons who have died since March 1, 2011 who meet any of the criteria in (i-iii) preceding.

   b. The **"Little Saskatchewan Class"**: all members of the First Nation

      i. whose property on Reserve, real or personal, was flooded in 2011; or,

      ii. who were evacuated, displaced or were unable to reside on Reserve because of the flooding on Reserve in 2011; or,

      iii. who were unable to work and thereby earn income because of the flooding on Reserve in 2011,

      including the estates of any persons who have died since March 1, 2011 who meet any of the criteria in (i-iii) preceding.

c. The "**Lake St. Martin Class**": all members of the First Nation

i. whose property on Reserve, real or personal, was flooded in 2011; or,

ii. who were evacuated, displaced or were unable to reside on Reserve because of the flooding on Reserve in 2011; or,

iii. who were unable to work and thereby earn income because of the flooding on Reserve in 2011,

including the estates of any persons who have died since March 1, 2011 who meet any of the criteria in i-iii preceding.

d. The "**Dauphin River Class**": all members of the First Nation

i. whose property on Reserve, real or personal, was flooded in 2011; or,

ii. who were evacuated, displaced or were unable to reside on Reserve because of the flooding on Reserve in 2011; or,

iii. who were unable to work and thereby earn income because of the flooding on Reserve in 2011,

including the estates of any persons who have died since March 1, 2011 who meet any of the criteria in (i-iii) preceding.

e. The "**Business Class**": all persons situate and carrying on business within 30 kilometers of any of the Pinaymootang (Fairford) First Nation Reserve, Little Saskatchewan First Nation Reserve, Lake St. Martin First Nation Reserve and

Dauphin River First Nation Reserve whose suppliers and/or customers are members of those First Nations.

8. The Defendant, The Government of Manitoba, is responsible for the management and operation of water resources within the Province of Manitoba including, but not limited to, the Assiniboine River, Lake Manitoba, Fairford River, Lake St. Martin, Lake Winnipeg and the rivers and tributaries thereto and all dams and other water control structures situate thereon.

2011 FLOOD

9. The Shellmouth Dam controls outflows from the Lake of the Prairies on the Assiniboine River. This dam was at all material times owned, operated and controlled by the Defendant.

10. In 1971, the Portage Diversion was constructed. The purpose of the Portage Diversion is to divert water flowing in the Assiniboine River into Lake Manitoba so as to control water levels along the Assiniboine River and prevent flooding.

11. At all material times, the Defendant owned, operated and controlled the Portage Diversion.

12. The Fairford River Water Control Structure is located at or near the head of the Fairford River. When open, this control structure allows water to flow from Lake Manitoba through the Fairford River to Lake St. Martin. Lake St. Martin is connected to Lake Winnipeg by the Dauphin River. The Fairford River Water Control Structure is owned, operated and controlled by the Defendant.

13. The Defendant's practice prior to 2011 was to forecast anticipated water levels for the Assiniboine River and to draw down the water level in the Shellmouth Reservoir in anticipation of Spring melt. In the winter to 2010-11, the Defendant was at all material times aware that groundwater levels, one of the factors to be considered in estimating Spring water levels, were well above average.

14. The Plaintiffs state that the Defendant knew or should have known that the above average groundwater levels would materially contribute to the volume of water during a Spring melt and should have taken reasonable steps in anticipation of above average water flow including, but not limited to, greater drawdown of water in the Shellmouth Reservoir before Spring runoff in 2011.

15. In the Spring of 2011 and subsequently, the Defendant operated the Shellmouth Dam, Portage Diversion and Fairford Water Control Structure so as to cause massive amounts of water from the Assiniboine River to be diverted into Lake Manitoba, through the Fairford River into Lake St. Martin and through the Dauphin River to Lake Winnipeg. In doing so, the Defendant knowingly and recklessly caused extensive flooding to occur on each of the four First Nation Reserves. That flooding caused the evacuation, displacement and relocation of hundreds of persons from their homes on Reserve as well as damage to their personal and real property.

16. Upon being evacuated, displaced and relocated, the members of the Pinaymootang (Fairford) Class, Little Saskatchewan Class, Lake St. Martin Class and Dauphin River Class were moved at the direction of the Defendant to various off-Reserve sites including, but not

limited to, hotels in Winnipeg and other areas where many of the members of the said Classes continue to reside.

NEGLIGENCE

17. The Fairford River Water Control Structure is located near to the Pinaymootang (Fairford), Little Saskatchewan and Lake St. Martin First Nation Reserves. This structure controls the outflow of water from Lake Manitoba into the Fairford River, Lake St. Martin and onward to Lake Winnipeg via the Dauphin River.

18. The Defendant was at all material times aware of the location and proximity of the First Nation Reserves to the Fairford River Water Control Structure and was aware that the release of excessive amounts of water through the Fairford River Water Control Structure into the Fairford River was likely to cause flooding to the four First Nation Reserves and to roads and highways connecting those Reserves.

19. The Plaintiffs state that the Defendant owed a duty of care to the Plaintiffs to

    a. protect the Plaintiffs from flooding;

    b. properly design, construct, inspect, repair, maintain, operate and supervise the water control structures which it owned, operated and controlled;

    c. have in place adequate and appropriate flood control systems and structures to prevent or minimize flooding of the Plaintiffs' Reserves;

    d. provide timely and appropriate warning of potential flooding;

    e. take reasonable steps to mediate and prevent flooding resulting from its operation of its water control facilities;

    f. avoid interference with the Plaintiffs' exercise of their rights of use and occupation of their Reserve lands; and,

g. assist those affected by the flood in a timely manner so as to restore their property and to allow a prompt return to their homes.

20. The Plaintiffs state that the Defendant was negligent and thereby breached its duty of care owed to the Plaintiffs in that the Defendant, its servants, employees or agents:

a. failed to obtain, calculate, analyze or interpret data properly or in a timely manner to estimate water levels in the Assiniboine River, Shellmouth Reservoir, Lake Manitoba, Fairford River, Lake St. Martin or Dauphin River in the Spring of 2011 and subsequently;

b. failed to take into account existing groundwater levels in, along or near the four Reserves;

c. diverted excess water unnecessarily into Lake Manitoba and through the Fairford River Water Control Structure;

d. fully opened the Fairford River Water Control Structure and allowed that structure to remain open thereby channeling excessive amounts of water into the Fairford River without regard for the Plaintiffs and their property;

e. failed to have in place reasonable or adequate flood control measures in the Spring of 2011 and subsequently despite earlier floods and earlier investigations with respect to the inadequacy of the Defendant's flood control structures;

f. failed to properly operate the existing flood control structures including the Shellmouth Dam, Portage Diversion and Fairford River Water Control Structure;

g. failed to properly maintain the said Water Control Structures;

h. allowed the situation of overloading of Lake Manitoba and the Fairford River Water Control Structure beyond their original and acceptable limits;

i. failed to establish and maintain adequate design, planning, construction, installation, maintenance and inspection of the Shellmouth Dam including, but not limited to, reservoir limits and spillway control;

j. failed to draw down water from the Shellmouth Reservoir in advance of the Spring melt;

k. failed to warn the Plaintiffs of the impending flood in a timely manner;

l. failed to warn the Plaintiffs of the dangers associated with contact with the flood waters at the time of the flood and subsequently;

m. failed to adequately or properly inspect the Water Control Structures;

n. failed to take adequate measures to protect the Plaintiffs and their property from the flood caused by the Defendant's diversion of water from the Assiniboine River;

o. failed to have in place adequate or any dikes or other protective measures prior to the diversion of water from the Assiniboine River;

p. hired or engaged servants or agents who were not competent, who lacked the necessary experience and skill and/or were not properly trained; and,

q. failed to take adequate or timely steps to remediate the Plaintiffs' property or to provide for their care following their evacuation.

21. Further, the Plaintiffs state that upon evacuating and relocating the members of the Plaintiff Classes, the Defendant owed a duty of care to provide for their physical, psychological and cultural/spiritual needs given their removal from their traditional lands and homes and dependence upon the Defendant.

22. The Plaintiffs state that since the evacuation and displacement of the members of the Plaintiff Classes, the Defendant has breached the duty of care owed; in particular,

    a. the Defendant has failed to remediate and replace damaged homes in a timely manner so as to allow the Plaintiffs to return to their Reserves;

    b. the Defendant has failed to provide reasonable or adequate long-term housing/accommodation for those evacuated or displaced who cannot return to their homes on Reserve;

    c. the Defendant has failed to provide timely, adequate or any assistance with respect to medical care and/or schooling; and,

    d. the Defendant has failed to provide adequate assistance for those members of the Classes affected by the flood.

NUISANCE

23. The Defendant caused the diversion of water from the Assiniboine River into Lake Manitoba via the Portage Diversion thereby significantly increasing the volume of water and water level in Lake Manitoba.

24. The Defendant opened and kept open the Fairford River Water Control Structure thereby allowing water to flow from Lake Manitoba into the Fairford River, Lake St. Martin and Dauphin River suddenly and at a substantially higher water level than would normally occur.

25. The Defendant's diversion of the water caused sudden and massive flooding on the four Reserves and the roads and highways connecting those Reserves.

26. The flooding destroyed and/or damaged homes, garages, sheds and other buildings owned or occupied by the Plaintiffs, and deposited contaminants onto lands used and occupied by the

Plaintiffs for their homes, businesses, farming enterprises, traditional and recreation purposes.

27. The Plaintiffs state that the flooding caused by the Defendant's conduct constitutes a nuisance for which the Defendant is responsible in law.

BREACH OF TREATY RIGHTS

28. By treaty dated August 21, 1871, the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin and Dauphin River Reserves were set apart for the use of the Indians belonging to the bands for whom the Reserves were established.

29. The Plaintiffs state that pursuant to Treaty #2, the Plaintiffs and Plaintiff Classes were entitled to occupy and reside upon the lands reserved and to the quiet enjoyment of those lands free from interference by the Defendant with the exercise and enjoyment of those rights.

30. The Plaintiffs state that the flooding of the Reserves by the Defendant constitutes an unlawful interference with the exercise and enjoyment of the Plaintiffs' treaty rights.

BREACH OF FIDUCIARY DUTY

31. As a result of the flood caused by the Defendants, the Plaintiffs were particularly vulnerable and were evacuated and displaced from their homes.

32. Many of those displaced or evacuated from their homes obtained accommodation at the direction of and with the assistance of the Defendant.

33. The Plaintiffs state that having unilaterally caused the flood and evacuation of the Plaintiffs from their homes and having accepted responsibility to provide lodging and other care, the

Defendant owed and continues to owe a fiduciary duty to the members of the Classes affected.

34. The Plaintiffs state that the Defendant has breached its fiduciary obligation to the Plaintiffs in that the Defendant has failed,

    a. to provide adequate accommodation;

    b. to provide adequate and timely medical care;

    c. to assist and provide schooling for children who were unable to continue their education at their schools on or near their Reserve;

    d. to provide appropriate and adequate recreational facilities;

    e. to provide a reasonable allowance for clothing given that most of their possessions were destroyed or contaminated through the flood;

    f. to provide transportation;

    g. to meet their dietary needs; and,

    h. to meet their cultural and religious needs.

EXPERIENCE OF THE REPRESENTATIVE PLAINTIFFS

Clifford J. Anderson

35. The Plaintiff, Clifford J. Anderson, was evacuated from his home together with his spouse in April, 2011. He and his spouse received virtually no warning of the need to evacuate and, accordingly, they were able to take only a few of their possessions before their home was flooded.

36. The Plaintiff is a firefighter employed by the First Nation and, in order to continue to perform his duties as a firefighter and to assist his community, the Plaintiff purchased a trailer at his own expense and found alternate accommodation near and on his Reserve.

37. The Plaintiff subsequently waded through the water to retrieve more, but not all, of his personal belongings from his flooded home. The Plaintiff has stored those belongings at his own personal expense. Like many others in his community, the Plaintiff will not be able to return to and live in the home which he owned and occupied prior to the flood.

38. The Plaintiff has experienced significant anxiety, depression, anger and medical complications such as increased hypertension as a result of coping with the aftermath of the flood. He has also incurred out-of-pocket costs for housing, transportation, storage of personal property and replacement of personal property which costs are ongoing, the particulars of which will be provided well in advance of trial.

Kurvis Anderson

39. The Plaintiff, Kurvis Anderson, is a constable with the First Nation Police Force in Pinaymootang (Fairford) First Nation and a school bus driver. The Plaintiff resided with his wife and 11-year-old daughter, Kelsey, on Reserve in their family home until they were forced to evacuate in May, 2011. The Plaintiffs' home was situate on lands which had been occupied by he and his family since the 1950's and which were used, in part, for farming.

40. For a brief period after being evacuated, the Plaintiff lived in a hotel in Winnipeg. However, in order to fulfil his obligations as a constable and to continue to be paid, the Plaintiff purchased a trailer at his own expense which he and his family occupied for many months at a trailer park near their Reserve.

41. The trailer occupied by the Plaintiff and his family was significantly smaller than the three bedroom home which he and his family had occupied until the flood. As a result of the cramped living quarters, there was virtually no privacy in the trailer. They were unable to have visitors. The cramped quarters and the displacement from their familiar environment was difficult and emotionally upsetting.
42. The Plaintiff's home suffered significant damage in the flood and it is unlikely that the Plaintiff and his family will ever be able to return to live in their home. Although he was able to move some of his personal belongings into storage, a significant portion of his personal property was damaged or destroyed by the flood.
43. The Plaintiff felt a profound sense of loss at having to leave his home. The Plaintiff had a special connection to his home and the lands upon which his home was situate which were substantially damaged by the flood waters and contaminants which were deposited upon the land by those flood waters.
44. The Plaintiff was fortunate to be able to move into a new home recently. The new home is not nearly as nice as the home which they lost and the lands upon which it is located are significantly smaller than the property on which he grew up and lived before the flood.
45. The Plaintiff has suffered significant anxiety and depression as a result of the uncertainty over his future and that of his family, as well as the inconvenience and emotional upset resulting from the flood.

Bertha Travers

46. Bertha Travers was evacuated from her home on the Little Saskatchewan Reserve in June, 2011. At the time of the flood, she was 62 years of age. Since the flood, she has resided in various temporary accommodations in Winnipeg with her daughter and grandchildren.

47. The Plaintiff's home was significantly damaged in the flood and it is unlikely that she will ever be able to live there again. The Plaintiff lost considerable personal belongings when she was evacuated with little or no notice.

48. The Plaintiff has returned to her home on several occasions since the flood, at her own expense, in order to attempt to clean and repair her home. Her personal property in her home has been destroyed or significantly damaged. The Plaintiff's vehicle has been damaged in the course of visiting her home due to the condition of the roads on Reserve following the flood.

49. The Plaintiff has suffered negative respiratory and other health effects as a result of the flooding and subsequent mold infestation in her home. She has also suffered significant emotional and psychological harm including, but not limited to, anxiety, depression, fear and anger.

Priscilla Anderson

50. Priscilla Anderson was evacuated from her home on the Little Saskatchewan Reserve in April, 2011. At the time of the evacuation, she was 40 years of age and occupied a six bedroom home on Reserve.

51. For the first six months following her evacuation, the Plaintiff resided with her son, three daughters and her one-year-old grandson in hotel rooms provided by the Defendant.

52. After considerable effort, the Plaintiff was able to obtain a two bedroom accommodation for her family of six. The Plaintiff has received confirmation that her home has been condemned and that she will never be able to return to her home.

53. Prior to the flood, the Plaintiff hosted many family gatherings at her home on Reserve, including Christmas festivities, Easter dinner and various family birthday parties. Her home

was the gathering place for her family and extended family, which has been lost as a result of the flood.

54. The Plaintiff received virtually no notice of the need to evacuate and, as a result, was only able to take a small suitcase of clothing for her and her children as well as her bible. At the time of the evacuation, she was advised that she would be able to return in a month. The Plaintiff has visited her home since the flood at her own expense. Most of the Plaintiff's personal possessions have been destroyed either by flood waters or by mold. Some of her personal possessions have been stolen.

55. The Plaintiff has experienced a significant worsening of her health because of the flood and subsequent evacuation. Her weight has increased significantly and her arthritis and breathing difficulties have been considerably more difficult to manage in recent months.

56. The Plaintiff has experienced significant grief and upset as a result of the flood and her evacuation.

57. Following the evacuation, the Plaintiff attempted to register her children in school in Winnipeg, but registration was denied because the Plaintiff and her children did not have a permanent address and were living in a hotel. As a result, her children were unable to attend school.

Lillian Traverse

58. The Plaintiff, Lillian Traverse, was evacuated together with her four-year-old daughter, Ainsley, from their home on the Lake St. Martin Reserve in May, 2011. Since being evacuated, the Plaintiff has been forced to secure temporary accommodations in Winnipeg and does not know when she and her daughter will be able to return to their home, if ever. The Plaintiff has travelled at her own expense to her community to survey the damage and

attempt to recover personal property. Unfortunately, her home and most, if not all, of her personal belongings were destroyed by the flood.

59. The Plaintiff has suffered significant emotional and psychological problems as a result of the flood and her evacuation including, but not limited to, anxiety, panic, fear, depression, considerable appetite disruption, anger, and mood dysregulation.

Mathew Traverse

60. The Plaintiff, Mathew Traverse, was evacuated from his home on the Lake St. Martin Reserve in May, 2011 together with his spouse, Heather, and their five daughters and one son. Prior to the flood, the Plaintiff worked as a commercial fisherman. The Plaintiff has not received full compensation for his lost commercial fishing wages.

61. Since January 2012, the Plaintiff has worked as a flood co-ordinator for the Lake St. Martin First Nation, and has more recently been working as a long-haul truck driver.

62. The Plaintiff's family home was destroyed by the flood along with virtually all of their personal property. It is unlikely that the Plaintiff will ever be able to return to live in his family home.

63. In order to manage his affairs and to assist with flood fighting efforts, the Plaintiff has made many trips to Lake St. Martin and surrounding communities at his own expense. He has suffered significant inconvenience, emotional and psychological upset as a result of the 2011 flood including, but not limited to, anxiety, fear, depression, overeating, anger and mood regulation problems.

Melloney Francois

64. The Plaintiff, Melloney Francois, was evacuated from her home on the Dauphin River Reserve in May, 2011 together with her husband, daughter and granddaughter. The Plaintiff has resided with her family in various temporary accommodations in Winnipeg.

65. The Plaintiff has made many trips to the Dauphin River Reserve at her own personal expense. The Plaintiff's home is contaminated with mold and has developed cracks as a result of the massive earth dike erected immediately adjacent to her home.

66. Further, the Plaintiff has experienced both physical and psychological injuries as a result of the flood including, but not limited to, anemia, anxiety, depression, eating difficulties and anger.

Mary Stagg

67. The Plaintiff, Mary Stagg, was 72 years old at the time she was evacuated from her home on the Dauphin River Reserve in April, 2011. Since then, she has resided in various temporary hotel accommodations in Winnipeg with family members, including small children. She has incurred additional living expenses that she would not have incurred were she allowed to reside in her home on Reserve and has since then had to rely on various forms of social and community-based assistance.

68. At the time of the evacuation, the Plaintiff was retired but owned and operated a camp ground, boat ramps and two docks as well as boat rentals. Although her home was not directly damaged in the flood, an eight foot dike was erected near to her home and the Plaintiff lives in fear that the dike will not hold. As a result of the construction of a massive earth dike near to her home, the Plaintiff's boat ramps and docks have been destroyed. Her

camp ground is inaccessible from the river and the trees on the camp ground have been destroyed. She has lost the income which she would have earned from the operation of these facilities.

69. Further, as a result of the erection of the massive earth dike near to her home, the Plaintiff's home has shifted causing damage to the interior of her house in addition to extensive dust and dirt which has migrated into her home. The dike to continues to leak and the Plaintiff lives in fear that the dike will not hold.

70. The Plaintiff has returned to her home on several occasions since the flood at her own expense.

71. The Plaintiff is a diabetic. Since being evacuated, her conditions and symptoms have worsened. She has been unable to regulate her diet in the same way she was able to do so living on Reserve. She has suffered and will continue to suffer significant emotional and psychological problems as a result of being evacuated including, but not limited to, significant anxiety, panic, fear, depression, appetite disruption, anger, sleep disturbance and attention problems.

Norman Stagg

72. The Plaintiff, Norman Stagg, moved to Winnipeg in the Fall of 2010 with his mother in order to be close to doctors for his mother. The Plaintiff planned to return to the Dauphin River Reserve following her death and, in any event, by the Spring of 2011. As a result of the flooding caused by the Defendant, he was, and continues to be, unable to move back to the Reserve.

73. The Plaintiff was a commercial fisherman whose fishing income was significantly diminished as a result of the flood. The Plaintiff has received some, but not complete compensation for his commercial fishing losses.

74. In order to manage his business and personal affairs, including supervising his vacant home, the Plaintiff has made several trips to the Reserve at his own expense and has suffered damage to his vehicle in doing so. The Plaintiff has suffered increased hydro expenses despite not being able to live at his home.

75. The Plaintiff's mother passed away after she moved to Winnipeg from her home on the Dauphin River Reserve in the Fall of 2010. She was buried at the Lake St. Martin cemetery, rather than with her husband and other family members at the Dauphin River Cemetery because the community was inaccessible due to the flooding. The Plaintiff has suffered considerable emotional and psychological upset as a result of the flood and evacuation including, but not limited to, depression and anger.

Dauphin River Fisheries Company Ltd.

76. The Plaintiff, Dauphin River Fisheries Company Ltd., is a corporation which carries on the business of processing and sale of fish caught by local commercial fishermen who are principally members of the other Classes, in *inter alia* Lake St. Martin, the Dauphin River and Lake Winnipeg.

77. Helgi, Erle and Einar Einarsson are brothers who are the principal owners of the Dauphin River Fisheries Company Ltd. and related businesses.

78. As a result of the flood in 2011, commercial fishing in Lake St. Martin and in the Dauphin River was wiped out. The roads leading to Dauphin River were flooded and became

impassable. The Defendant constructed massive earth dikes including an earth dike which surrounds the fish processing plant owned and operated by the Plaintiff.

79. As a result of the flood of 2011, the Plaintiff and other businesses have lost significant revenues which they would have earned in 2011 and subsequently.

80. In addition, the Defendant constructed a Cut, also known as a Reach 1 without appropriate environmental assessment and without regard to the impact that such construction would have on commercial fishing in the vicinity of Dauphin River. As a result, fish spawning grounds have been destroyed or damaged.

81. The Plaintiff and many of the businesses which rely upon the members of the four First Nation Classes as customers or suppliers have suffered significant financial losses and will continue to suffer those losses for years to come.

DAMAGES

82. As a result of the negligence, nuisance, breach of fiduciary duty and interference with or breach of treaty rights by the Defendant, the Plaintiffs in the Pinaymootang (Fairford), Little Saskatchewan, Lake St. Martin and Dauphin River Classes have suffered significant damages including, but not limited to,

    a. damage to their homes and other buildings owned and occupied by them;

    b. damage to the lands on which their homes and other buildings were situate;

    c. contamination of the soil and buildings;

    d. damage and loss of personal property;

    e. loss of use and enjoyment of their lands, homes and personal property;

    f. physical injury as a result of exposure to the parasites, bacteria and other harmful contaminants in the flood waters;

g. physical injury as a result of exposure to the flood water and mold caused by the flooding;

h. loss of amenities of life and loss of community;

i. mental, emotional, psychological damage and loss of enjoyment of life;

j. loss of income and loss of competitive employment advantage;

k. loss of future income;

l. out-of-pocket expenses including living expenses, transportation costs, storage costs, relocation costs, the full particulars of which will be delivered to the Defendant during the course of this lawsuit and prior to trial.

83. The Plaintiff, Dauphin River Fisheries Company Ltd., and the members of the Business Class have suffered a significant loss of income and future income as a consequence of the Defendant's negligence and nuisance.

PUNITIVE DAMAGES

84. The Plaintiffs state that the conduct of the Defendant, their servants, employees or agents was wilful, arrogant, callous, highhanded and constituted a gross violation of the rights and interests of the Class Members. The Plaintiffs submit that this is an appropriate case for an award of punitive, exemplary and/or aggravated damages.

STATUTORY PROVISIONS

85. The Plaintiffs plead and rely upon the following provisions:

a. *The Class Proceedings Act, supra*;

b. *The Proceedings Against the Crown Act*, C.C.S.M. c. P140, sections 3, 4, 7, 10 and 14.

86. The Plaintiffs respectfully request that this action be tried in the Winnipeg Judicial Centre.

MCKENZIE LAKE LAWYERS LLP
300 Dundas St.
London, ON N6B 1T6

Tel: 519-672-5666
Fax: 519-672-2674

Russell Raikes (LSUC #24544O)

William Jenkins (LSUC #10055D)

Michael Saelhof (LSUC #59701O)

TRONIAK LAW

1000-444 St Mary Ave
Winnipeg MB R3C 3T1

Tel: 204-947-1743
Fax: 204-947-0101

Dennis Troniak (LSM # 1977074)

Lawyers for the Plaintiffs

File No: CI 12-01-77146

Clifford J. Anderson et al.	vs.	**The Government of Manitoba**
Plaintiffs		Defendant

THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE

PROCEEDING COMMENCED AT
WINNIPEG, MANITOBA

AMENDED STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP
300 Dundas St.
London, ON N6B 1T6
Tel: 519-672-5666
Fax: 519-672-2674

Russell Raikes, LSUC #24544O
email: raikes@mckenzielake.com

William Jenkins, LSUC #10055D
email: jenkins@mckenzielake.com

Michael Saelhof, LSUC #59701O
email: saelhof@mckenzielake.com

TRONIAK LAW
1000-444 St. Mary Ave.
Winnipeg, MB R3C 3T1
Tel: 204-947-1743
Fax: 204-947-0101

Dennis Troniak, LSM #1977074

Lawyers for the Plaintiffs