

File No. C1-19-01- 25086

THE QUEEN'S BENCH  
Winnipeg Centre

(Proceeding under *The Class Proceedings Act*)

BETWEEN:

RYNELLE JASMINE FLETT

PLAINTIFF

- and -

THE GOVERNMENT OF MANITOBA,  
TATASKWEYAK CREE NATION, MANTO SIPI CREE NATION,  
GARDEN HILL FIRST NATION, RED SUCKER LAKE FIRST NATION,  
ST. THERESA POINT FIRST NATION, and WASAGAMACK FIRST NATION

DEFENDANTS

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STATEMENT OF CLAIM

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Counsel for the Plaintiff:

BENNETT MOUNTEER LLP  
400 – 856 Homer Street  
Vancouver, BC V6B 2W5  
Phone: (604) 639-3680  
Fax: (604) 639-3681  
Attn: Paul R. Bennett and  
Mark W. Mounteer

JEMMETT JACK  
BARRISTERS & SOLICITORS  
Box 191  
Thompson, Manitoba, R8N 1N1  
Phone: (204) 800-6438 ext. 2  
Fax: (888) 371-7412  
Attn: Meagan Jemmett

Local Agent for Delivery:

GAVIN WOOD LAW OFFICE  
3 – 430 River Avenue  
Winnipeg, Manitoba R3L 0C6  
Phone: (204) 947-1830  
Fax: (204) 943-0461  
Attn: Gavin Wood

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RYNELLE JASMINE FLETT

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**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Queen's Bench Rules*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff and file it in this court office, WITHIN 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.

Date: \_\_\_\_\_

Issued : \_\_\_\_\_

Deputy Registrar

TO:

**The Government of Manitoba**  
the Attorney General of Manitoba  
104 Legislative Building  
450 Broadway  
Winnipeg, Manitoba R3C 0V8

**Tataskweyak Cree Nation**  
Box 250  
Split Lake, Manitoba R0B 1P0

**Manto Sipi Cree Nation**  
PO Box 97  
Gods River, Manitoba R0B 0N0

**Garden Hill First Nation**  
General Delivery  
Island Lake, Manitoba R0B 0T0

**Red Sucker Lake First Nation**  
General Delivery  
Red Sucker Lake, Manitoba R0B 1H0

**St. Theresa Point First Nation**  
General Delivery  
St. Theresa Pt., Manitoba R0B 1J0

**Wasagamack First Nation**  
PO Box 1  
Wasagamack, Manitoba R0B 1Z0

AND, PURSUANT TO THE *Class Proceedings Act*, s. 42, TO:

**The Attorney General of Manitoba**  
104 Legislative Building  
450 Broadway  
Winnipeg, Manitoba R3C 0V8

## CLAIM

### I. RELIEF SOUGHT

1. The Plaintiff, Rynelle Jasmine Flett, claims on her own behalf and on behalf of a Class, as defined below at paragraph 11:
  - a. an injunction prohibiting the Defendants Tataskweyak Cree Nation, Manto Sipi Cree Nation, Garden Hill First Nation, Red Sucker Lake First Nation, St. Theresa Point First Nation, Wasagamack First Nation (collectively, the “Defendant First Nations”) from detaining any individual in facilities owned by the Defendant First Nations;
  - b. general and special damages for the torts of negligence and false imprisonment and for breaches of rights guaranteed by the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c.11 (the “*Charter*”);
  - c. aggravated damages and punitive damages;
  - d. interest on all amounts found to be owing, pursuant to the *Court of Queen’s Bench Act*, C.C.S.M., c. C-280, as amended; and,
  - e. such further and other relief as this Honourable Court may allow.

## II. THE PARTIES

2. The Plaintiff, Rynelle Jasmine Flett, is a resident of Split Lake, Manitoba and a treaty member of Tataskweyak Cree Nation.

3. The Defendant, the Government of Manitoba (“the Government of Manitoba”), is responsible for the administration of justice within the Province of Manitoba including, pursuant to s. 2 of *The Police Services Act*, C.C.S.M., c. P94.5, ensuring that adequate and effective policing is provided throughout Manitoba in accordance with the provisions of *The Police Services Act*.

4. The Defendant, Tataskweyak Cree Nation is a “band” as defined in the *Indian Act*, with an address of Box 250, Split Lake, Manitoba, R0B 1P0.

5. The Defendant Manto Sipi Cree Nation is a “band” as defined in the *Indian Act*, with an address of PO Box 97, God’s River, Manitoba, R0B 0N0.

6. The Defendant Garden Hill First Nation is a “band” as defined in the *Indian Act*, R.S.C. 1985, c. I-5, with an address of General Delivery, Island Lake, Manitoba, R0B 0T0.

7. The Defendant Red Sucker Lake First Nation is a “band” as defined in the *Indian Act*, with an address of General Delivery, Red Sucker Lake, Manitoba, R0B 1H0.

8. The Defendant St. Theresa Point First Nation is a “band” as defined in the *Indian Act*, with an address of General Delivery, St. Theresa Point, Manitoba, R0B 1J0.

9. The Defendant Wasagamack First Nation is a “band” as defined in the *Indian Act*, with an address of PO Box 1, Wasagamack, Manitoba, R0B 1H0.

10. Each of the Defendant First Nations owns and operates facilities which each Defendant First Nation uses to detain individuals (the “Band-Owned Detention Facilities”).

### **III. THE PROPOSED CLASS**

11. The Plaintiff brings this action on her own behalf and on behalf of all persons who have been detained in the Band-Owned Detention Facilities (the “Class”).

### **IV. FACTS**

#### ***Detention in the Band-Owned Detention Facilities***

12. First Nation Safety Officers, “band constables”, and other employees, representatives, agents or volunteers of each of the Defendant First Nations have detained members of the Class, including the Plaintiff, in the Band-Owned Detention Facilities.

13. During the period of their detention in the Band-Owned Detention Facilities, Class members, including the Plaintiff, were entirely deprived of their liberty.

14. During their detention in the Band-Owned Detention Facilities, Class members, including the Plaintiff, were subjected to unsanitary, dangerous, and degrading conditions.

15. At no time was there a legal justification for the Defendant First Nations' detention of Class members, including the Plaintiff, within the Band-Owned Detention Facilities.

***The First Nation Safety Officer Program***

16. In the Defendant First Nations communities, the policing authority is the Royal Canadian Mounted Police (the "RCMP"). The RCMP provides policing services in the Defendant First Nations communities pursuant to the *Provincial Police Services Agreement* entered into between the Governments of Manitoba and Canada, pursuant to s. 18 of *The Police Services Act*.

17. Historically, members of some First Nation communities in Manitoba acted as informal band constables who assisted the RCMP and enforced band by-laws. Over time, the Government of Canada formalized its policy in relation to band constables and provided funding directly to First Nations for the employment of band constables.

18. In the 1970s, the Government of Canada issued Circular 55, which clarified the parameters of the band constable program, and explicitly stated that band constables had no more law enforcement powers than an ordinary band member.

In cases requiring detention, band constables were to refer the matter to the local policing authority.

19. In March 2015, the Government of Canada terminated the band constable program and stopped providing funding to First Nations for the employment of band constables.

20. In place of the band constable program, the Government of Manitoba established the First Nation Safety Officer program, in Part 7.2 of *The Police Services Act*. In order to operate a First Nation Safety Officer program, a First Nation must enter into an operating agreement with the Government of Manitoba, as represented by the Minister of Justice, and the RCMP, pursuant to s. 77.12(1) of *The Police Services Act* (the “FNSO Operating Agreement”).

21. The statutorily prescribed role of First Nation Safety Officers is to implement crime prevention strategies and initiatives, connect persons in need with social service providers, maintain a visible presence within the First Nation community and provide information to the local policing authority on ongoing or emerging public safety issues, pursuant to s. 77.14 of *The Police Services Act*.

22. First Nation Safety Officers are not police officers. The authorities and powers of First Nation safety officers are limited to those set out in *The Police Services Act*, the *First Nation Safety Officers Regulation*, 229/2015 and the relevant FNSO Operating Agreement.

23. If expressly authorized to do so by the FNSO Operating Agreement, First Nation Safety Officers are permitted, pursuant to the *First Nation Safety Officers Regulation*, to enforce a limited set of provisions in certain provincial statutes, namely *The Highway Traffic Act*, *The Off-Road Vehicles Act*, *The Liquor, Gaming and Cannabis Control Act* and *The Smoking and Vapour Products Control Act*. First Nation Safety Officers are also permitted to exercise a limited number of specific powers set out in *The Highway Traffic Act*, *The Intoxicated Persons Detention Act*, *The Mental Health Act*, and *The Petty Trespasses Act*, provided that the FNSO Operating Agreement expressly authorizes them to do so. First Nation Safety Officers are also permitted to enforce the lawful First Nation by-laws if the relevant First Nation has authorized them to do so.

24. Nothing in either *The Police Services Act*, the *First Nation Safety Officers Regulation*, or any other source of legal authority, permits First Nation Safety Officers, or any other employees, representatives of agents of a First Nation, to detain people in Band-Owned Detention Facilities.

25. Each of the Defendant First Nations has entered into one, or more, FNSO Operating Agreements for the operation of a First Nation Safety Officer program in their respective communities.

26. None of the FNSO Operating Agreements for the First Nation Safety Officer programs operated by the Defendant First Nations authorizes the relevant First Nation Safety Officers to detain anyone in Band-Owned Detention Facilities. On the contrary, each of the FNSO Operating Agreements expressly or, in the

alternative, by direct and necessary implication, prohibits the use of Band-Owned Detention Facilities.

27. The Government of Manitoba is a party to the FNSO Operating Agreements for each of the First Nation Safety Officer programs. Each of the FNSO Operating Agreements authorizes the Government of Manitoba to direct, supervise and monitor the First Nation's operation of the First Nation Safety Officer program. For example:

- a. The Government of Manitoba may issue directives, guidelines or standard operating procedures to the First Nation relating to the operation of the program;
- b. The Defendant First Nations must provide the Government of Manitoba with an annual report regarding the operation of the program, which includes the names of the First Nation Safety Officers, details of training, proof of insurance and any other information requested by the Government of Manitoba;
- c. The Defendant First Nations must provide the Government of Manitoba with budgetary information and detailed annual audited financial statements for the program.

28. The FNSO Operating Agreements provide that the detention, by a First Nation Safety Officer, of a person in a band-owned facility is an event of default under the FNSO Operating Agreement. Upon the occurrence of an event of

default, the FNSO Operating Agreements provide that the Government of Manitoba may immediately terminate the FNSO Operating Agreement.

29. The Government of Manitoba employs a Director of First Nations Policing who is responsible for liaising with and monitoring the First Nation Safety Officer programs across Manitoba.

***The Plaintiff's Detention by Tataskweyak Cree Nation***

30. On or about January 21, 2018, the Plaintiff was driving a truck along a snow-covered road. When she tried to pull the truck into a driveway, the truck slid off the side of the driveway into a ditch. In addition to the Plaintiff, there were two female passengers and one male passenger in the Plaintiff's truck.

31. Kelly Spence, a First Nation Safety Officer employed by Tataskweyak Cree Nation ("FNSO Spence") was following the Plaintiff's vehicle at the time of the accident. After the accident, FNSO Spence exited her vehicle, opened the driver's door on the Plaintiff's truck, and told the Plaintiff to get out.

32. James Audy and another individual, both known to the Plaintiff as Tataskweyak Cree Nation "band constables", then arrived at the accident.

33. FNSO Spence told the Plaintiff, "come with us, you're going in". Despite the Plaintiff's protests, FNSO Spence and at least one of the "band constables" forced the Plaintiff into a vehicle that belonged to either FNSO Spence or Mr. Audy.

34. FNSO Spence and one of the “band constables” also forced the male passenger from the Plaintiff’s truck into the back of the vehicle belonging to either FNSO Spence or Mr. Audy.

35. FNSO Spence and one of the “band constables” drove the Plaintiff and the male passenger to a detention facility owned by Tataskweyak Cree Nation.

36. The Plaintiff was ordered to remove her shoes and her jacket and told to go into a cell. The Plaintiff was not searched.

37. The Plaintiff’s male passenger was placed in a different cell. The Plaintiff heard other male voices coming from that cell.

38. The Plaintiff demanded to know why she had been detained but received no response to her questions. She was not advised of the reason for her arrest or detention. She was not advised of her right to retain and instruct counsel. She was not given access to a telephone or an opportunity to contact a lawyer.

39. The Plaintiff entered the cell as instructed. She was its only occupant.

40. The floor of the cell was muddy and sticky. The toilet in the cell did not flush and was full of urine and feces, which resulted in an overwhelming odour. The water fountain in the cell did not work. The heat inside the cell was stifling.

41. The Plaintiff lay down on the floor of the cell, next to the door, where there was a small draft of cold, fresh air entering the cell through the crack between the cell door and the floor. The Plaintiff slept.

42. The Plaintiff woke when she heard the male passenger being released from his cell. In response to the Plaintiff's shouted questions, a guard told her it was 2:30 am. The Plaintiff asked why she was not also being released. The guard replied that, since the Plaintiff "got caught with DUI" she had to stay in the cell for twelve hours.

43. The Plaintiff slept again. When she awoke, she was thirsty and hot. Shouting through the door, the Plaintiff asked for water and for the heat to be turned down. The guard refused her request for water and said that the Plaintiff only had two more hours before she would be released.

44. After approximately 12 to 13 hours of detention, the Plaintiff was released from the cell. A guard told her that she would have been released thirty to forty-five minutes earlier, but the guard had to wait for "band constables" to arrive because the guard could not release prisoners himself.

45. As a result of the incident, the Plaintiff was served with a summons by the RCMP and charged with the criminal offence of impaired operation of a motor vehicle. The Plaintiff pled not guilty and the matter was set for trial. Neither FNSO Spence nor Mr. Audy attended for the trial, and the charge was stayed.

46. Tataskweyak Cree Nation operates a First Nation Safety Officer program pursuant to an operating agreement that was in place for, at a minimum, 2016-2017 and 2017-2018 (the "TCN FNSO Operating Agreement").

47. The TCN FNSO Operating Agreement sets out the limited powers of Tataskweyak Cree Nation First Nation Safety Officers, and those powers do not include any authority to detain individuals in holding facilities owned by Tataskweyak Cree Nation.

48. Pursuant to s. 30(1)(c)(v) of the TCN FNSO Operating Agreement, it is an event of default under the TCN FNSO Operating Agreement for a First Nation Safety Officer employed by Tataskweyak Cree Nation to detain a person in a band-owned facility.

***Provincial Court Inquests regarding Deaths in Band-Owned Detention Facilities***

49. The Defendants either knew or, in the alternative, were recklessly indifferent to the fact that the operation and use of the Band-Owned Detention Facilities was both unlawful and dangerous.

50. Since 2005, at least four Provincial Court Inquests have investigated and reported upon the deaths of individuals during their detention within Band-Owned Detention Facilities.

51. On September 7, 2005, Judge Lerner released a report from the inquest into the death of Glenn Fiddler, in 1999. Mr. Fiddler died while detained in cells owned by the Defendant Wasagamack First Nation, after he was able to start a fire within his cell and it was not possible to extract him from the cell and extinguish the fire. Judge Lerner concluded, among other things, that the band

constables of Wasagamack First Nation lacked the legal authority to detain Mr. Fiddler at Wasagamack First Nation. Judge Lerner further concluded that the cells in which Mr. Fiddler had been confined were dangerous and wholly inadequate for their purpose.

52. On June 4, 2007, Judge M.P. Thompson released a report from the inquest into the death of Rachel Lori Wood in 2003. Ms. Wood committed suicide while she was being held in detention cells owned by Nisichawayasihk Cree Nation. Judge Thompson found that the band-owned cells in which Ms. Wood died were inhumane, disgusting, and unsafe. Judge Thompson recommended, among other things, that the Governments of Manitoba and Canada form a joint working group to identify band operated holding cells in Manitoba and take immediate action to shut them down.

53. On July 23, 2015, Judge Tracey Lord released a report from the inquest into the death of Calvin Waylon McDougall in 2009. Mr. McDougall committed suicide while he was being held in detention cells owned by the Defendant Garden Hill First Nation. Representatives of both the Governments of Manitoba and Canada took the position, in their testimony at the inquest, that First Nation communities in Manitoba were not permitted to use band-owned cells for the detention of individuals.

54. Most recently, on February 12, 2016, Judge Malcolm McDonald released a report from the inquest into the death of Brian McPherson in 2011. Mr. McPherson died of sudden heart failure while being held in detention cells owned

by the Defendant Garden Hill First Nation. Judge McDonald found that the detention facility in which Mr. McPherson was held was in an unacceptable condition, extremely overcrowded and substandard. The detention of individuals for band by-law violations was, Judge McDonald reported, “unlawful” and “should stop.”

## **V. CAUSES OF ACTION**

55. The Defendant First Nations are liable for the actions of each of their employees and agents, including all First Nation Safety Officers, band constables, securities, guards, and any other employees, agents, and volunteers.

### ***False Imprisonment***

56. By causing the Class members, including the Plaintiff, to be detained in the Band-Owned Detention Facilities and thus totally deprived of their liberty without lawful justification, the Defendant First Nations committed the tort of false imprisonment.

### ***Negligence***

57. The Plaintiff claims, on her own behalf and on behalf of the Class, that the Government of Manitoba is liable in negligence.

58. The Government of Manitoba owed a duty of care to the Class members, including the Plaintiff, to take reasonable steps to ensure that the Defendant First Nations operated their respective First Nation Safety Officer Program in accordance with their respective FNSO Operating Agreement and did not detain

persons in Band-Owned Detention Facilities in breach of their FNSO Operating Agreement, by virtue of the following facts:

- a. The Government of Manitoba's responsibility for the administration of justice in Manitoba, including its specific responsibility, set out in s. 2 of *The Police Services Act*, to ensure that adequate and effective policing is provided throughout Manitoba;
- b. The Government of Manitoba's decision to enter into FNSO Operating Agreements with each of the Defendant First Nations which provided for the establishment, operation, supervision and funding of First Nation Safety Officer programs in each of the Defendant First Nations communities;
- c. The Government of Manitoba knew or ought to have known that First Nation Safety Officers, "band constables" and other employees, agents or volunteers of the Defendant First Nations had been unlawfully detaining individuals in Band-Owned Detention Facilities and would continue to unlawfully detain people in Band-Owned Detention Facilities if the Government of Manitoba did not intervene;
- d. The Government of Manitoba had extensive powers, both generally and pursuant to the FNSO Operating Agreements, to supervise, monitor, direct and terminate the First Nation Safety Officer programs in general, and the Band-Owned Detention Facilities operated by the Defendant First Nations in particular.

59. The Government of Manitoba breached the duty of care it owed to the Class members, including the Plaintiff, by failing to take reasonable steps to stop the Defendant First Nations from unlawfully detaining individuals in Band-Owned Detention Facilities.

60. If the Government of Manitoba had met its duty of care, members of the Class, including the Plaintiff, would not have been unlawfully detained in Band-Owned Detention Facilities. In the alternative, the Government of Manitoba's inaction materially contributed to the risk that the Class members, including the Plaintiff, would be unlawfully detained in Band-Owned Detention Facilities.

***Damages for False Imprisonment and Negligence***

61. As a result of the wrongful detentions, the Plaintiff and each Class member suffered losses and claim general damages from the Defendants for their suffering, which include the loss of liberty, inconvenience, indignity, humiliation, and mental suffering, and special damages for any pecuniary losses suffered as a result of the unlawful detention.

62. The Class members and the Plaintiff also claim aggravated and punitive damages due to the high-handed, deliberate, and reprehensible nature of the Defendants' conduct, which both increased the humiliation suffered by the Class members, including the Plaintiff, and necessitates condemnation. In particular, the Plaintiff points to the following circumstances:

- a. In addition to being unlawful, in most or all cases the Band-Owned Detention Facilities subjected the Plaintiff and Class members to dangerous, unsanitary, and degrading conditions; and,
- b. The Defendant First Nations continued to operate and use Band-Owned Detention Facilities, and the Government of Manitoba failed to take reasonable steps to stop the Defendant First Nations from using Band-Owned Detention Facilities, notwithstanding the repeated occurrence of fatalities in those facilities, and the resulting reports from four Provincial Inquests to the effect that the use of Band-Owned Detention Facilities was unlawful and subjected people to dangerous and degrading conditions.

***Breach of Charter Rights***

63. The Defendants' conduct, as set out above, infringed upon the following rights held by Class members, including the Plaintiff, under the *Charter*:

- a. The right, guaranteed by s. 7 of the *Charter*, not to be deprived of liberty or security except in accordance with the principles of fundamental justice;
- b. The right, guaranteed by s. 9 of the *Charter*, not to be arbitrarily detained or imprisoned; and,
- c. The right, guaranteed by s. 12 of the *Charter*, not to be subjected to any cruel and unusual treatment or punishment.

64. As a result of the breaches of their *Charter* rights, the Plaintiff and Class members suffered humiliation, degradation, and a loss of dignity.

65. The Plaintiff and Class members seek an award of damages, pursuant to s. 24(1) of the *Charter*, to compensate for their suffering, vindicate their *Charter* rights and deter similar future breaches.

**VI. THE RELEVANT STATUTES**

66. The Plaintiff and the Class members plead and rely on:
- a. *The Class Proceedings Act*, C.C.S.M., c. C-130;
  - b. the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c.11 (the “*Charter*”);
  - c. *The Police Services Act*, CCSM c. P94.5; and,
  - d. the *First Nation Safety Officers Regulation*, 229/2015.
67. The Plaintiff, therefore, claims for the relief as set out in para. 1 herein.

Date: December \_\_\_\_\_, 2019

*Counsel for the Plaintiff:*  
**BENNETT MOUNTEER LLP**  
400 – 856 Homer Street  
Vancouver, BC V6B 2W5  
Tel: (604) 639-3680  
Fax: (604) 639-3681

Attn: Paul R. Bennett and  
Mark W. Munteer  
Email: pb@hbmlaw.com;  
mm@hbmlaw.com

*Local Agent for Delivery:*  
**GAVIN WOOD LAW OFFICE**  
3 – 430 River Avenue  
Winnipeg, Manitoba R3L 0C6

Attn: Gavin Wood  
Tel: (204) 947-1830  
Fax: (204) 943-0461

*Co-Counsel for the Plaintiff:*  
**JEMMETT JACK**  
Barristers and Solicitors  
Box 191  
Thompson, Manitoba, R8N 1N1

Attn: Meagan Jemmett  
Tel: (204) 800-6438 ext. 2  
Fax: (888) 371-7412  
Email: meagan@jemmettjack.ca