

File No: CI 24 - 01- 44504

THE KING'S BENCH
Winnipeg Centre

BETWEEN:

MELODIE NORTH and PATRICK NORTH

plaintiffs

-and-

CROSS LAKE FIRST NATION

defendant

FILED JAN 04 2024

STATEMENT OF CLAIM

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STATEMENT OF CLAIM

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the King'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 TWENTY DAYS** after this Statement of Claim is served on you, if you are 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 forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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

DATE:

JAN 04 2024

Issued by:

**D. CHAMPAGNE
DEPUTY REGISTRAR
COURT OF KING'S BENCH
DEPUTY REGISTRAR
FOR MANITOBA
100C-408 York Avenue
Winnipeg, Manitoba R3C 0P9**

TO: CROSS LAKE FIRST NATION
P.O. Box 10
Cross Lake, Manitoba R0B 0J0

CLAIM

1. The plaintiffs, MELODIE NORTH and PATRICK NORTH claim:
 - A. As to MELODIE NORTH, pursuant to section 5(1) of *The Fatal Accidents Act*, C.C.S.M. c.F50 and amendments and regulations thereto ("*the FAA*") on behalf of herself and on behalf of all those entitled to benefit under *the FAA*,
 - a. Damages, pursuant to section 3.1 of *the FAA*, for the death of Kobie Albert North for the following family members, to be adjusted for inflation:
 - i. MELODIE MICHELLE NORTH, mother, born July 9, 1985, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;
 - ii. PATRICK ANTHONY TRAVIS NORTH, father, born February 9, 1986, laborer, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;
 - iii. CASSIE LISA MUSKEGO, sister, born November 1, 2001, homemaker, residing at 12-45 Ashbury Place,

Thompson, Manitoba, R8N 0J1, in the sum of \$10,000.00;

iv. PHYLLIS AUDREY NORTH, maternal grandmother, born August 20, 1962, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;

v. ORTON LAWRENCE MUSKEGO, maternal grandfather, March 13, 1966, retired, residing at Cross Lake, Manitoba R0B 0J0, in the sum of \$10,000.00;

vi. PATRICK WILFRED NORTH, paternal grandfather, born April 12, 1966, carpenter, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;

vii. ALEXANDRA MADRA NORTH, paternal grandmother, born June 13, 1971, educational assistant, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00.

b. Damages, pursuant to section 3.1 of *the FAA*, for the death of Jade Tamar North for the following family members, to be adjusted for inflation:

i. MELODIE MICHELLE NORTH, mother, born July 9, 1985, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;

- ii. PATRICK ANTHONY TRAVIS NORTH, father, born February 9, 1986, laborer, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;
- iii. CASSIE LISA MUSKEGO, sister, born November 1, 2001, homemaker, residing at 12-45 Ashbury Place, Thompson, Manitoba, R8N 0J1, in the sum of \$10,000.00;
- iv. PHYLLIS AUDREY NORTH, maternal grandmother, born August 20, 1962, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;
- v. ORTON LAWRENCE MUSKEGO, maternal grandfather, March 13, 1966, retired, residing at Cross Lake, Manitoba R0B 0J0, in the sum of \$10,000.00;
- vi. PATRICK WILFRED NORTH, paternal grandfather, born April 12, 1966, carpenter, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;
- vii. ALEXANDRA MADRA NORTH, paternal grandmother, born June 13, 1971, educational assistant, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00.

c. Damages, pursuant to section 3.1 of *the FAA*, for the death of Reed Anthony Travis North for the following family members, to be adjusted for inflation:

- i. MELODIE MICHELLE NORTH, mother, born July 9, 1985, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;
- ii. PATRICK ANTHONY TRAVIS NORTH, father, born February 9, 1986, laborer, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$30,000.00;
- iii. CASSIE LISA MUSKEGO, sister, born November 1, 2001, homemaker, residing at 12-45 Ashbury Place, Thompson, Manitoba, R8N 0J1, in the sum of \$10,000.00;
- iv. PHYLLIS AUDREY NORTH, maternal grandmother, born August 20, 1962, homemaker, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;
- v. ORTON LAWRENCE MUSKEGO, maternal grandfather, March 13, 1966, retired, residing at Cross Lake, Manitoba R0B 0J0, in the sum of \$10,000.00;

- vi. PATRICK WILFRED NORTH, paternal grandfather, born April 12, 1966, carpenter, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00;
- vii. ALEXANDRA MADRA NORTH, paternal grandmother, born June 13, 1971, educational assistant, residing at Cross Lake, Manitoba, R0B 0J0, in the sum of \$10,000.00.

B. As to MELODIE NORTH,

- a. General damages;
- b. An award of 3% on account of loss of opportunity to invest non-pecuniary damages;
- c. Special damages, including, but not limited to (i) professional counselling services, (ii) transportation costs and (iii) any other special damages to be incurred;
- d. Interest;
- e. Costs of this action; and
- f. Such further and other relief as the nature of the case may require and the Court may permit.

C. As to PATRICK NORTH,

- a. General damages;
 - b. An award of 3% on account of loss of opportunity to invest non-pecuniary damages;
 - c. Loss of income, past and future;
 - d. Special damages, including, but not limited to (i) professional counselling services, (ii) transportation costs and (iii) any other special damages to be incurred;
 - e. Interest;
 - f. Costs of this action; and
 - g. Such further and other relief as the nature of the case may require and the Court may permit.
2. The plaintiff, MELODIE NORTH, ("Melodie") is an Indigenous person of Treaty status, a member of the CROSS LAKE FIRST NATION residing on Cross Lake First Nation Indian Reserve in Manitoba, a homemaker, and the mother of the late Kobie Albert North, born on December 6, 2004, and who died on February 12, 2022, Jade Tamar North, born on March 28, 2008, and who died on February 12, 2022 and Reed Anthony Travis North, born on October 24, 2019, and who died on February 12, 2022, hereafter referred interchangeably by their first names and/or collectively as "the deceased children".

3. The plaintiff, PATRICK NORTH, ("Patrick") is an Indigenous person of Treaty status, a member of the CROSS LAKE FIRST NATION residing on Cross Lake First Nation Indian Reserve in Manitoba, a laborer, the husband of MELODIE NORTH, and the father of the deceased children.
4. The defendant, CROSS LAKE FIRST NATION ("CLFN") is a Band of Indians created pursuant to the *Indian Act*, R.S.C., 1985, c. I-5 represented by Chief and Council and resides on Cross Lake First Nation Indian Reserve ("Reserve") in Manitoba.
5. The plaintiffs say that CLFN is vicariously liable for those torts committed by its employees and/or agents during the course of, and within the scope of their employment and/or agency with CLFN and/or while having its actual or ostensible authority. The plaintiffs plead and rely on the principle *respondeat superior*.
6. The plaintiffs state that:
 - a. CLFN owned land and structures on the Reserve which it provided to Band members for housing;
 - b. During the Covid-19 pandemic, CLFN provided temporary lodgings to isolate Band members and/or residents of the Reserve infected with the SARS-CoV-2 virus;
 - c. One such temporary lodging built by CLFN in or about November 2021 on the south portion of 1200 Sawmill Road on

the Reserve at the approximate geographical co-ordinates 54°37'20.8"N, 97°44'51.2"W, consisted of one room measuring approximately 16 by 16 feet, roof overhead, one door on its north side; one window on its south side, one window on its east side, each measuring approximately 28 by 24 inches; one window on its west side measuring approximately 60 by 48 inches with an opening limitation to approximately 20 by 16 inches ("the Covid structure," alternatively known as "the premises");

- d. Due to a shortage of housing on Reserve, CLFN assigned the plaintiffs and family members the Covid structure to dwell indefinitely in approximately March, 2021;
- e. No member of the plaintiffs' family was infected with the SARS-CoV-2 virus and the virus was immaterial to the assignment of the plaintiffs and family members to the Covid structure;
- f. At all times material Melodie, Patrick, Kobie, Jade and Reed resided in the Covid structure;
- g. A porch adjacent to the Covid structure's north side was erected by Patrick North and his brother in accordance with permission granted by CLFN and/or its employees or agents. The porch accommodated a slop pail for the family to urinate and defecate, and personal property;

- h. CLFN and/or its employees or agents knew or ought to have known that the porch had been added to the front of the Covid structure.
7. At all times material, CLFN was an occupier of the premises as defined by *The Occupiers' Liability Act*, C.C.S.M. c.08 and amendments and regulations thereto ("*the Act*"), upon which statute each plaintiff pleads and relies, and had responsibility for, and control over the condition of the premises and thereby owed the plaintiffs and the deceased children the statutory duty of care set out in Section 3(1) of *the Act* to take reasonable care to see that each was safe while on the premises.
8. The plaintiffs further say that CLFN owed each of them, Kobie, Jade and Reed and all individuals on the premises, a common law duty to take reasonable care for their safety and to protect them from foreseeable risks of harm.
9. In the evening of Friday, February 11, 2022, Melodie, Patrick, Kobie, Jade and Reed, as well as Melodie's granddaughter and Kobie's girlfriend, slumbered in the Covid structure.
10. On February 12, 2022 at approximately 0430 hrs., the plaintiffs awakened to smoke and fire.
11. The plaintiffs state that flames of fire blocked the door.
12. All sleeping people were roused.

13. The west window frozen shut, Patrick shattered it through which Kobie's girlfriend escaped. Patrick then facilitated Melodie's escape by lifting her to the broken window space which she exited, followed by the plaintiff's granddaughter.
14. Melodie ran with her granddaughter to the closest housing structure and a telephone call was placed to the CLFN fire hall.
15. Because of smoke and flames inside the Covid structure, and having remained in the Covid structure until forced to crawl through the broken window space, Patrick was unable to rescue Kobie, Jade and Reed.
16. Approximately thirty (30) minutes following the telephone call to the fire hall, CLFN firefighters attended the fire without water or retardant equipment to suppress the blaze.
17. The Covid structure was destroyed by fire; Kobie, Jade and Reed, who were inside, were burned to their deaths.
18. The plaintiffs claim that CLFN, and/or its employees or agents breached the statutory duty under the *OLA*, and/or was/were negligent, and that the breach of statutory duty and/or negligence caused or materially contributed to the deaths of Kobie, Jade, and Reed, particulars which are:
 - a. Housing the plaintiffs and the deceased children in a structure failing to meet fire code;

- b. Housing the plaintiffs and the deceased children in unsafe premises;
- c. Failing to equip the Covid structure with fireproof or fire retardant housing materials;
- d. Failing to provide any or any adequate windows for egress in case of emergency;
- e. Failing to have built a second door in the Covid structure at a location opposite the door then existing;
- f. Failing to provide any or any adequate doors for escape from fire;
- g. Failing to provide any or any adequate windows for escape from fire;
- h. Failing to inspect, and to initiate appropriate modifications to make the Covid structure a safe place for habitation prior to the plaintiffs and the deceased children taking up residence;
- i. Failing to take any or any adequate steps to ensure the Covid structure would meet code prior to the plaintiffs and the deceased children's habitation;
- j. Failing to inspect the Covid structure to ensure it was safe for a family of six to inhabit;

- k. Permitting Patrick and his brother to construct the porch without Band oversight;
- l. Failing to inspect the porch knowing or having ought to have known that Patrick and his brother erected the porch as an addition;
- m. Failing to direct Patrick to install a second door opposite the porch side of the Covid structure;
- n. Knowing the prevalent risks of fire, providing unsafe accommodations for the plaintiffs and the deceased children to inhabit;
- o. Failing to equip the Covid structure with one or more fire extinguishers;
- p. Failing to equip the Covid structure with sufficient water, water pressure and a hose to suppress a fire;
- q. Failing to have provided the plaintiffs and the deceased children with fire emergency education and training;
- r. Failing to adequately train, properly equip, adequately populate, and have its firefighting personnel and firefighting services at the ready for emergent response to a house fire on the Reserve, and particularly the Covid structure;

- s. Failing to respond to an emergent fire situation in a timely manner;
 - t. Delaying rescue of the deceased children; and
 - u. Failing to act with diligence, prudence, and reasonable care in response to notification of a fire on Reserve, and particularly in the prevailing circumstances.
19. As a result of the breach of statutory duty and/or negligence causing the death of the deceased children, the plaintiffs state they have each suffered, and continue to suffer, (i) post-traumatic stress disorder, (ii) anxiety (iii) emotional and psychological distress, and (iv) mental suffering, for which general damages are claimed by each of them, in amounts to be proven at the trial of this action.
20. As a further result of CLFN'S statutory breach of duty and/or negligence, each plaintiff has required, and will continue to require professional counselling services, for which special damages are claimed in amounts to be proven at the trial of this action.
21. As a further consequence of CLFN'S statutory breach of duty and/or negligence, Patrick sustained, and continues to sustain, a loss of earning capacity causing him a loss of income, past and future, in amounts to be proven at the trial of this action.

22. The plaintiffs were required to pay numerous out-of-pocket expenses, including but not limited to counselling costs and travel costs, for which reimbursement is sought as damages, in amounts to be proven at the trial of this action.

23. Each plaintiff claims interest and costs against the defendant and the relief more particularly set out in paragraph 1.

DATE: January 4, 2024

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