

Court File No. **ci 26-01-56994**

**THE KING'S BENCH
WINNIPEG CENTRE**

BETWEEN:

TERRY WAYNE FRANCOIS

Plaintiff

-and-

NISICHAWAYASIIHK CREE NATION

Defendant

FILED APR 28 2026

STATEMENT OF CLAIM

CHARTER ADVOCATES CANADA

c/o [REDACTED]

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THE KING'S BENCH
Winnipeg Centre

BETWEEN:

TERRY WAYNE FRANCOIS plaintiff
and

NISCHAWAYASIKH CREE NATION defendant

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 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 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, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Where the claim made is for a stated amount of money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$750.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$750.00 for costs and have the costs assessed by the court.

Date April 28, 2026

Issued S. BORNN
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA

To: (Name and address of each defendant)

NISCHAWAYASIKH CREE NATION #313



COURT OF KING'S BENCH
MAIN FLOOR - 408 YORK AVENUE
WINNIPEG, MANITOBA R3C 0P9
CANADA

CLAIM

1. The plaintiff, Terry Wayne Francois, claims:

(a) a declaration that subsections 17(1), 17(2), 17(4), 17(5), 17(6) and 17(7) and 17(8) (all with respect to banishment) (the “**Banishment Provisions**”, as discussed further below) of the *Nisichawayasi Community Protection Law*, CCLNCN 2019, c. C-1 (the “**CPL**”), enacted by the respondent, Nisichawayasihk Cree Nation (“**NCN**”), are *ultra vires* NCN’s authority;

(b) a declaration that subsections 16(1) – 16(4) of the *CPL* (the “**Checkstop Provisions**”, as discussed further below) are *ultra vires* NCN’s authority;

(c) a declaration that the *Checkstop Provisions* infringe sections 6(1), 7, 8 and 9 of the *Canadian Charter of Rights and Freedoms*, being Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “**Charter**”), and that such infringements cannot be saved by section 1;

(d) a declaration that the *Banishment Provisions* infringe sections 6(1), 7 and 12 of the *Charter*, and that such infringements cannot be saved by section 1;

(e) a declaration, pursuant to section 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11* (the “**Constitution Act, 1982**”), that the *Checkstop Provisions* and the *Banishment Provisions* are of no force or effect;

(f) *Charter* damages from NCN in the amount of \$25,000, or such other amount as the Court considers appropriate, for having subjected Mr. Francois to the Banishment Decision (as described below), resulting in his unlawful and unconstitutional banishment from NCN lands and premises from, at minimum, May 22, 2025 to October 8, 2025;

(g) additional *Charter* damages from NCN in the further amount of \$25,000, or such other amount as the Court considers appropriate, for having enacted the *Checkstop Provisions* and/or the *Banishment Provisions*, in circumstances where NCN knew that the *Checkstop Provisions* and/or *Banishment Provisions* were clearly unconstitutional, or was reckless or wilfully blind as to their unconstitutionality;

(h) an order that no costs of this proceeding be awarded to or against any party, regardless of the outcome; and

(i) such further and other relief as counsel may advise and this Court considers appropriate.

The Parties

2. The defendant, NCN, is a Treaty 5 First Nation headquartered in Nelson House, Manitoba, approximately 850 km north of Winnipeg and 80 km west of Thompson, Manitoba. NCN is a Section 10 Band that manages its own membership under the *Indian Act*, RSC 1985, c. I-5 (the "*Indian Act*") and is governed by an elected Chief and Council.

3. NCN signed an adhesion to Treaty 5 in 1908. NCN is not party to a self-governance agreement of any kind with the Government of Canada or any other entity.

4. The plaintiff, Mr. Francois, is a member of NCN; he has lived on and off NCN reserve lands since he was a child. For the past decade, Mr. Francois has lived on NCN reserve lands in a dwelling located at 17 Tamarack Cres in Nelson House (the “Home”) with his family. Mr. Francois has five daughters, three of whom currently live in the Home. Another daughter, along with his first grandchild, also lives on NCN reserve lands.

The Checkstop Provisions and the Banishment Provisions

5. In 2019, NCN adopted and approved its *Community Protection Law 2019*, c. C-1 (the “CPL”). As discussed below, NCN’s Council does not purport to have enacted the CPL pursuant to the authority vested in NCN by the *Indian Act*.

The Checkstop Provisions

6. Section 16(1) of the CPL purports to authorize NCN’s Chief and Council to set up a checkstop to enable peace officers to conduct inspection of vehicles, persons and personal property of everyone seeking to enter NCN lands. Pursuant to section 16(1) of the CPL, the stated purposes of the checkstop are: 1) to ensure that motorists are properly licenced and insured; 2) to ensure that no one is transporting contraband; 3) to ensure that no one is being “harboured” on NCN lands; 4) to ensure that no one is being exploited, trafficked, or involved in gang activity; 5) to ensure that people entering NCN have proper work permits or are NCN residents ; 6) to ensure that no one seeking to enter NCN lands is under a banishment order or other court order; and 7) to ensure that no one is violating any other laws.

7. Subsection 16(2) of the *CPL* provides that all persons seeking to enter NCN lands are subject to search at a checkstop, and that anyone who refuses to be searched will be denied entry.
8. Subsection 16(3) of the *CPL* prescribes a modified search procedure for “sacred bundles” but still prescribes that all who refuse to allow their sacred bundle to be searched will be denied entry.
9. Subsection 16(4) of the *CPL* authorizes the confiscation of “illegal substances” found during a search.
10. Subsections 16(1)-(4) are referred to hereinafter collectively as the *Checkstop Provisions*.
11. NCN has been operating a permanent roadside checkstop (the “**Checkstop**”) at the entry to NCN reserve lands for several years. It has used, and continues to use, sniffer dogs to conduct searches at the Checkstop, including on the date of the events giving rise to this proceeding. The *CPL*, including the *Checkstop Provisions*, does not expressly authorize the use of sniffer dogs at checkstops.

The Banishment Provisions

12. Section 17 of the *CPL* is entitled “Eviction and Banishment”. Subsection 17(1) provides:

Authority to evict or banish

17 (1). A person who

- (a) poses a significant threat to the health, safety or wellbeing of NCN or any person residing on or visiting NCN Lands,
- (b) has engaged in human trafficking, harbouring or other criminal activity, or

(c) refuses to comply with NCN Laws,

may be evicted from any residence, building or other premises or banished from NCN Lands by order of Chief and Council or any person or entity to whom Chief and Council has delegated such authority by regulation;

13. While subsection 17(3) provides that a hearing on an eviction order can be requested within seven days, subsection 17(4) provides that a person subject to a banishment order can request a hearing to rescind the order “**no earlier than five (5) years from the date of the banishment order**” [emphasis added].

Facts

The December 2024 Incident

14. On December 30, 2024, Mr. Francois was driving to his Home from Thompson, MB, with one of his daughters, bringing home take-out pizza for his family. He stopped at the Checkstop at the entry point to NCN lands. Mr. Francois was willing to consent to a search of his vehicle by NCN peace officers, as he had done numerous times in the past. However, on this occasion, a sniffer dog was brought forward to search inside Mr. Francois’s vehicle. Mr. Francois refused to permit the sniffer dog to search his vehicle, believing that such a search was not authorized by law. Mr. Francois expressed his strong objections to the peace officers; he then proceeded to leave the Checkstop and drive Home.

15. On his way Home, Mr. Francois was stopped by RCMP officers who inquired about the incident at the Checkstop. After Mr. Francois explained his position, the RCMP officers allowed him to proceed to his Home.

16. The next morning, however, three RCMP officers arrived at Mr. Francois's Home to arrest him on criminal charges, including assault with a weapon by driving away from the Checkstop the previous night. Mr. Francois told the officers that the charges were bogus, protested his innocence and expressed his refusal to leave his Home. The RCMP officers chose to physically remove Mr. Francois from his Home, whereupon Mr. Francois pulled away. After this initial resistance, Mr. Francois relented and told the RCMP officers that he would go with them.

17. Mr. Francois received four charges related to the December 30, 2024 Checkstop interaction, including two charges of assault on NCN officers with a weapon, operating a vehicle in a dangerous way. He was also charged with resisting arrest in relation to his interactions with the RCMP on December 31, 2024.

18. Mr. Francois was released from RCMP custody on December 31, 2024. As a condition of his release, and as a result of the allegations made by NCN personnel in the course of their NCN responsibilities against Mr. Francois, Mr. Francois was not permitted to stay at his Home or remain on NCN reserve lands while the charges were pending. Mr. Francois was thus forced to stay in Thompson at his own expense, rather than returning to his Home to live with his daughters.

19. On May 21, 2025, the charges against Mr. Francois were resolved, with Mr. Francois pleading guilty under section 129 of the *Criminal Code* to resisting an NCN peace officer in the execution of her duties on December 30, 2024, and to resisting the RCMP officers when they came to arrest him on December 31, 2024. Mr. Francois was fined \$500 and \$100, respectively, and promptly paid both fines in full. The other charges were stayed.

Mr. Francois's Banishment

20. On or about May 22, 2025, Mr. Francois attempted to return Home. He arrived at the Checkstop; however, he was told by an NCN peace officer at the Checkstop that he was not permitted on NCN reserve lands and had been banished. This was the first time Mr. Francois had heard that he had been banished. Mr. Francois complied with the NCN peace officer's direction and returned to Thompson.

21. Mr. Francois then reached out to NCN officials for an explanation. He learned that Terry B. Linklater ("Mr. Linklater"), a member of NCN and NCN's Director of Justice, had decided to banish him. At no time was Mr. Francois ever made aware of the purported basis for his banishment. When Mr. Francois spoke to Mr. Linklater on the phone around the end of May 2025, Mr. Linklater simply told him that he was not allowed on to NCN reserve lands and that he was banished, without providing an explanation, or an opportunity for Mr. Francois to respond to any basis for the banishment.

22. In June 2025, two of Mr. Francois's daughters were graduating. Mr. Francois sought and received permission from NCN to attend their graduation ceremonies held on NCN reserve lands on June 24 and June 27, 2025. Mr. Francois however was not permitted by NCN to attend the social celebrations on NCN reserve lands held for graduates.

23. When Mr. Francois arrived at NCN on June 24, 2025 to attend the first graduation ceremony, he was handed a letter that was dated June 10, 2025 (the "**Banishment Decision Letter**"), informing him that he had been banished, effective December 30, 2024, and that he could request a reinstatement hearing "no earlier than **December 30, 2029**" [emphasis in the original] (the "**Banishment Decision**").

Alleged “Conditional Banishment”

24. The Banishment Decision Letter opens by stating: “*This letter is to inform you that on May 5, 2022 Chief and Council passed a motion to place you on a conditional banishment.*” However, Mr. Francois was never previously informed of any “conditional banishment” against him in 2022.

Upgrade to Full Banishment

25. The Banishment Decision Letter continued:

We have received information that you were convicted of:

- Assault on peace officer with a weapon (striking Carol with your vehicle)
- Resisting arrest by fighting with RCMP members

For this reason, your conditional banishment will be upgraded to a full banishment as of December 30, 2024.

Attempt to Appeal Banishment Decision Internally

26. Mr. Francois then attempted to challenge the Banishment Decision by reaching out to elected NCN Councillors. He was told that the Councillors had no choice but to sign off on the Banishment Decision and that there was nothing they could do.

Mr. Francois’s Judicial Review Application in the Federal Court

27. Accordingly, on July 24, 2025, Mr. Francois filed an application for judicial review in the Federal Court, in which he challenged the Banishment Decision, as well as the constitutionality of the *Banishment Provisions* and the *Checkstop Provisions*.

28. On September 11, 2025, Mr. Francois filed a Notice of Motion seeking an injunction against the Banishment Decision which would allow him to return Home and access NCN lands.

29. In response to Mr. Francois's injunction motion, NCN rescinded the Banishment Decision on or about October 8, 2025, although this was not communicated to Mr. Francois' counsel until October 14, 2025.

30. Mr. Francois was thus allowed to return to his Home. He has now done so.

NCN's Position Concerning the *CPL*

31. On October 27, 2025, NCN's counsel advised Mr. Francois's counsel that NCN's position is that the *CPL*, and associated laws and regulations, including those with respect to checkstops (including the Checkstop) and banishments, were enacted pursuant to NCN's inherent jurisdiction and custom, and not pursuant to the authority granted to NCN's Council by the *Indian Act*, whether in whole or in part.

The Federal Court Judicial Review Application is Discontinued

32. Because NCN rescinded the Banishment Decision, and in light of NCN's counsel's advice as described above, Mr. Francois discontinued his application for judicial review in the Federal Court on or about January 23, 2026.

Mr. Francois's Claims in this Court

33. Mr. Francois repeats, incorporates by reference, and relies on each and every one of the allegations of fact pleaded above in connection with each claim set out in the following paragraphs 34 to 93.

The *Checkstop Provisions* and the *Banishment Provisions* are *Ultra Vires* NCN's Authority

34. Section 81 of the *Indian Act* permits bands (including NCN) to make by-laws concerning a variety of things. However, neither section 81 nor any other provision of the *Indian Act* permits NCN to enact a by-law empowering NCN's Chief and Council to unilaterally banish a band member, effectively for a minimum of five years. Furthermore, neither section 81 nor any other provision of the *Indian Act* permits them to do so without affording band members a sufficient degree of (or any) procedural fairness.

35. Further, neither section 81 nor any other provision of the *Indian Act* permits bands (including NCN) to enact a by-law (a) authorizing the creation of a checkstop such as the Checkstop, (b) requiring all persons wishing to enter NCN reserve lands to submit to the requirements set forth in the *Checkstop Provisions*; or (c) requiring all persons wishing to enter NCN reserve lands to submit to searches of their vehicles and/or persons through the use of sniffer dogs.

36. Further still, neither section 81 nor any other provision of the *Indian Act* permits bands (including NCN) to enact unconstitutional by-laws.

37. Yet, the *Checkstop Provisions* purport to (a) authorize the creation of the Checkstop, and (b) authorize NCN authorities to subject every person wishing to enter NCN lands to submit to a search at the Checkstop, as contemplated by the *Checkstop Provisions*.

38. Moreover, whether authorized by the *Checkstop Provisions* or not, NCN officials subject persons wishing to enter NCN lands to submit to searches of their vehicles and/or persons through the use of sniffer dogs.

39. Further, the *Banishment Provisions* purport to authorize NCN's Chief and Council to unilaterally banish a band member, effectively for a minimum of five years, with no provision made for any degree of procedural fairness to be accorded to the subject member.

40. Neither the *Checkstop Provisions* nor the *Banishment Provisions* are authorized delegations of power to NCN's Chief and Council under section 81 or any other provision of the *Indian Act* or related legislation.

41. Moreover, neither the *Checkstop Provisions* nor any other legislative enactment of any kind gives NCN authorities the power to subject persons wishing to enter NCN lands to submit to searches of their vehicles and/or persons through the use of sniffer dogs.

42. Accordingly, NCN's enactment of the *Checkstop Provisions* and the *Banishment Provisions* was and is *ultra vires* its authority.

Charter-Based Claims

43. Further or in the alternative, Mr. Francois pleads as follows and claims the following *Charter*-based remedies.

The Availability of *Charter* Review in this Proceeding

44. NCN is a "government" and is subject to the *Charter*, pursuant to section 32(1) of the *Charter*.

45. The *CPL*, including the *Checkstop Provisions* and the *Banishment Provisions*, is subject to review under the *Charter*.

46. Further, NCN's conduct in enacting the *CPL*, including the *Checkstop Provisions* and the *Banishment Provisions*, is subject to review under the *Charter*.

47. Further, NCN's conduct in connection with making the Banishment Decision is subject to review under the *Charter*.

The *Checkstop Provisions* Unjustifiably Infringe Sections 9, 8, 7 and 6(1) of the *Charter*

The *Checkstop Provisions* Unjustifiably Infringe Section 9 of the *Charter*

48. Section 9 of the *Charter* provides:

Everyone has the right not to be arbitrarily detained or imprisoned.

49. Roadside checkstops by law enforcement are a form of detention under section 9 of the *Charter*. A checkstop that stops everyone without exception – where the officer has no discretion whatsoever as to who gets stopped – is arbitrary.

50. In this case, the *Checkstop Provisions* provide for the detention and search of all vehicles, motorized and non-motorized, as well as persons and personal property, that attempt to enter NCN lands. They contain no language relating to reasonable and probable grounds. They contain no guidance for officers, or any criteria whatsoever governing the operation of the Checkstop. The *Checkstop Provisions* thus provide for arbitrary detention, contrary to section 9 of the *Charter*.

51. Furthermore, the *Checkstop Provisions* encompass more purported purposes for the detention and search of vehicles than can be found to be reasonable or justifiable. NCN uses the *Checkstop Provisions* as a broad law enforcement, criminal investigation, general public safety

and regulatory tool. This goes far beyond the limited purposes under which some checkstops have been found constitutionally permissible.

52. Furthermore, NCN has not demonstrated, pursuant to s. 1 of the *Charter*, that the *Checkstop Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

53. Accordingly, the *Checkstop Provisions* violate section 9 of the *Charter* and cannot be saved by section 1.

The *Checkstop Provisions* Unjustifiably Infringe Section 8 of the *Charter*

54. Section 8 of the *Charter* provides:

Everyone has the right to be secure against unreasonable search and seizure.

55. The *Checkstop Provisions* engage band members' reasonable expectation of privacy protected under *Charter* section 8, by requiring their persons, personal property and vehicles to be searched at the Checkstop.

56. The *Checkstop Provisions* contain no requirement that the searching officer obtain a warrant prior to conducting the search, nor does it require the officer to have reasonable and probable grounds, nor does it authorize the use of sniffer dogs.

57. The *Checkstop Provisions*, therefore, for this reason at least, are not a reasonable authorizing law.

58. Further, to the extent the *Checkstop Provisions* can be viewed as authorizing the use of sniffer dogs (which Mr. Francois denies), sniffer dogs may only be used in warrantless searches

where an officer has a reasonable suspicion based on objectively discernible facts that evidence of a crime is present. Yet the only valid purposes of a roadside checkstop are to ensure proper licencing, insurance, driver sobriety and vehicular fitness, none of which requires the use of a sniffer dog. The use of sniffer dogs at the Checkstop to carry out such searches, therefore, is not reasonable.

59. In the absence of any warrant requirements whatsoever, and by permitting searches in the absence of reasonable and probable grounds, and in the unreasonable use of sniffer dogs, the *Checkstop Provisions* are an unreasonable law within the meaning of section 8 of the *Charter*.

60. Furthermore, NCN has not demonstrated, pursuant to s. 1 of the *Charter*, that the *Checkstop Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

61. Accordingly, the *Checkstop Provisions* violate section 8 of the *Charter* and cannot be saved by section 1.

The *Checkstop Provisions* Unjustifiably Infringe Section 7 of the *Charter*

62. Section 7 of the *Charter* provides:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

63. NCN members who fail to comply with the unreasonable, arbitrary and grossly disproportionate requirements of the *Checkstop Provisions* described above, are not allowed entry onto NCN Lands, preventing them from accessing their families, homes and community. Failure to comply with the *Checkstop Provisions* can also lead to banishment.

64. The *Checkstop Provisions* therefore deprive members of their *Charter* section 7 right to liberty, not in accordance with the principles of fundamental justice.

65. Furthermore, NCN has not demonstrated, pursuant to s. 1 of the *Charter*, that the *Checkstop Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

66. Accordingly, the *Checkstop Provisions* violate section 7 of the *Charter* and cannot be saved by section 1.

The *Checkstop Provisions* Unjustifiably Infringe Section 6(1) of the *Charter*

67. Section 6(1) of the *Charter* provides:

Every citizen of Canada has the right to enter, remain in and leave Canada.

68. A purposive interpretation of section 6(1) supports a general guaranteed right of mobility within Canada, including within provincial borders, without state restraint or a requirement for state authorization. Government actions that limit the ability of Canadian citizens to move freely within Canada, or make such movement contingent on state authorization, infringe section 6(1) of the *Charter*.

69. In this case, NCN's enactment of the *Checkstop Provisions* have the effect of limiting Mr. Francois's ability to enter NCN territory. Further, the *Checkstop Provisions* continue to prevent Mr. Francois and other NCN members from entering NCN territory unless they submit to invasive and unconstitutional searches of their property and persons, as described above. These are clear

examples of government action limiting a person's ability to move freely within a particular territorial catchment, in a non-fleeting, non-trivial manner.

70. Furthermore, NCN has not demonstrated, pursuant to section 1 of the *Charter*, that the *Checkstop Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

71. Accordingly, the *Checkstop Provisions* violate section 6(1) of the *Charter* and cannot be saved by section 1.

The *Banishment Provisions* Unjustifiably Infringe Sections 6(1), 7 and 12 of the *Charter*

The *Banishment Provisions* Unjustifiably Infringe Section 6(1) of the *Charter*

72. Mr. Francois repeats and adopts the allegations set out at paragraphs 67-68, above.

73. In this case, NCN's invocation of the *Banishment Provisions* had the effect of limiting Mr. Francois' ability to move freely within, or even to enter, NCN territory. This restriction was to have been indefinite in duration, and was to have been in place for a minimum of 5 years without any right of appeal or to reconsideration. This is a clear example of government action limiting a person's ability to move freely within a particular territorial catchment, in a non-fleeting, non-trivial manner.

74. Furthermore, NCN has not demonstrated, pursuant to section 1 of the *Charter*, that the *Banishment Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

75. Accordingly, the *Banishment Provisions* violate section 6(1) of the *Charter* and cannot be saved by section 1.

The *Banishment Provisions* Unjustifiably Infringe Section 7 of the *Charter*

76. The *Banishment Provisions* effectively provide that NCN may banish members from NCN lands for a minimum of five years, and potentially for life. This constitutes a serious interference with both the liberty and security of the person of NCN members, including Mr. Francois, by denying them access to their homes (and therefore basic shelter and necessities of life), their families and their community.

77. Yet, the *Banishment Provisions* allow for no shorter period of banishment than five years, with no possibility for calibration of the banishment, either before or after it is ordered, to prevent harm on NCN lands in a proportionate manner.

78. Moreover, the provision in the *Banishment Provisions* of a minimum five-year term of banishment for a person who is deemed to fall into one of the three eligible categories for banishment is overbroad, arbitrary and grossly disproportionate, all contrary to the principles of fundamental justice.

79. Further still, given the seriousness of the penalty involved, the *Banishment Provisions* do not afford band members, including Mr. Francois, a sufficient degree of (or any) procedural fairness, including (but not limited to): (a) adequate notice of the case that they have to meet; (b) an opportunity to answer that case in a meaningful way; (c) an oral hearing in which to do so; and, (d) an independent and impartial tribunal or decision-maker, contrary to the principles of fundamental justice.

80. Accordingly, the Banishment Provisions violate band members' rights to liberty and security of the person, in a manner contrary to the principles of fundamental justice, contrary to s. 7 of the *Charter*.

81. Furthermore, NCN has not demonstrated, pursuant to s. 1 of the *Charter*, that the *Banishment Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

82. Accordingly, the *Banishment Provisions* violate section 7 of the *Charter* and cannot be saved by section 1.

The *Banishment Provisions* Unjustifiably Infringe Section 12 of the *Charter*

83. Section 12 of the *Charter* provides:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

84. A state-imposed treatment or punishment is cruel and unusual if it is grossly disproportionate to a judicially-determined fit treatment or punishment for a given instance of misconduct.

85. Subsection 17(4) of the *CPL* provides that a banished person may apply for readmission to NCN lands no earlier than five (5) years from the effective date of banishment. Readmission is at the discretion of NCN's Peacekeepers Tribunal. Banishment decisions thus have no inherent end point. Absent an application for readmission, banishment is thus permanent. This is effectively a five-year mandatory minimum sentence, which is arbitrary and grossly disproportionate to the

scope of possible conduct that the *Banishment Provisions* may capture. As such, the *Banishment Provisions* are a cruel and unusual treatment or punishment, contrary to section 12 of the *Charter*.

86. Furthermore, NCN has not demonstrated, pursuant to s. 1 of the *Charter*, that the *Banishment Provisions* amount to a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society, and cannot do so.

87. Accordingly, the *Banishment Provisions* violate section 12 of the *Charter* and cannot be saved by section 1.

The *Checkstop Provisions* and *Banishment Provisions* are of no force or effect

88. In light of the above, and pursuant to s. 52 of the *Constitution Act, 1982*, Mr. Francois pleads that the *Checkstop Provisions* and the *Banishment Provisions* are of no force or effect.

Mr. Francois is entitled to *Charter* Damages

89. Further or in the alternative, Mr. Francois pleads that he is entitled to *Charter* damages, for the following reasons and in the following amounts.

Mr. Francois is entitled to *Charter* Damages for having been subjected to the Banishment Decision

90. Mr. Francois pleads that for the following reasons, he is entitled to *Charter* damages in the amount of \$25,000, or such amount as the Court considers appropriate, for having been subjected to the Banishment Decision:

- a) given the serious nature of the decision that infringed Mr. Francois's section 7 *Charter* right to liberty, and its importance for Mr. Francois, a high degree of procedural fairness (as a principle of fundamental justice required by section 7) was owed before the

Banishment Decision was taken. Mr. Francois however, received no procedural fairness whatsoever:

- i. Mr. Francois had no notice of the banishment allegations against him, or opportunity to respond to those allegations, prior to receiving the Banishment Decision letter dated June 10, 2025, on June 24, 2025. He had not been informed or notified of any alleged “conditional banishment” prior to receiving the Banishment Decision letter, which would have put him on notice that he risked “full banishment.” Nor was Mr. Francois ever made aware of any conditions that he had to meet in order to remain eligible to reside on NCN lands;
- ii. despite the alleged “conditional banishment” stating that “if TERRY WAYNE FRANCOIS returns to Nisichawayasihk Cree Nation and its traditional territory, that he/she be charged with trespassing”, Mr. Francois continued to live with his family in his Home on NCN reserve lands in 2022, 2023 and 2024, and was processed by NCN peace officers through the Checkstop countless times without ever being told that he was conditionally banished and without ever being charged with trespassing;
- iii. the Banishment Decision letter states that the December 2024 incident was “the second incident, on record, where your actions jeopardized the safety of our First Nations Safety Officers.” Mr. Francois was never made aware of any inferentially-alleged first incident;

iv. Mr. Francois was given no opportunity, at any time, to respond to allegations or claims against him, which formed the basis for either the alleged “conditional banishment” or the full banishment;

v. Terry B. Linklater, in making the Banishment Decision against him, was biased or is reasonably apprehended to be biased in that (a) Mr. Linklater indicated a closed mind about the Banishment Decision when Mr. Francois tried to speak with her in May 2025; and (b) there had been a recent negative issue between a member of Mr. Linklater’s family and a member of Mr. Francois’s family;

b) NCN’s conduct described in this Statement of Claim constitutes a violation of his constitutional rights, as guaranteed by ss. 6(1), 7, 8, 9 and 12 of the *Charter*. In light of the various violations of his *Charter* rights as described above, Mr. Francois is entitled to an award of *Charter* damages pursuant to section 24(1) of the *Charter*, as (1) compensation for the monetary losses suffered by Mr. Francois as well as the harm to his intangible interests, including distress, humiliation, embarrassment and anxiety; (2) vindication; and (3) deterrence. There are no countervailing factors present that would render an award of *Charter* damages unjust. It is therefore appropriate and just for the Court to award Mr. Francois *Charter* damages, in the amount of \$25,000 or such amount as the Court considers appropriate.

NCN is Liable to Mr. Francois for Additional *Charter* Damages for having enacted the *Checkstop Provisions* and the *Banishment Provisions*

91. Further or in the alternative, Mr. Francois pleads that both the *Checkstop Provisions* and the *Banishment Provisions* were clearly unconstitutional at the time of their enactment by NCN. Further, at the time of their enactment, NCN knew that the *Checkstop Provisions* and the *Banishment Provisions* were clearly unconstitutional or was reckless or wilfully blind as to their unconstitutionality.

92. Accordingly, as described above, Mr. Francois pleads that NCN's enactment of the *Checkstop Provisions* and the *Banishment Provisions* constitutes a deliberate, reckless or wilfully blind violation of his, and other NCN members', constitutional rights, as guaranteed by ss. 6(1), 7, 8, 9 and 12 of the *Charter*. In light of the various violations of his *Charter* rights as described above, Mr. Francois is entitled to a further award of *Charter* damages pursuant to section 24(1) of the *Charter*, as (1) compensation for the monetary losses suffered by Mr. Francois as well as the harm to his intangible interests, including distress, humiliation, embarrassment and anxiety; (2) vindication; and (3) deterrence. There are no countervailing factors present that would render an award of *Charter* damages unjust. It is therefore appropriate and just for the Court to award Mr. Francois *Charter* damages, in the further amount of \$25,000 or such amount as the Court considers appropriate.

93. In all the circumstances of this novel case, Mr. Francois is a public interest litigant. Accordingly, no costs should be ordered against Mr. Francois, regardless of the outcome of this proceeding.

94. Mr. Francois relies on the following authorities:

- i. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11, including the *Canadian Charter of Rights and Freedoms*;
- ii. *Treaty No. 5*;
- iii. *The Court of King's Bench Act*, CCSM, c. C280, section 55;
- iv. *Court of King's Bench Rules*, M.R. 553/88;
- v. *Indian Act*, RSC 1985, c I-5;
- vi. *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976);
- vii. *Nisichawayasi Community Protection Law*, 2019 c C-1 (NCN);
- viii. *Othasowewin* (NCN);
- ix. *Peacekeepers Tribunal Law* (NCN);
- x. *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, Vol III, UN Doc A/61/49 (2008); and

- xi. *Universal Declaration of Human Rights*, GA Res 217 A (III), UN Doc A/810 (1948).

Date: April 28, 2026



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