

THE KING'S BENCH
Winnipeg Centre

BETWEEN:

WUSKWI SIPIHK FIRST NATION

Applicant,

- and -

THE GOVERNMENT OF MANITOBA

Respondent,

- and -

LOUISIANA-PACIFIC CANADA LTD.

Respondent.

NOTICE OF APPLICATION

HEARING DATE: Monday, May 30, 2024 at 10:00am

PUBLIC INTEREST LAW CENTRE

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Winnipeg, Manitoba
R3C 0R9

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FILED APR 26 2024

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TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge, on Monday, May 30, 2024 at 10:00 a.m., at the Court of King's Bench, Winnipeg Centre, Civil Division, at 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

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

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

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

Date: April 26, 2024 Issued by:

J. BUDDICK
DEPUTY REGISTRAR
COURT OF KING'S BENCH
FOR MANITOBA

Deputy Registrar
Court of Queen's Bench
Winnipeg Centre
408 York Street
Winnipeg, MB R3C 0R9

TO:

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RELIEF

1. The Applicant, Wuskwi Sipiik First Nation ("**Wuskwi Sipiik**") makes an application for:
 - (a) a declaration that Louisiana-Pacific Canada Ltd. ("**Louisiana-Pacific**") does not have lawful statutory authority to carry out forestry operations in the areas designated as Forest Management Licence Area # 3 ("**FML 3**"), Forest Management Unit 12 ("**FMU 12**") and Forest Management Unit 14 ("**FMU 14**");
 - (b) a declaration that Louisiana-Pacific shall not carry out forestry operations in FML 3 in the absence of an approved long-term Forest Management Plan ("**FMP**");
 - (c) a declaration that the decision of the Minister of Economic Development, Investment, Trade and Natural Resources (the "**Minister**"), dated March 30, 2024, granting an extension of the term of the Forest Management Licence Agreement ("**FMLA**") between the Government of Manitoba ("**Manitoba**") and Louisiana-Pacific and granting Louisiana-Pacific a Forest Management Licence for FML 3 ("**FML**") as well as the right to harvest hardwood in FMU 12 and FMU 14 (the "**Extension Decision**"), is contrary to the requirements of *The Forest Act*, CCSM c F150 ("**The Forest Act**") and the FMLA;
 - (d) a declaration that the Minister did not have statutory authority to issue the Extension Decision;

- (e) a declaration that Manitoba shall not continue to licence or authorize further forestry activities in FML 3, FMU 12 and FMU 14 which contravene its statutory obligations;
- (f) a declaration that, as an incident of the honour of the Crown, Manitoba has a fiduciary duty to protect Wuskwi Sipihk's Treaty right to harvest moose, including by ensuring that Manitoba's ongoing and future participation in managing forestry in FML 3, FMU 12 and FMU 14 is substantively consistent with the requirements of section 35 of the *Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982 c. 11 (the "**Constitution Act, 1982**");
- (g) an order quashing or setting aside Manitoba Order in Council 55/2024, dated March 29, 2024 (the "**OIC**"), authorizing the Minister to grant an extension of the term of the FMLA;
- (h) an order quashing or setting aside the Extension Decision;
- (i) a declaration that Manitoba breached the Crown's obligations pursuant to section 35 of the *Constitution Act, 1982*, by failing to discharge the Crown's duty to consult and accommodate Wuskwi Sipihk prior to issuing the OIC and the Extension Decision (collectively, the "**March 2024 Decisions**");
- (j) a declaration that the March 2024 Decisions are not in the public interest within the meaning of section 39(1) of *The Forest Act*;
- (k) a declaration that Manitoba's conduct in respect of the March

2024 Decisions is contrary to the honour of the Crown;

- (l) a declaration that Manitoba's conduct in respect of forestry licensing and management for FML 3 constitutes a breach of the Crown's obligations under Treaty 4, including the obligation to diligently implement the Crown's Treaty promises;
- (m) a declaration that Manitoba's guidelines for forestry management and planning are lacking and have contributed to the breach of its obligations under the Treaty;
- (n) a declaration that Manitoba's regulatory framework for timber cutting constitutes an unstructured, discretionary regime which risks infringing Wuskwi Sipiik's Treaty rights;
- (o) a declaration that Manitoba shall not continue to licence or authorize further forestry activities in FML 3, FMU 12 and FMU 14 that breach the Crown's Treaty obligations;
- (p) costs of this proceeding; and
- (q) such other relief as counsel may advise and this Court may allow.

EXECUTIVE SUMMARY

2. Wuskwi Sipiik brings this application to address Manitoba's longstanding, ongoing failure to adhere to its statutory obligations under *The Forest Act* and to fulfil the Crown's obligations to honour and uphold its Treaty promises in respect of forestry activities in Treaty 4.

3. For generations, Wuskwi Sipiik members have relied on the lands and waters in their territory, including FML 3, FMU 12 and FMU 14, to hunt, fish, and trap, gather traditional foods and medicines, and to maintain their connection to their culture and way of life as promised under Treaty 4.
4. The lands and waters in FML 3, FMU 12 and FMU 14 have been under persistent pressure since at least 1996 as a result of commercial timber harvesting authorized or undertaken by Manitoba. These activities have significantly diminished Wuskwi Sipiik members' ability to exercise their Treaty rights and engage in traditional and spiritual practices.
5. For almost two decades, Manitoba has failed to enforce critical conditions of Louisiana-Pacific's forestry authorizations, including by allowing Louisiana-Pacific to operate in FML 3 without an approved FMP.
6. In 2019, Louisiana-Pacific submitted a draft 20-year FMP for FML 3 for Manitoba's review. Manitoba has never approved the FMP.
7. Wuskwi Sipiik subsequently provided Manitoba with a series of independent expert reports regarding issues related to the draft FMP. The experts each identified deficiencies in core elements of the FMP, including in relation to the risks, soundness and sustainability of the FMP as well as the impacts of forestry activities on moose habitat and on Wuskwi Sipiik members' ability to exercise their Treaty rights.
8. Rather than addressing these concerns, Manitoba again issued an extension in March 2024 allowing Louisiana-Pacific to continue to

operate in FML 3, FMU 12 and FMU 14 in the absence of statutory authority and without any enforceable measures to protect Wuskwi Sipiik's Treaty rights.

9. Manitoba's conduct constitutes a persistent pattern of error and indifference which substantially frustrates the Crown's Treaty promises. As such, Manitoba breached its duty to honourably and diligently implement the Crown's Treaty promises to Wuskwi Sipiik.

FOUNDATIONS

The Parties

10. The Applicant, Wuskwi Sipiik, is a "band" within the meaning of the *Indian Act*, RSC 1985, c.1.5. and an "Aboriginal people" as defined in section 35 of the *Constitution Act, 1982*.
11. The Respondent, Manitoba, is vested with the administration, control, and beneficial interest in public lands within the Province of Manitoba pursuant to section 109 of the *Constitution Act, 1867*, 30 & 31 Vict, c 3 and section 2 of *The Manitoba Natural Resources Act*, RSC 1930, c 29, subject to the rights and interests of the Applicant. Manitoba is named in these proceedings pursuant to *The Proceedings Against the Crown Act*, CCSM c P140.
12. The Minister exercises responsibilities for managing forests on behalf of Manitoba pursuant to *The Forest Act*. Where the investment in a wood-using industry in Manitoba is sufficient to require the security of a continuous timber supply, the Minister is authorized under *The Forest Act* to enter into an agreement and grant a FML to such an

industry under the terms and conditions imposed by the Minister or prescribed in the regulation.

13. The Respondent, Louisiana-Pacific, is an international forestry and manufacturing company with operations in Manitoba including timber cutting and removal activities in FML 3, FMU 12 and FMU 14 as well as a mill in Minitonas, Manitoba. To ensure a continuous timber supply for the Louisiana-Pacific mill, Manitoba and Louisiana-Pacific entered into an FMLA for a twenty-year period expiring on December 31, 2014. The FMLA granted Louisiana-Pacific a FML for FML 3 and the right to harvest hardwood in FMU 12 and FMU 14.

Wuskwi Sipiik's Treaty Rights & Territory

14. Wuskwi Sipiik is an Oji-Cree community located north of Birch River in the Swan Valley of west-central Manitoba.
15. Wuskwi Sipiik is a beneficiary of Treaty 4 (the "**Treaty**"), which is a 'treaty' within the meaning of section 35(1) of the *Constitution Act, 1982*.
16. The Treaty includes both the written text and oral promises and assurances made by the parties at the time the Treaty was negotiated.
17. Taken as a whole, the Treaty established a binding obligation on the Crown to ensure Wuskwi Sipiik would be able to continue to hunt, fish and trap in accordance with its traditions and way of life.
18. Wuskwi Sipiik members hold and exercise rights within the meaning of section 35 of the *Constitution Act, 1982* including established

Treaty rights to hunt, fish and trap, throughout territory in west-central Manitoba.

19. Wuskwi Sipiik members rely on territory in Treaty 4, including the areas known as FML 3, FMU 12 and FMU 14, to exercise their Treaty rights, carry out cultural practices and impart values of stewardship and sustainability to younger generations.
20. Wuskwi Sipiik holds reserves which are located within FML 3, FMU 12 and FMU 14.
21. The forests in and around FML 3, FMU 12 and FMU 14 are critical to sustain the wildlife populations and plants that Wuskwi Sipiik members rely on to exercise their Treaty rights.
22. FML 3 and FMU 14 include areas known as the Kettle Hills and Porcupine Hills.
23. The Kettle Hills and Porcupine Hills are particularly important for the exercise of Wuskwi Sipiik's Treaty rights, including the right to hunt moswa (moose), deer, bear and elk, and to gather plants and berries for food, medicine, and ceremonial uses.
24. Wuskwi Sipiik members also rely on lands in and around FMU 12 to exercise their right to hunt moswa and woodland caribou for food, cultural and spiritual purposes. The woodland caribou populations in FMU 12 are listed as "threatened" under the *Species At Risk Act*, SC 2002, c 29.

Wuskwi Sipiik Treaty Land Entitlement

25. In 1997, the Government of Canada ("**Canada**"), Manitoba and the Treaty Land Entitlement Committee of Manitoba Inc ("**TLEC**") entered into a framework agreement to address the Crown's outstanding obligations to provide lands ("**TLE Lands**") to First Nations, including Wuskwi Sipiik, pursuant to Treaties 1, 3, 4, 5, 6 and 10.
26. In 1998, Wuskwi Sipiik entered into a Treaty Entitlement Agreement with Canada, Manitoba and TLEC to establish a process for the selection and acquisition of TLE Lands by Wuskwi Sipiik.
27. Canada and Manitoba are engaged in ongoing discussions with Wuskwi Sipiik regarding the fulfilment of Wuskwi Sipiik's outstanding treaty land entitlement.
28. Manitoba is aware that Wuskwi Sipiik has selected TLE Lands in and around the Porcupine Hills and the Kettle Hills in partial fulfilment of its treaty land entitlement and that Wuskwi Sipiik wishes to select additional lands in and around FML 3, FMU 12 or FMU 14 as TLE Lands.

Impacts on Wuskwi Sipiik Rights

29. Wuskwi Sipiik members have always relied on the lands and waters in FML 3, FMU 12 and FMU 14, including in and around the Kettle Hills and Porcupine Hills, to exercise their Treaty rights and to maintain their connection to their culture, language, and traditions.
30. Since 1996, Louisiana-Pacific has carried out commercial timber harvesting and related activities for hardwood in FML 3, FMU 12 and

FMU 14, including in and around the Porcupine Hills and, to a much smaller extent, the Kettle Hills.

31. Wuskwi Sipiik members' ability to exercise their Treaty rights has been significantly affected by the cumulative impacts of commercial timber harvesting, other resource development and recreational activities such as tourism in FML 3, FMU 12 and FMU 14.
32. In 2011, Manitoba unilaterally instituted a ban on all moswa hunting in FMU 14 and much of FMU 12 and FML 3 in response to significant declines in moswa populations in the region and Manitoba's determination that the populations were at immediate risk of further decline, including near extirpation.
33. Manitoba has identified the cumulative effect of human activities, including resource development, as a critical factor contributing to the decline of moswa populations in Manitoba.
34. Commercial timber harvesting, including by Louisiana-Pacific through its contractors, is by far the main form of resource development activity in and around the Porcupine Hills.
35. Manitoba's prohibition on moswa hunting remains in effect today. As a result, Wuskwi Sipiik members are prohibited by Manitoba from exercising their right to hunt for moswa, including in and around the Kettle Hills and Porcupine Hills.
36. The decline in moswa populations has significantly and meaningfully diminished Wuskwi Sipiik's ability to exercise its Treaty right to harvest moose in accordance with its traditions and way of life.

Licensing for Commercial Timber Cutting in Manitoba

37. Manitoba authorizes and regulates commercial timber harvesting in Manitoba pursuant to *The Forest Act* and regulations, including the *Forest Use and Management Regulation*, Man Reg 227/88 R (the "**Forest Regulation**").
38. The Minister is responsible under *The Forest Act* and Forest Regulation for administering forests in Manitoba in a manner consistent with the principles of sound and sustainable forest management.
39. The Minister has authority, pursuant to section 39(1) of *The Forest Act*, to:
 - (a) suspend any licence, permit, or agreement issued, granted, or made under *The Forest Act*, for any stated period of time or until a condition is met; and
 - (b) after notice and hearing, cancel the licence, permit or agreement if the Minister determines it is in the public interest to do so.
40. Section 28 of *The Forest Act* prohibits the cutting and removal of timber from Crown land as defined pursuant to *The Crown Lands Act*, CCSM c C340 without authorization by the Minister.
41. Sections 8, 11 and 18 of *The Forest Act* provide that the Minister may, with the approval of the Lieutenant Governor in Council:

- (a) enter into a FMLA with a wood-using industry in Manitoba setting out conditions and requirements for the cutting and removal of timber from Crown land; and
 - (b) issue an FML to a wood-using industry in Manitoba authorizing the cutting and removal of timber, subject to the conditions and requirements set out in the FMLA.
42. The Minister has discretion, under *The Forest Act* and the Forest Regulation, to issue decisions in respect of forestry licensing which carry significant consequences for Aboriginal and Treaty rights.
43. *The Forest Act* and the Forest Regulation do not include any explicit or specific criteria to guide the exercise of Crown discretion in respect of forestry licensing and approval decisions which could adversely affect Aboriginal and Treaty rights.

Forest Management Plans

44. Proponents seeking to hold an FML are required to develop for approval an FMP which guides forestry activities, including timber harvesting, road access development and reforestation activities, throughout the Forest Management Licence Area.
45. Pursuant to sections 8 and 18 of *The Forest Act*, section 16(1) of the Forest Regulation and Manitoba's *Submission Guidelines for Twenty Year Forest Management Plans*, the FMP must be consistent with the principles of sound, sustainable forest management.
46. FMPs are central elements of Manitoba's forestry licensing process. They set out the long-term forestry strategies and objectives for

timber harvesting, including the provision of economic, social, and cultural opportunities and the maintenance of the forest's long-term ecosystem function.

47. Manitoba has acknowledged that FMPs are critical for sustainable, long-term forestry management.
48. Manitoba is responsible for the review and approval of the FMP.

Louisiana-Pacific's Forestry Operations

49. On September 21, 1994, Manitoba entered into an FMLA with Louisiana-Pacific for FML 3 for a 20-year period expiring December 31, 2014. It granted Louisiana-Pacific an FML for the same period.
50. The FMLA and FML authorized Louisiana-Pacific to cut and remove timber in FML 3, FMU 12 and FMU 14, including in and around the Kettle Hills, the Porcupine Hills, and other areas where Wuskwi Sipiik members exercise their Treaty rights.
51. Section 3 of the FMLA provides that the FMLA and the FML could be renewed every 10 years, subject to compliance with the conditions set out in the FMLA.
52. Before the FMLA and FML can be renewed, sections 8 and 18 of *The Forest Act*, section 16 of the Forest Regulation and sections 3, 17 and 19 of the FMLA require Louisiana-Pacific to hold an approved FMP for the corresponding period in order for it to conduct timber harvesting.

53. Manitoba has acknowledged that Louisiana-Pacific is required to hold an approved FMP in order to conduct forestry activities in FML 3.
54. On or about May 27, 1996, Manitoba approved a 10-year FMP submitted by Louisiana-Pacific in respect of FML 3.
55. In 1997, Manitoba approved an FMP for Forest Management Licence Area 2 which at the time included FMU 12 and FMU 14. The FMP expired in 2009.
56. FMU 12 and FMU 14 are no longer part of Forest Management Licence Area 2. Currently, there is no draft or approved FMP for FMU 12 and FMU 14.
57. On or about June 1, 2006, Louisiana-Pacific submitted a draft FMP in respect of FML 3 for a 20-year period commencing on or about January 1, 2006. Manitoba did not approve the draft FMP.
58. In 2012, the Lieutenant Governor in Council by Order in Council 00452/2012 authorized the Minister to extend the term of the FMLA in response to moose management concerns. The extension of the FMLA was intended to enable the exploration of other harvesting approaches that might require revisions to the still unapproved FMP. The Minister subsequently extended the term of the FMLA to December 31, 2019, and issued an FML for FML 3 for the same period.
59. Since at least 2018, Wuskwi Sipiik has repeatedly and consistently raised concerns with Manitoba regarding the cumulative and ongoing impacts of Louisiana-Pacific's forestry activities on Wuskwi Sipiik's

Treaty rights, including concerns regarding the impacts of Louisiana-Pacific's activities in the absence of an approved FMP.

60. Since December 2018, Wuskwi Sipiik has repeatedly advised Manitoba that further and updated studies were necessary to ascertain the extent of the impacts of previous and ongoing forestry activities on Wuskwi Sipiik's Treaty rights.

Terms of Reference for the 20-Year FMP

61. On July 23, 2019, Manitoba and Louisiana-Pacific executed Terms of Reference ("**TOR**") for the development of a 20-year FMP for FML 3, including a portion of the Kettle Hills.
62. The TOR provides that the purpose of the FMP is to ensure the use of forest resources in Manitoba is consistent with Manitoba's commitment to sustainable forest management.
63. The TOR identifies low moose populations as an existing issue in FML 3. It provides that the FMP is to be designed with a community-supported strategy to ensure the long-term conservation of moose populations.
64. The TOR further sets out management goals and considerations in respect of forestry activities, including maintaining or improving moose habitat, maintaining or improving biodiversity, protecting wetlands and considering climate change in the development of the FMP.

65. The TOR expressly directs Louisiana-Pacific to use a Resource Selection Function to assess winter moose habitat, and a Habitat Supply Model to assess summer moose habitat.
66. The TOR does not include any guidance or criteria for the protection or accommodation of Aboriginal and Treaty rights including existing or future TLE selections.
67. On or about December 19, 2019, Louisiana-Pacific submitted a draft FMP in respect of FML 3 for a 20-year period commencing in December 2021.

The Previous Extension Decisions

68. In November 2019, the Lieutenant Governor in Council issued Order in Council 360/2019 authorizing the Minister to extend the term of the FMLA. The Minister subsequently extended the term of the FMLA to December 31, 2021, and issued an FML for FML 3 for the same period.
69. On December 1, 2021, the Lieutenant Governor in Council issued Manitoba Order in Council 436/2021 authorizing the Minister to again extend the FMLA from December 31, 2021 to December 31, 2022.
70. On December 15, 2021, the Minister extended the term of the FMLA from December 31, 2021 to December 31, 2022 and granted Louisiana-Pacific an FML for FML 3 for that same period (together, the "**December 2021 Decisions**").

71. The December 2021 Decisions allowed Louisiana-Pacific to cut and remove millions of cubic metres of timber from FML 3, including areas which are critical for the exercise of Wuskwi Sipiik's Treaty rights.
72. In issuing the December 2021 Decisions, Manitoba did not impose any conditions, restrictions, or limitations on forestry activities in FML 3 in response to Wuskwi Sipiik's concerns regarding the impacts of Louisiana-Pacific's activities on its Treaty rights.
73. Manitoba did not notify or consult with Wuskwi Sipiik prior to issuing the December 2021 Decisions.
74. Between January and March 2022, Wuskwi Sipiik First, Minegoziibe Anishinabe and Sapotaweyak Cree Nation (together, the "**Nations**") each brought applications for judicial review at the Manitoba Court of King's Bench challenging the December 2021 Decisions (the "**Judicial Reviews**").

The Forestry Agreements

75. In September 2022, the Nations, Manitoba, and Louisiana-Pacific entered into a Memorandum of Agreement and Memorandum of Understanding (together, the "**Forestry Agreements**").
76. The Parties agreed, pursuant to the Forestry Agreements, to establish a Forestry Working Group (the "**Working Group**") to address issues and improve processes related to forestry management and planning in Manitoba, including within FML 3.
77. The Nations further agreed, pursuant to the Forestry Agreements, to discontinue the Judicial Reviews.

78. The Forestry Agreements provide that:

- (a) Louisiana-Pacific is required to hold an approved FMP in order to conduct forestry activities in FML 3;
- (b) Louisiana-Pacific could rely on interim authorizations issued by Manitoba for the purposes of conducting forestry activities in FML 3, notwithstanding the absence of an approved FMP, until March 31, 2024;
- (c) the term of any interim authorizations issued by Manitoba authorizing Louisiana-Pacific to carry out forestry activities in FML 3 would conclude on or before March 31, 2024;
- (d) Manitoba would issue a determination on Louisiana-Pacific's proposed FMP on or before March 31, 2024;
- (e) Manitoba and Louisiana-Pacific would provide the Nations with funding to conduct studies to inform and support consultation and engagement processes in respect of the FMP and related decisions (the "**Expert Reports**"); and
- (f) the Working Group would develop, on a priority basis, an agreed-upon framework to govern consultation and engagement processes between the parties, including measures to ensure the Expert Reports were demonstrably considered, addressed, and wherever possible, integrated into the determination and implementation of the FMP.

79. On July 14, 2023, the Nations provided Manitoba and Louisiana-Pacific with a draft protocol setting out a proposed framework for

consultation and engagement processes regarding the FMP as contemplated under the Forestry Agreements.

80. To date, the parties have not agreed to the terms of a framework to govern consultation and engagement processes regarding the FMP.

The Expert Reports

81. The Nations retained independent experts to undertake the Expert Reports as contemplated in the Forestry Agreements.
82. The Expert Reports were carried out on an expedited basis in recognition of Manitoba's stated intention to issue a determination on the FMP on or before March 31, 2024.
83. In July 2023, six months after the commencement of the Working Group process, Manitoba expressed a desire to receive the results of the Expert Reports on or before December 2023.
84. On August 31, 2023, the Nations provided Manitoba and Louisiana-Pacific with an Expert Report prepared by Dr. Chris Johnson entitled *Critical Review of the Louisiana-Pacific 20-Year Forest Management Plan, August 30, 2023* (the "**Johnson Report**").
85. The Johnson Report concluded that the FMP relied on an approach to moose habitat modelling which was biased, unreliable, and inconsistent with the collective understanding of moose ecology as represented in the literature, such that the FMP could not be relied upon to guide future decision-making related to the assessment of strategic harvest scenarios and their impact on moose habitat in FML 3.

86. The Johnson Report also highlighted the importance of scrutinizing the forest estate model underlying the FMP which purported to provide a meaningful representation of the future forest. It noted that the model did not consider forest change or loss associated with natural disturbance and that this limitation was particularly relevant given climate change and future fire dynamics. The Johnson Report observed that if the underlying forest estate model was misrepresenting the future forest in terms of forest type and forest age then there could be implications on the reliability of its predictions for moose habitat.
87. On November 14, 2023, a biologist retained by Louisiana-Pacific as part of the Working Group confirmed that the models prescribed in the TOR for assessing the impacts of the FMP on winter and summer moose habitat were not valid or suitable for evaluating the performance of the FMP in terms of moose habitat.
88. On December 12, 2023, Wuskwi Sipiik First and Minegoziibe Anishinabe advised Manitoba of concerns identified by independent experts, including in the Johnson Report and in an additional, forthcoming Expert Report, regarding the credibility of the underlying forest estate modelling and its projections regarding the sustainability of the future forest.
89. On December 23, 2023, Minegoziibe Anishinabe provided Manitoba and Louisiana-Pacific with an Expert Report prepared by Dr. Ian Halkett entitled *Review of Louisiana-Pacific's 20-year Forest Management Plan as it Relates to Hydrology* (the "**Halkett Report**").

90. The Halkett Report concluded that the FMP lacked critical data such that it was not possible to determine whether Louisiana-Pacific was meeting objectives regarding biodiversity and the protection of wetlands. The Halkett Report further raised concerns that the FMP did not provide adequate information to guide future decision-making with respect to hydrology.
91. Between January 23, 2024 and March 21, 2024, the Nations provided Manitoba and Louisiana-Pacific with four additional Expert Reports regarding forest sustainability, moose habitat, and hydrology issues in respect of the FMP.
92. Each of the Expert Reports identified flaws and deficiencies with core elements of the proposed FMP such that the FMP cannot be reasonably relied upon to assess risks, address potential impacts, or guide decision-making relating to forest sustainability, moose habitat, hydrology, biodiversity, wetlands and climate change, or on the Nations' ability to exercise their Treaty rights in FML 3.
93. The Expert Reports further concluded that the FMP does not meaningfully address critical considerations identified in the TOR, including in relation to forest sustainability, moose habitat, hydrology, biodiversity, wetlands, and climate change.
94. On March 13, 2024, Manitoba committed to providing a response to the Nations' January 23, 2024 Expert Report regarding forest sustainability issues by March 15, 2024. Manitoba did not provide any response prior to issuing the March 2024 Decisions.

95. Manitoba was aware, since at least August 31, 2023, that the proposed FMP contains significant flaws and deficiencies.
96. Manitoba was further aware, since at least January 1, 2024, that the proposed FMP failed to meaningfully assess and address risks related to moose habitat, water, biodiversity, forest sustainability and climate change, all of which were identified as critical considerations in the TOR.
97. On January 16, 2024, the Nations wrote to Manitoba expressing the view that the FMP could not be relied upon to draw conclusions about the impact of Louisiana-Pacific's ongoing forestry activities on their Treaty rights.
98. On January 26, 2024, the Nations again wrote to Manitoba to express their concern that Manitoba had yet to propose any measures to address concerns about the impacts of the proposed FMP on their Treaty rights.
99. On January 16, 2024, February 12, 2024, March 15, 2024 and March 28, 2024, Wuskwi Sipiik reiterated its understanding to Manitoba that Manitoba had committed pursuant to the Forestry Agreements to issue a decision on the FMP on or before March 31, 2024.
100. Wuskwi Sipiik did not, in the course of the Working Group process or otherwise, request that Manitoba delay or defer the March 31, 2024 decision on the FMP, including to allow further time for the completion of any further Expert Reports.
101. Manitoba still has not made a decision on the impugned FMP.

The March 2024 Decisions

102. Between February 15, 2024 and March 28, 2024, the Nations and Manitoba met and exchanged correspondence to discuss the possibility of achieving a resolution on issues related to Louisiana-Pacific's forestry operations in FML 3.
103. On March 28, 2024, the Nations provided Manitoba with a proposed Term Sheet outlining the proposed elements for an agreement to address issues regarding forestry management and planning in FML 3. Manitoba did not respond directly to the Term Sheet.
104. On March 29, 2024, Manitoba provided the Nations with a draft Memorandum of Understanding (the "**MOU**"). The MOU substantially departed from the proposed Term Sheet on a number of key issues, including the process and timeline for the development of a revised FMP for FML 3 and the development and implementation of interim measures to protect the Nations' Treaty rights.
105. Manitoba did not advise why it was unable or unwilling to consider or agree to the measures set out in the Term Sheet.
106. On the same day, Manitoba advised the Nations by separate letter that it had decided to grant Louisiana-Pacific a 3-month extension. Manitoba did not provide the Nations with any details regarding the nature of the extension.
107. On March 29, 2024, the Lieutenant Governor in Council issued the OIC authorizing the Minister to enter into an agreement with

Louisiana-Pacific to grant an extension of the FMLA from March 31, 2024 to June 30, 2024.

108. Contrary to communications from Manitoba, Manitoba and the Nations did not reach an agreement on issues related to Louisiana-Pacific's forestry operations on or before March 29, 2024.
109. On March 30, 2024, Manitoba and Louisiana-Pacific entered into the agreement to extend the term of the FMLA. By virtue of extending the FMLA, the FML for FML 3 and the right to harvest hardwood in FMU 12 and FMU 14 also was extended for the same period.
110. Manitoba did not provide Wuskwi Sipiik with copies of the March 2024 Decisions.
111. Contrary to the statutory scheme and the FMLA, Louisiana-Pacific has been operating without an approved FMP for over 18 years.
112. The 20-year FMP submitted in 2019 has not been approved. The 20-year FMP submitted in 2006 has not been approved.
113. As it has for the past 18 years, Louisiana-Pacific continues to cut and remove timber and to impact the exercise of WSNF rights without an approved FMP.
114. Timber harvesting by Louisiana-Pacific and its contractors in FML 3, FMU 12 and FMU 14, including in the Porcupine Hills, is ongoing.

Impacts on Wuskwi Sipiik's Treaty rights

115. The March 2024 Decisions authorize Louisiana-Pacific to harvest timber (the "**Forestry Activities**") in FML 3, FMU 12 and FMU 14

including in areas which are of critical importance for the exercise of Wuskwi Sipiik's Treaty rights.

116. Manitoba was aware, prior to the March 2024 Decisions, that:

- (a) Wuskwi Sipiik members rely on lands and waters within FML 3, FMU 12 and FMU 14 including the Kettle Hills and Porcupine Hills, to exercise Wuskwi Sipiik's Treaty rights;
- (b) Wuskwi Sipiik had repeatedly raised concerns, including in the course of the Working Group, about the cumulative and ongoing impacts of Louisiana-Pacific's activities in FML 3 on the exercise of Wuskwi Sipiik's Treaty rights; and
- (c) The independent Expert Reports prepared as part of the Working Group had identified critical deficiencies in the FMP which had yet to be addressed.

117. The Forestry Activities will adversely impact Wuskwi Sipiik's Treaty rights, including by:

- (a) reducing Wuskwi Sipiik members' ability to access lands used for Wuskwi Sipiik's Treaty rights and for traditional, cultural and spiritual purposes;
- (b) adversely affecting wildlife populations, including moose, which Wuskwi Sipiik members rely on for sustenance and spiritual purposes;

- (c) damaging plants, including sage, cedar, seneca root and berries, which are used by Wuskwi Sipiik members for traditional and medicinal purposes; and
- (d) contributing to the adverse cumulative effects of resource development on Wuskwi Sipiik s Treaty rights.

118. Manitoba did not consult Wuskwi Sipiik or take steps to address the impacts of the Forestry Activities on Wuskwi Sipiik's Treaty rights prior to issuing the March 2024 Decisions.

119. The March 2024 Decisions do not include any conditions, restrictions, or limitations on forestry activities in FML 3 in response to Wuskwi Sipiik's concerns regarding the impacts of Louisiana-Pacific's activities on its Treaty rights or the deficiencies in the proposed FMP.

Failure to enforce licensing conditions

120. Louisiana-Pacific is required, as a condition of the FMLA, to hold an approved FMP in order to cut and remove timber in FML 3.

121. The Minister has authority, pursuant to section 39(1) of *The Forest Act*, to suspend the FMLA and/ or FML until a condition is met, and to cancel the FMLA and/ or FML, after notice and hearing, if in the opinion of the Minister it is in the public interest to do so.

122. Manitoba is aware that Louisiana-Pacific has operated in contravention of the conditions of the FMLA since January 1, 2006.

123. To date, the Minister has never exercised his authority under section 39(1) of *The Forest Act* to suspend or cancel Louisiana-Pacific's FMLA and/ or FML.
124. Louisiana-Pacific continues to harvest timber in FML 3, FMU 12 and FMU 14 in contravention of the conditions of the FMLA today.

Manitoba breached the Crown's duty to consult

125. Manitoba, on behalf of the Crown, is obligated to discharge the Crown's duty to consult and accommodate Wuskwi Sipiik prior to decisions or activities which have the potential to adversely affect Wuskwi Sipiik's Treaty rights.
126. The Forestry Activities authorized pursuant to the March 2024 Decisions will result in new and additional impacts on the exercise of Wuskwi Sipiik's Treaty rights.
127. Manitoba breached the Crown's constitutional obligations by failing to consult Wuskwi Sipiik or to take steps to substantially address Wuskwi Sipiik's concerns prior to issuing the March 2024 Decisions.

Manitoba breached the honour of the Crown

128. The honour of the Crown is engaged by the Forestry Agreements.
129. In implementing the Forestry Agreements, Manitoba was obligated to act honourably, with integrity and good faith, and in an open and fair manner.
130. Wuskwi Sipiik relied on Manitoba's commitments and representations, including Manitoba's stated intention to issue a

decision on the proposed FMP on before March 31, 2024, to inform its decision to enter into the Forestry Agreements and discontinue its judicial review of the 2021 Decisions.

131. Manitoba failed to uphold the honour of the Crown in implementing the Forestry Agreements, including by:
- (a) refusing or otherwise failing to issue a decision approving or rejecting the proposed FMP on or before March 31, 2024 as contemplated under the Forestry Agreements;
 - (b) failing to provide sufficient information to enable Wuskwi Sipiik to prepare and present its views prior to rendering the March 2024 Decisions;
 - (c) allowing Louisiana-Pacific to continue to operate in FML 3 after March 31, 2024 in the absence of an approved FMP; and
 - (d) allowing Louisiana-Pacific to continue to operate in FML 3 after March 31, 2024 despite the absence of any approved FMP and in the absence of enforceable measures to protect Wuskwi Sipiik's Treaty rights.

Manitoba breached the Crown's Treaty obligations

132. Manitoba, on behalf of the Crown, owes honourable and fiduciary obligations to Wuskwi Sipiik under the Treaty, including the obligation to:
- (a) act honourably and in a way that accomplishes the intended purposes of the Treaty;

- (b) diligently pursue the fulfilment of the Crown's solemn Treaty promises, including and especially the promise that Wuskwi Sipiik would be able to continue to harvest moose in accordance with its traditions and way of life; and
 - (c) to manage and regulate forestry activities in Manitoba so as to ensure Wuskwi Sipiik is able to continue to meaningfully exercise its Treaty rights and maintain its way of life.
133. The exercise of Wuskwi Sipiik's Treaty right to harvest moose in FML 3, FMU 14 and FMU 12 including in and around the Porcupine Hills, has been significantly affected by the cumulative and ongoing impacts of commercial forestry.
134. Since January 1, 2006, Louisiana-Pacific has conducted forestry activities in FML 3, notwithstanding the expiration of the 1996 FMP and the absence of a further approved FMP as required pursuant to *The Forest Act* and the conditions of the FMLA.
135. Manitoba has had reasonable, credible notice that its actions and inactions in respect of forestry licencing and management in FML 3, FMU 12 and FMU 14 have put it in breach of its Treaty and statutory obligations.
136. Despite this notice, Manitoba has repeatedly issued authorizations or otherwise permitted Louisiana-Pacific to continue to conduct forestry activities in FML 3, FMU 12 and FMU 14 without regard for Wuskwi Sipiik's Treaty rights and in contravention of its statutory obligations under *The Forest Act*.

137. Manitoba has further been aware, since at least August 2023, that the proposed FMP is materially deficient and cannot be relied upon to inform licensing decisions for FML 3.
138. In the circumstances, Manitoba was obligated to take steps as necessary to diligently pursue the fulfillment of the Crown's solemn Treaty promises, including by ensuring Louisiana-Pacific did not conduct further forestry activities in FML 3 in the absence of an approved FMP prepared in accordance with principles of sound, sustainable forest management.
139. Instead of doing so, Manitoba allowed Louisiana-Pacific to continue forestry activities in FML 3 since January 1, 2006 without an approved FMP as required under Manitoba's licensing regime and without taking any steps to address Wuskwi Sipihk's longstanding, legitimate concerns about the cumulative effects of Louisiana-Pacific's activities on Wuskwi Sipihk's Treaty rights.
140. Manitoba further relied on a regulatory framework for forestry licensing that does not include any criteria to guide the exercise of Crown discretion, including in respect of decisions to approve Louisiana-Pacific's FMP for FML 3.
141. Through its actions and omissions, Manitoba has breached its duty of diligent and honourable Treaty implementation, including by:
 - (a) authorizing or otherwise allowing Louisiana-Pacific to conduct forestry operations in FML 3 in the absence of an approved FMP;

- (b) relying on an unstructured, discretionary administrative regime for forestry licensing decisions which risks infringing Wuskwi Sipiik's Treaty rights;
- (c) failing to develop and implement guidelines or other planning measures to ensure forestry operations are managed so as to ensure Wuskwi Sipiik is able to continue to meaningfully exercise its Treaty rights, including the right to harvest moose in accordance with its traditions and way of life;
- (d) authorizing or otherwise allowing Louisiana-Pacific to conduct forestry operations in FML 3, FMU 12 and FMU 14 between 2006 and the present without regard to the potential cumulative impacts of those operations and the consequent adverse cumulative impacts on the exercise of Wuskwi Sipiik's Treaty rights;
- (e) failing to exercise its statutory authority pursuant to section 39(1) of *The Forest Act* as necessary to ensure Louisiana-Pacific did not continue to operate in FML 3 in the absence of an approved FMP;
- (f) issuing the March 2024 Decisions authorizing Louisiana-Pacific to continue to conduct forestry operations in FML 3 without an approved FMP; and
- (g) consistently disregarding Wuskwi Sipiik's Treaty rights in favour of the commercial interests of Louisiana-Pacific.

The Minister failed to comply with the terms of *The Forest Act* and the FMLA

142. Pursuant to sections 8 and 18 of *The Forest Act*, section 16 of the Forest Regulation, and sections 3, 17 and 19 of the FMLA, Louisiana-Pacific is required to hold an approved long-term FMP to cut and remove timber from FML 3.
143. Louisiana-Pacific has not had an approved long-term FMP for FML 3 since December 31, 2005.
144. On March 29, 2024, the Lieutenant Governor in Council issued the OIC authorizing the Minister to extend the term of the FMLA from March 31, 2024 to June 30, 2024 and to grant Louisiana-Pacific an FML to cut and remove timber in FML 3, FMU 12 and FMU 14 for that same period.
145. On March 30, 2024, the Minister entered into an agreement with Louisiana-Pacific to extend the term of the FMLA from March 31, 2024 to June 30, 2024. In doing so, the Minister granted Louisiana-Pacific an FML to cut and remove Crown timber in FML 3, FMU 12 and FMU 14 for that same period.
146. Manitoba did not approve the 20-year FMP on or before March 31, 2024.
147. By issuing the Extension Decision and allowing Louisiana-Pacific to cut and remove timber and carry out associated harvesting activities without an approved FMP, the Minister failed to fulfil his obligations under *The Forest Act* and Forest Regulation to administer forests in

Manitoba in a manner consistent with sound and sustainable forest management.

Authorities

148. The Applicant pleads and relies on:

- a. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11, s 35.
- b. *Constitution Act, 1867*, 30 & 31 Vict, c 3, s 109.
- c. *Indian Act*, RSC 1985, c.1.5.
- d. *Treaty 4*, (1874), enacted pursuant to Order in Council PC No 944 (July 23, 1874).
- e. *The Proceedings Against the Crown Act*, CCSM c P140.
- f. *The Forest Act*, CCSM c F150, ss 8, 11, 15.1(1), 15.1(3), 18, 28, 39(1).
- g. *Forest Use and Management Regulation*, Man Reg 227/88 R, s 16(1).
- h. *The Crown Lands Act*, CCSM c C340.
- i. *Manitoba Natural Resources Act*, RSC 1930, c 29, s 2.
- j. *Species at Risk Act*, SC 2002 c 29.
- k. *Court of King's Bench Rules*, Man Reg 553/88, ss 1.04(1), 38.

- I. *Forest Management Licence Agreement between Her Majesty The Queen, In Right Of The Province of Manitoba, Represented By The Minister of Natural Resources and Louisiana Pacific-Canada, LTD, 21 September 1994.*

149. The following documentary evidence will be used at the hearing of the application:

- (a) Affidavit of Chief Elwood Zastre, to be filed;
- (b) Affidavit of Dan Soprovich, to be filed; and
- (c) Such further and other material as counsel may advise and this Honourable Court may permit.

DATED: April 26, 2024

A handwritten signature in black ink, appearing to read 'BYRON WILLIAMS', is written over a horizontal line. The signature is stylized and somewhat cursive.

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