Court File No. T-961-23

FEDERAL COURT

BETWEEN:

INDIGENOUS POLICE CHIEFS OF ONTARIO

Complainant/Moving Party

- and -

PUBLIC SAFETY CANADA

Respondent

MEMORANDUM OF FACT AND LAW OF THE MOVING PARTY

(Re. Motion Under Rule 372)

DATE: June 6, 2023

FALCONERS LLP

Julian N. Falconer (L.S.O. #29465R)
Asha James (L.S.O. #56817K)
Jeremy Greenberg (L.S.O. #79486N)
Shelby Percival (L.S.O. #82855R)

Barristers-at-Law
10 Alcorn Avenue, Suite 204
Toronto, ON M4V 3A9

Tel.: 416-964-0495
Fax: 416-929-8179

E: julianf@falconers.ca
E: ashaj@falconers.ca
E: jeremyg@falconers.ca
E: shelbyp@falconers.ca

Lawyers for the Complainant/Moving Party

TO: PUBLIC SAFETY CANADA

Michael Roach, Sean Stynes
Department of Justice, Civil Litigation Section
50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
Tel: (613) 297-6618
Fax: (613) 954-1920

E: Michael.Roach@justice.gc.ca
E: Sean.Stynes@justice.gc.ca

AND TO: This Honourable Court

OVERVIEW **4**

A. ISSUE ESTOPPEL IN THIS MATTER 6

I. STATEMENT OF FACTS **8**

A. THE PARTIES 9

B. EMERGENCY CIRCUMSTANCES – CESSATION OF POLICING IN 45 INDIGENOUS COMMUNITIES 9

i. Canada Cuts Off Indigenous Community Safety Funding (March 31, 2023) *9*

ii. Arbitrariness of FNIPP T&Cs Restrictions (and violation of Underlying Policy) *10*

iii. Canada manufactures a public safety crisis in 45 Indigenous communities. *13*

iv. Developments Since Filing of IPCO's Human Rights Complaint *17*

II. STATEMENT OF ISSUES **17**

A. PRELIMINARY ISSUES: JURISDICTION AND ISSUE ESTOPPEL 17

B. CENTRAL ISSUE: THE TEST FOR INJUNCTIVE RELIEF 18

(i) First Branch of the Test: Serious Issue to Be Tried / "Strong Prima Facie Case" *18*

(ii) Second Branch of the Test: Irreparable Harm *20*

(iii) Third Branch of the Test: Balance of Convenience *21*

III. SUBMISSIONS **21**

A. PRELIMINARY ISSUES 21

(i) First Preliminary Issue: This Court's Jurisdiction to Hear This Motion *21*

(ii) Second Preliminary Issue: Canada Is Issue Estopped in this Matter. *22*

C. THE MOVING PARTY MEETS THE THREE-PART TEST FOR INJUNCTIVE RELIEF 24

*i. There is a Serious Issue to be Tried *and* There is a Strong Prime Facie Case* *24*

ii. There is a Risk of Irreparable Harm *25*

iii. The Balance of Convenience Weighs in Favour of the Moving Party *27*

IV. ORDER SOUGHT **29**

V. AUTHORITIES **31**

"What Canada is again asking us to do is Administer our own Misery."

Chief Brian Perrault, Couchiching First Nation, at Grand Council Treaty #3 Spring Assembly, May 24, 2023

OVERVIEW

1. This is an emergency motion for interlocutory relief under section 44 of the *Federal Courts Act* (the "*Act*"), sought pursuant to Rules 374 and 376 of the *Federal Courts Rules*.

2. The motion arises out of the ongoing discriminatory conduct of Canada, contrary to a series of court rulings holding that Canada discriminates against Indigenous peoples through its implementation of a federal program, the First Nations and Inuit Policing Program ("FNIPP"). On January 31, 2022, the Canadian Human Rights Tribunal ("CHRT" or the "Tribunal") ruled in *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4 ("*Dominique*") that Canada's implementation of the FNIPP, including the systemic under-funding of Indigenous policing and imposition of arbitrary terms, violates the human rights of Indigenous peoples. This decision was upheld in February 2023 by this Honourable Court in *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267 ("*Pekuakamiulnuatsh*"). Additionally, in a separate but related ruling at the Quebec Court of Appeal ("QCCA"), in a civil case brought by the *Dominique* plaintiffs, the QCCA held that Canada's discriminatory under-funding breached the Crown's obligations under the Honour of the Crown.

3. Instead of abiding by the various court rulings, or bring a motion to stay the rulings pending appeal, Canada continues to force Indigenous communities to agree to the same discriminatory program, the FNIPP, or else face the cessation of their designated self-

administered Indigenous police services, likely replaced by the Ontario Provincial Police ("OPP"), which Canada knows lacks the cultural competence to serve these communities.[1]

4. The Moving Party, the Indigenous Police Chiefs of Ontario ("IPCO"), requests a combination of declaratory relief, prohibitive injunctive relief, and mandatory injunctive relief with respect to the Respondent, Public Safety Canada ("PSC" or "Canada").

5. Specifically, without restricting the generality of the foregoing, the Moving Party requests:

    a. Declaratory relief reaffirming the CHRT decision in *Dominique*, the decision of this Honourable Court in *Pekuakamiulnuatsh*, and the decision of the Quebec Court of Appeal in *Takuhikan*:

        i. That the FNIPP is a service that is provided to Indigenous communities by Canada as defined in paragraph 5(B) of the *Canadian Human Rights Act* ("*CHRA*");[2]

        ii. That the implementation of the FNIPP deprives Indigenous communities from being able to access basic policing services, which results in the perpetuation of existing discrimination faced by Indigenous people;[3] and

        iii. That the implementation of the FNIPP violates Canada's Honour of the Crown obligations by failing to fund Indigenous police services at a level comparable to that of surrounding communities with similar conditions.[4]

    b. Injunctive relief:

---

[1] **Affidavit of Chief Liu**, at para 49; **Malone Transcript**, p. 78, lines 15-22.
[2] ***Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada***, 2022 CHRT 4, at paras 190-191 ["***Dominique***"].
[3] ***Dominique,*** at para 328.
[4] ***Takuhikan c. Procureur général du Québec***, 2022 QCCA 1699, at paras 118 and 124 ["***Takuhikan"***] *Unofficial translation from the original French.

i. Enjoining Canada from enforcing specific identified clauses in section 6 of the FNIPP Terms and Conditions, 2017 ("T&Cs") (prohibiting essential police services, prohibiting financing of infrastructure, and prohibiting expenditures on legal representation); and/or

ii. In the alternative, an order relieving APS, T3PS, and UCCM from any obligation of compliance with the specific identified clauses in section 6 of the FNIPP Terms and Conditions (prohibiting essential police services, prohibiting financing of infrastructure and prohibiting expenditures on legal representation);

c. Mandatory injunctive relief, ordering Canada to flow funds to APS, T3PS, and UCCM for a twelve-month period, consistent with the 1996 First Nations Policing Policy ("Policy") and in at least the amounts flowed through the last tripartite funding agreement funding agreement for the 2022-2023 fiscal period.

A. Issue Estoppel in this Matter

6. The underlying process in this proceeding – a pending human rights complaint, filed under the *Canadian Human Rights Act* (R.S.C., 1985, c. H-6) on March 29, 2023 – relates to discrimination which is already the subject of multiple court rulings. As such, the moving party relies on the doctrine of *res judicata* and submits that Canada is issue estopped from contesting the factual and legal findings made in those decisions.

7. On January 31, 2022, the CHRT ruled in *Dominique* that the FNIPP was discriminatory, based on a complaint filed by an Indigenous community with an FNIPP-funded self-administered Indigenous police service. The Tribunal held that Canada's discriminatory

FNIPP implementation prevented Indigenous police services from serving their communities at the required standard.[5]

8. Further, on December 15, 2022, the QCCA ruled in *Takuhikan* that Canada discriminated through the FNIPP, thereby breaching their obligations under the Honour of the Crown. That civil action was filed by the same Indigenous community as in *Dominique*, seeking compensation for budget shortfalls it had been forced to cover due to FNIPP failings.[6]

9. On February 27, 2023, this Honourable Court in *Pekuakamiulnuatsh* upheld on judicial review the Tribunal's decision in *Dominique*. The Court confirmed that Canada discriminates against Indigenous peoples through chronic underfunding of the FNIPP and through discriminatory terms which directly contravene Canada's underlying 1996 Policy.[7] In both the Tribunal and Court decisions, Canada's main defence – that the FNIPP is a "discretionary contribution program", which purportedly gives Canada discretion to under-fund Indigenous communities – was completely rejected.

10. The Moving Party understands that on March 31, 2023, Canada filed, at the Federal Court of Appeal ("FCA"), an appeal of the *Pekuakamiulnuatsh* decision (FCA Court File No. T-454-22). However, Canada has not, to the Moving Party's knowledge, brought a motion to stay *Pekuakamiulnuatsh* pending the outcome of that appeal. The Moving Party further understands that on February 12, 2023, Quebec (but not Canada) applied for leave to appeal the *Takuhikan* QCCA decision to the Supreme Court of Canada. To the Moving Party's knowledge, Canada is not appealing the *Takuhikan* QCCA decision.

---

[5] ***Dominique***.
[6] ***Takuhikan.***
[7] ***Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh***, 2023 CF 267 ["***Pekuakamiulnuatsh***"]
*Unofficial translation from the original French.

I. STATEMENT OF FACTS

11. The basis for this emergency motion is a recent *CHRA* human rights complaint filed by the Moving Party, now with the Canadian Human Rights Commission ("Commission"), alleging Canada has taken no steps to reform the FNIPP in the wake of those rulings, instead forcing communities to accept the same discriminatory FNIPP terms, or else lose funding.[8]

12. It is an incontrovertible legal finding that Canada discriminates against Indigenous peoples through its implementation of the FNIPP. Moreover, the cause of that discrimination is Canada's failure to implement its own underlying policy – the 1996 Policy – which sets the benchmark for equity in policing:

> The evidence shows that the implementation of the FNPP is perpetuating existing discrimination, not eliminating it entirely. The goal of substantive equality is not achieved and cannot be achieved by the FNPP because of its very structure. This is highlighted by the gap between the objectives of the policy to develop professional and responsive policing services for First Nations and the actual impact of the implementation of the program…
>
> … the structure of the FNPP necessarily results in a denial of service, as it is impossible for the Complainant to receive basic policing services, as basic services are effectively ruled out under the funding formula. The funding becomes arbitrary and inadequate.[9]

13. As Canada's affiant Mr. Daniel Malone, Acting Director, Indigenous Policing Programs with the Indigenous Secretariat, PSC, has acknowledged, the Policy is, in effect, the "bible" for the entire FNIPP, governing its every aspect.[10]

14. In truth, Canada's implementation of the FNIPP has forced Indigenous communities to choose between two inadequate models of policing: either a fully funded <u>non</u>-Indigenous police service, or an <u>under-funded</u> self-administered Indigenous police service:

> [T]he adverse treatment based on race and national or ethnic origin arises from the fact that [the Complainant] must either (a) accept a police service 100 percent funded by [the province], under which the services offered by the [provincial police service] will not necessarily be adapted to the needs, habits and customs of the First Nation; or (b) rely on applying the FNPP to have their

---

[8] **Affidavit of Chief Liu**, at para 38.
[9] ***Dominique***, at paras 326 and 328.
[10] **Transcript of the Cross-Examination of Daniel Malone**, May 31, 2023, p. 57, lines 21-25 ["Malone Transcript"].

> own Indigenous police force that provides a service adapted to the needs, customs and traditions of the community; however, they must then expect that their police services will not be funded to the extent that they need to be because of the structure of the FNPP, such that if they wish to provide the community with culturally appropriate basic police services, they will incur deficits.[11]

A. The Parties

15. The Moving Party, IPCO, is a corporation duly incorporated in the province of Ontario pursuant to the *Corporations Act*, R.S.O. 1990, c. C.38. IPCO represents nine self-administered Indigenous police services, which receive funding under the FNIPP to serve Indigenous communities. Three of these police services – APS, T3PS, UCCM – have been operating without funding since March 31, 2023, when the Respondent cut off their FNIPP funding. On March 29, 2023, the Moving Party filed a complaint under the *CHRA*, alleging ongoing discrimination by the Respondent in its implementation of the FNIPP.

16. The Respondent, PSC, is the federal ministry responsible for administering the FNIPP. As of March 31, 2023, the Respondent has stopped funding three IPCO member police services with expired FNIPP funding agreements.

B. Emergency Circumstances – Cessation of Policing in 45 Indigenous Communities.

i. Canada Cuts Off Indigenous Community Safety Funding (March 31, 2023)

17. The FNIPP is a federal program overseen by PSC on behalf of Canada. Under the FNIPP, funding for self-administered Indigenous police services is provided through tripartite funding agreements signed with Canada (52% funding) and Ontario (48% funding).[12] FNIPP agreements typically span a term of several years, forcing Indigenous communities to try to negotiate new agreements each time their current agreement nears expiry. In the case of APS, T3PS, and UCCM, the funding agreements for all three services expired on March 31, 2023.

---

[11] ***Dominique***, at para 331. Emphasis added.
[12] **Affidavit of Chief Liu**, at para 6.

18. Months in advance of the expiry of their funding agreements, APS, T3PS, UCCM each attempted to engage in discussions with Canada and Ontario in respect of negotiating new agreements. Instead of engaging in good faith negotiations, Canada repeatedly sought to impose the unlawful, restrictive, discriminatory terms of the FNIPP, including the most blatantly discriminatory provisions at Section 6 of the FNIPP T&Cs. Following failed efforts to start negotiations, Canada deliberately allowed the agreements to expire on March 31, 2023, in a transparent effort to force communities to agree to the discriminatory terms or else lose funding. Since March 31st, no funding has flowed from Canada to these three services.[13]

19. While these three services have remained operational since March 31, 2023, by relying on limited surplus funding and funding from bilateral agreements outside of the FNIPP, they are quickly running out of funds. Once the services are unable to make payroll, they will be forced to lay off their officers and administrative staff and cease operations.[14]

20. If this occurs, the safety of 45 Indigenous communities, with a combined population of approximately 30,000 individuals, will be severely compromised, exacerbating already difficult conditions, such as the disproportionately high rate of severe criminal incidents.[15]

21. As the financial situation currently stands, it is anticipated that T3PS will be the first to run out of funding, with funds likely to be completely depleted following payment of their June 6, 2023, payroll. UCCM and APS will deplete their available funds by July 2023.[16]

ii. <u>Arbitrariness of FNIPP T&Cs Restrictions (and violation of Underlying Policy)</u>

22. In 1996, Canada adopted a Policy committing the federal government to promoting Indigenous community safety and self-determination by funding self-administered

[13] **Affidavit of Chief Liu**, at paras 9-11.
[14] **Affidavit of Chief Liu,** at paras 9-11.
[15] **Affidavit of Chief Liu,** at paras 35 and 42.
[16] **Affidavit of Derek Assiniwe,** at para 22; **Affidavit of Debra Bouchie,** at para 22.

Indigenous police services at a standard comparable to non-Indigenous police services.[17] Specifically, Canada has recognized the long and difficult history with Indigenous peoples and the criminal justice system, which led in part to the development of the Policy.[18]

23. However, in practice, Canada ignores this Policy, imposing instead a set of discriminatory rules in the form of the FNIPP T&Cs (last updated in 2017). The most egregious restrictions are set out in Section 6 of the FNIPP T&Cs, "ineligible expenditures", which blocks Indigenous communities from accessing specialized policing services, blocks Indigenous police services from owning infrastructure, prohibits Indigenous peoples from legal representation on any matter related to FNIPP funding, and prevents access to loans.[19]

24. This motion seeks an order blocking the effect of these discriminatory restrictions at section 6 of the FNIPP T&Cs. This will permit these Indigenous communities to engage in meaningful negotiations which (for the first time ever) factor in key funding categories – such as specialized policing services or infrastructure ownership – which are presently, arbitrarily blocked. At the same time, the requested order to reinstate funding will allow urgently needed funds to flow, for the most part, to payroll, thereby ensuring the services continue operating while those negotiations for longer-term agreements play out.

25. To be clear, these restrictions are not intrinsic to the FNIPP – indeed, they are absent from the underlying Policy – and Canada has acknowledged that they can be severed from FNIPP agreements without affecting the agreements.[20] However, Canada always foregrounds these

[17] **Affidavit of Chief Liu**, at paras 7 and 19.
[18] **Affidavit of Daniel Malone**, at paras 6-7; see also **Affidavit of Kai Liu**, at para 49.
[19] **Affidavit of Chief Liu**, at para 20; see also **Malone Transcript**, at p. 46, line 8 to p. 47, line 11.
[20] **Malone Transcript**, p. 164 line 22 to p. 165 line 14.

FNIPP T&Cs while avoiding any reference to the underlying Policy.[21] Indeed, Canada has freely admitted that it never discloses the Policy to communities – only the FNIPP T&Cs.[22]

26. Key Policy promises which Canada has failed to deliver on include: the commitment to support Indigenous self-sufficiency and self-governance, maintaining partnerships with communities based on trust, mutual respect, and participation and decision making; guaranteeing that Indigenous communities be policed by such members as persons or similar cultures, linguistic backgrounds as necessary to ensure that the police service will be effective and responsive to their cultures and particular policing needs; and a guarantee that Indigenous communities will have access to policing services "equal in quality and level of service" to policing found in (non-Indigenous) communities of similar conditions. [23]

27. For example, the FNIPP T&Cs prohibition on "specialized policing" prevents Indigenous police from operating such basic services – typical for non-Indigenous police services – as: canine units, emergency response teams, homicide units, identification/crime scene officers, as well as domestic violence and human trafficking specialty units.[24]

28. Canada's only justification for blocking these services is that Indigenous communities can rely on non-Indigenous police services operating outside the FNIPP, although it cannot explain why these communities are forced to rely on those services, such as Ontario's provincial police service. During his cross-examination, Canada's affiant could not explain why homicide units are prohibited at Indigenous police services, other than to (confusingly) suggest that Ontario – which is not responsible for the FNIPP – has decided as much:

---

[21] **Affidavit of Chief Liu,** at paras 7 and 52.
[22] **Malone Transcript**, p. 46 line 8 to p. 47 line 11.
[23] **Transcript of the Cross-Examination of Kai Liu**, p. 23, line 19-24, p. 34, lines 8-15, p. 35, lines 21-25 to p. 36, lines 1-3 ["**Liu Transcript**"].
[24] **Affidavit of Kai Liu**, at para 20; see also **Liu Transcript**, p. 89, line 14 to p. 90, line 23.

> Q. … And specialized policing services means, for example, a homicide unit would not be an allowed expenditure under the terms and conditions, correct?
> A. I don't know without conferring with the province of jurisdiction.[25]

29. However, even as Canada insists non-Indigenous police services can deliver these specialized policing services, it also acknowledges that those services lack the cultural competence to serve these communities – much as this Court recognized in *Dominique*.[26]

30. The FNIPP T&Cs also arbitrarily block legal representation for Indigenous police services. This is despite the fact that the underlying Policy contains clear commitments to promoting self-determination and self-governance.[27] The Respondent's affiant indicates that Canada prohibits legal representation because it purportedly wants "every dollar" to go towards policing – this, in stark contrast to the fact that Canada itself relies in a number of lawyers in the preparation, execution, and interpretation of FNIPP agreements.[28]

31. There is also arbitrariness in the way Indigenous police services are blocked from ownership of policing infrastructure. On the one hand, section 6 of the FNIPP T&Cs indicates that the taking out of mortgages ("amortization") is prohibited.[29] On the other hand, Canada's affiant indicated that the FNIPP T&Cs do not directly block ownership of infrastructure.[30] What Canada fails to explain is how an Indigenous police service is supposed to finance infrastructure ownership if it is blocked from obtaining a mortgage to pay for it.

iii. Canada manufactures a public safety crisis in 45 Indigenous communities.

32. Several months before the expiry of their respective funding agreements, each of APS, T3PS, and UCCM attempted to negotiate new agreements with Canada and Ontario. In November

---

[25] **Malone Transcript**, p. 90, lines 6-14.
[26] **Malone Transcript**, p. 78, lines 15-22; p. 108, lines 16-21; ***Dominique***, at para 331.
[27] **Liu Transcript**, p. 23, lines 19-24.
[28] **Malone Transcript**, p. 202, lines 19-25.
[29] **Affidavit of Chief Liu**, at paras 20 and 45.
[30] **Malone Transcript**, p. 198 lines 16-25 to p. 199, lines 1-5.

2022, both T3PS and UCCM provided draft Terms of Reference ("ToR") to the funders, intended to guide the negotiations process. Both the T3PS and UCCM draft ToR set out the history of each police service, acknowledging the importance of self-determined and culturally responsive policing, and setting out shared goals in promoting Indigenous community safety in line with the Honour of the Crown and the underlying 1996 Policy.[31]

33. In November 2022, T3PS convened two days of in-person negotiations with both funders, during which discussions were dominated by Canada's refusal to agree to ToR provisions acknowledging the unique context and history of Indigenous policing. This drafting process was also characterized by Canada repeatedly deleting key provisions which acknowledged the centrality of the 1996 Policy and commitments to promoting self-government – provisions which Canada's own affiant later admitted should not have been removed.[32]

34. This led to extensive edits and rewrites aimed at arriving at a "compromise" ToR so that actual negotiations could commence. Although Canada's representatives initially stated that the "compromise" ToR produced after two days was "90%" acceptable, they advised shortly thereafter they were unwilling to agree to this ToR. A "revised" draft would only be provided much later in April 2023, after funding expired. However, and as discussed further below, this "revised" draft just repeated all of Canada's original edits, such as removing references to "negotiation", the participation of decision-makers, or acknowledgments of self-determination, the Honour of the Crown, and the shared goals of the 1996 Policy.[33]

35. The experience for UCCM and APS was somewhat different. UCCM provided draft ToR in November 2022, with Canada indicating in December they were not prepared to sign the

[31] **Affidavit of Chief Liu**, at para 23; **Affidavit of Chief Killeen**, at para 13.
[32] **Malone Transcript**, p. 64, lines 23-25 to p. 65, lines 1-25.
[33] **Affidavit of Chief Liu**, at paras 24-25, and Exhibit Q.

ToR, with no further explanation.[34] APS approached the funders in December 2022, but held off on drafting ToR as it had become aware of the challenges faced by T3PS and UCCM, and was waiting to see if Canada was willing to discuss ToR for its own negotiations.[35] Ultimately, both UCCM and APS would only receive Canada's version of a draft ToR in April 18, 2023, after Canada had cut off funding (containing the same failings as the "revised" draft sent to T3PS).[36]

36. Despite resistance from Canada, the three services continued to attempt to move forward, adopting a joint strategy on negotiations. Concerned for the safety of the communities policed, and with weeks to go before funding expiry, the services sent a joint letter on March 17, 2023, indicating that if Canada agreed to three pre-conditions for negotiation – thereby signalling that Canada was willing to negotiate in good faith – they would consider signing one-year extensions and then commence actual negotiations on long-term agreements.[37]

37. Those three pre-conditions were, and remain: (a) That parties commit to the attendance of a decision-maker with decision-making authority at each negotiation table; (b) That a Negotiations ToR finalized, recognizing the unique context of Indigenous policing and shared commitments to encouraging self-determination, in line with the Honour of the Crown, Reconciliation, and the 1996 Policy; and (c) That each table be funded by Canada, as it regularly does in other contexts (examples: Indigenous child welfare, education).[38]

38. In its initial response, Canada did not even acknowledge that the services had set out three pre-conditions for negotiation, entirely ignoring those pre-conditions and focussing only on

---

[34] **Affidavit of Chief Killeen**, at paras 13-14, and 27.
[35] **Affidavit of Chief Skye**, at para 13.
[36] **Affidavit of Chief Skye**, at para 14.
[37] **Affidavit of Chief Liu**, at para 29.
[38] **Affidavit of Chief Liu**, at para 29.

extending agreements on the same, discriminatory terms. Canada's subsequent correspondence represented either a refusal to agree to any of the pre-conditions or vague statements lacking in clarity. Canada also refrained from ever referring to "negotiations", insisting repeatedly that only funding "renewal", based on existing terms, was available.[39]

39. Indeed, Canada's refusal to negotiate persists to this day, with Canada's affiant referring only to "renewal" in his affidavit and on examination, avoiding any reference to negotiation, and even going so far as to suggest that negotiation ToR were unnecessary:

> Q. …Or what was stopping addressing the terms of reference before the actual termination of the funding agreement?
> A. The fact that the terms of reference were not seen as necessary.[40]

40. The affiant also acknowledged that Canada deliberately replaced references to "negotiate" with "renew" in the draft ToR.[41]

41. On March 24, 2023, the three services sent further correspondence, repeating the three pre-conditions. On March 31, 2023, the day funding expired, an additional letter was sent to Canada summarizing Canada's position to date on the three pre-conditions, as well as the public safety crisis that Canada had, in effect, created for the 45 Indigenous communities which would soon lose the services of APS, T3PS, and UCCM.[42]

42. Throughout this process, Canada has attempted to impose the very same terms that the QCCA, the Tribunal, and this Honourable Court have all found to be discriminatory. When asked to deviate from the imposition of these terms, Canada has repeatedly relied on the excuse that the FNIPP is a "discretionary contribution program", subject to whatever terms

---

[39] **Affidavit of Chief Liu**, at paras 28, 30-32, 40, and at Exhibit Q.
[40] **Malone Transcript**, p. 35, lines 13-20.
[41] **Malone Transcript**, p. 40, line 25 to p. 41, lines 1-8.
[42] **Affidavit of Chief Liu,** at para 35.

Canada decides to impose. However, this "contribution program" excuse was expressly rejected by this Honourable Court:

> The Tribunal correctly rejected [Canada's] position to the effect that the FNPP is merely a contribution program for the funding of Indigenous police services, or that it only serves to augment the police services offered by the provinces. This interpretation is fundamentally reductive and completely ignores the purpose and scope of the [First Nations Policing Policy], which seeks to implement the inherent right of Indigenous peoples to self-government.[43]

iv. Developments Since Filing of IPCO's Human Rights Complaint

43. On March 31, 2023, the IPCO *CHRA* complaint was filed. On April 4, 2023, the three services sent additional correspondence to Canada, again setting out the three pre-conditions for negotiations. This correspondence was copied to the Honourable Patty Hajdu, Minister of Indigenous Services to invite the participation of a Ministry with cultural competence, which, based on the Moving Party's experience, is clearly lacking in the Respondent PSC.[44]

44. A full ten days later, Canada responded to each service on April 14, 2023, attaching draft ToR for funding negotiations, containing substantively the same provisions in each. These latest drafts represented a significant step backwards, removing references to the unique context of Indigenous policing, to decision-makers attending, and to the word "negotiate", Canada instead referring to "renewal" based on existing, discriminatory FNIPP terms.[45]

II. STATEMENT OF ISSUES

A. Preliminary Issues: Jurisdiction and Issue Estoppel

45. This Court's jurisdiction to hear this motion is made out under section 44 of the *Act*. (Further commentary on jurisdiction is set out below under "Submissions".) Additionally, and as noted at the outset, the doctrine of *res judicata* applies in respect of the findings that Canada

---

[43] ***Pekuakamiulnuatsh***, at para 78.
[44] **Affidavit of Chief Liu**, at para 39.
[45] **Affidavit of Chief Liu**, at para 40.

discriminates through the FNIPP. To that end, the Moving Party repeats and relies upon the findings of this Honourable Court in *Pekuakamiulnuatsh*, the findings of the Tribunal in *Dominique*, and the findings of the Quebec Court of Appeal in *Takuhikan*. The Moving Party respectfully submits that Canada is estopped from raising all defences rejected in those cases.

B. Central Issue: The Test for Injunctive Relief

46. An interlocutory injunction is a remedy designed to preserve the status quo or to prevent imminent harm pending the outcome of proceedings.[46] The central issue in this motion is whether the Moving Party meets the three-part test for granting an interlocutory injunction – as modified, in one instance, for the requested mandatory interlocutory relief.

47. For the first branch of the test, the Court must consider:

    a. For the requested prohibitive relief: is there a serious issue to be tried?

    b. For the requested mandatory relief: is there a strong *prima facie* case?

48. For the second branch, the Court must ask whether irreparable harm will result if an injunction is not granted. For the third branch, the Court must ask whether the balance of convenience weighs in favour of the Moving Party or the Respondent.

(i) First Branch of the Test: Serious Issue to Be Tried / "Strong *Prima Facie* Case"

49. As noted, this motion seeks declaratory relief to the effect that *Dominique* and the related cases remain good law, as well as orders related to two categories of injunctive relief:

    a. Prohibitive injunctive relief, requiring the Respondent to refrain from certain conduct (i.e., to refrain from applying certain discriminatory clauses of section 6 of the FNIPP T&Cs); and

---

[46] ***Lukács v. Canada (Citizenship and Immigration)***, 2023 FCA 36, at para 33 ["***Lukács****"]; **Ahousaht First Nation v. Canada (Fisheries, Oceans and Coast Guard)***, 2019 FC 1116 ["***Ahousaht***"] at para 68.

b. Mandatory interlocutory relief, requiring the Respondent to take a particular action (i.e., to reinstate funding to three Indigenous police services).

50. In the first category, the Moving Party must only demonstrate there is a serious issue to be tried. For the second category, the Moving Party must establish a "strong *prima facie* case". As discussed below, this effectively creates two sub-branches for the first part of the test:

(a) Prohibitive Interlocutory Relief: Serious Issue to Be Tried

51. For prohibitive injunctive relief, the Moving Party must first demonstrate that there is "a case with enough legal merit to justify the extraordinary intervention of this Court."[47]

52. The threshold for meeting this "serious issue" branch of the test is a low one, with the Court tasked with determining, on the "basis of common sense and an extremely limited review of the case on the merits", whether there is a serious issue.[48]

53. At the same time, certain indicators may be more or less persuasive in determining whether there is a serious to be tried. Notably, the existence of a judgment (or judgments, as the case may be) in the matter is a "relevant and weighty" consideration.[49]

54. Additionally, in circumstances where a party has failed to abide by previous court rulings, an interlocutory injunction may be the only practical way to prevent it from continuing to flout those orders.[50]

(b) Mandatory Interlocutory Relief: Strong Prima Facie Case.

55. Beyond establishing there is a "serious issue to be tried", the Court must also be satisfied, for mandatory injunctive relief, that the moving party has established a strong *prima facie*

---

[47] ***RJR-Macdonald Inc. v. Canada (Attorney General),*** [1994] 1 SCR 311, at p. 339 ["***RJR Macdonald***"].
[48] ***RJR-Macdonald***, at p. 337-338.
[49] ***RJR-Macdonald***,, at p. 348.
[50] ***Google Inc. v. Equustek Solutions Inc***., 2017 SCC 34, at para 20.

case.[51] In other words, the Court must be satisfied upon a preliminary review of the case that there is a strong likelihood the moving party will be ultimately successful in its application.[52]

56. This requirement reflects the more burdensome nature of a mandatory interlocutory injunction, by which the Court orders the Responding Party to undertake a positive course of action, such as "taking steps to restore the *status quo*, or to otherwise 'put the situation back to what it should be.'"[53]

(ii) Second Branch of the Test: Irreparable Harm

57. The court must also consider whether there is a risk of harm which cannot be repaired by any relief or damages ordered following a later hearing on the merits. This aspect of the test does not refer to the magnitude of the harm suffered, but only the nature of that harm.[54]

58. In other words, harm is considered irreparable when it "either cannot be quantified in monetary terms or which cannot be cured." The irreparable harm must be unavoidable, in the sense that the harm will be caused by failure to obtain the requested relief.[55]

59. In establishing irreparable harm, the Court should look for clear and convincing evidence of unavoidable harm. Speculation and assertions are not sufficient. For example, if a Moving Party asserts dire financial consequences if the injunctive relief is not granted, then the Court should benefit from a clear understanding of their "overall financial situation".[56]

60. In certain circumstances, the requested relief can be limited to an identifiable period, i.e., pending the restoration of a particular state of affairs. In such circumstances, "the question

---

[51] ***R. v. Canadian Broadcasting Corp***., 2018 SCC 5, at para 15 ["***CBC***"].
[52] ***Air Passengers Rights v. Canada (Transportation Agency)***, 2020 FCA 92, at para 19.
[53] ***Ahousaht***, at para 69; ***CBC***, at para 15.
[54] ***RJR-Macdonald***, at p. 348. ***Operation Dismantle v. The Queen***, [1985] 1 SCR 441, at para 34.
[55] ***Glooscap Heritage Society v Canada***, 2012 FCA 255 [***Glooscap***] at para 39. ***RJR-Macdonald***, at p. 348.
[56] ***Glooscap*** at para 31, para 36. ***VisionWerx Investment Properties v. Strong Industries***, 2020 FC 378, at para 82.

is whether irreparable harm will be suffered during the period between now and when" that state of affairs is anticipated to return.[57]

(iii) Third Branch of the Test: Balance of Convenience

61. Finally, the Court must consider whether the balance of convenience lies with the Moving Party or the Respondent. This question of how, and to what degree, the Motion will inconvenience one party compared to the other, is a central consideration.[58]

62. In addition to the potential harm suffered by the parties, the interest of the public should also be considered. The purpose is to ensure that the public interest in ensuring a just outcome is considered.[59]

63. However, the Court must also be careful not to operate on the presumption that the Crown purports to represent the "public interest". The Attorney General of Canada is not the exclusive representative of a monolithic "public", and indeed the public interest may not always gravitate in favour of enforcing the existing framework implemented by the Crown.[60]

III. SUBMISSIONS

A. Preliminary Issues

(i) First Preliminary Issue: This Court's Jurisdiction to Hear This Motion

64. This Honourable Court is the appellate/review body for all federal boards, commissions, and tribunals, and has "general administrative jurisdiction" to hear and grant requests for injunctive relief in matters pending before such bodies, pursuant to s. 44 of the *Act*.[61]

---

[57] ***Stoney First Nation v. Shotclose***, 2011 FCA 232, at para 42.
[58] ***RJR-Macdonald***, at p. 350.
[59] ***RJR-Macdonald***, at p. 348-349.
[60] ***RJR-Macdonald***, at p. 343-344.
[61] ***Federal Courts Act*** (R.S.C., 1985, c. F-7) at s. 44; and ***Canada (Human Rights Commission) v. Canadian Liberty Net***, [1998] 1 S.C.R. 626, at para 36-37 ["***Liberty Net***"]; ***Lukács***, at para 33.

65. It is well established that this Honourable Court has jurisdiction to issue an injunction in support of the prohibitions contained in the *CHRA*.[62] As this Court has repeatedly held, this jurisdiction specifically extends to granting injunctive relief on pending *CHRA* complaints, regardless of whether the complaints are presently before the Commission or Tribunal.[63]

66. In assuming this jurisdiction, this Honourable Court is empowered by Parliament to grant an injunction "in all cases in which it appears to the court to be just or convenient to do so".[64]

67. In any event, to the extent there is something novel – which is not admitted – about an order to suspend specific provisions of a discriminatory service, such novelty should not be a barrier to relief. The law only evolves by consideration of novel legal arguments.[65]

68. Such novel arguments should be allowed to proceed, so long as the Court considers them to be, at minimum, arguable. Such innovative advocacy ought to be encouraged.[66] At the same time, it must also be recognized that the contours of constitutional rights are settled through the litigation of emerging, unresolved, and contentious issues.[67]

(ii) Second Preliminary Issue: Canada Is Issue Estopped in this Matter.

69. As indicated, the Moving Party relies on the doctrine of *res judicata* in respect of the factual and legal findings made by this Tribunal in *Dominique*; the factual and legal findings made by this Court in *Pekuakamiulnuatsh*; and the factual and legal findings made by the Quebec Court of Appeal in *Takuhikan*.

70. These findings include, but are not limited to:

---

[62] ***Liberty Net***, at paras 8, 36-37.
[63] ***Toutsaint v. Canada (Attorney General),*** 2019 FC 817, at para 65 ["***Toutsaint***"]; ***Liberty Net***; ***Drennan v. Canada (Attorney General),*** 2008 FC 10 ["***Drennan***"]; ***Colasimone v. Canada (Attorney General)***, 2017 FC 953; ***Letnes v. Canada (Attorney General),*** 2020 FC 636.
[64] ***Drennan*** at para 22; ***Toutsaint,*** at para 65.
[65] ***R. v. Griffin***, 2020 ABCA 319 at para 25.
[66] ***Groia v. Law Society of Upper Canada***, 2018 SCC 27, at para 89.
[67] ***R. v. McDonald***, 2013 BCSC 314, at para 44.

a. That the FNIPP is a "service", within the meaning of section 5 of the *CHRA*[68];

b. That Canada discriminates against Indigenous peoples through its implementation of the FNIPP[69];

c. That Canada's discriminatory practices stem from its failure to fulfil the guarantees of the underlying Policy that governs the FNIPP[70];

d. That the goal of substantive equality set out in the underlying Policy is not achieved and cannot be achieved by the FNIPP because of its very structure[71];

e. That the Canadian government is legally bound to guarantee a standard of policing in Indigenous communities that is adapted to their needs and that is equal in quality and quantity to services provided in similar non-Indigenous communities[72];

f. That this obligation extends to a legal guarantee that police service models in Indigenous communities should be at least equivalent to those offered in neighbouring communities with similar conditions, and that Indigenous communities should be involved in choosing a model that is adapted to their particular needs while also being as cost-effective as possible[73];

g. That the very structure of the FNIPP results in a denial of service, as the FNIPP makes it impossible for Indigenous communities to receive basic policing services, since those service standards are effectively ruled out under the funding formula[74];

h. That funding under the FNIPP is both arbitrary and inadequate[75];

---

[68] ***Dominique*** at para 190; ***Pekuakamiulnuatsh*** at para 83**.**
[69] ***Dominique*** at para 326, 349; ***Pekuakamiulnuatsh*** at paras 33-34, and 77.
[70] ***Dominique,*** at paras 310 and 326; ***Pekuakamiulnuatsh,*** at paras 30 and 78.
[71] ***Dominique***, at paras 326, 328-329, and 333.
[72] ***Dominique,*** at paras 154 and 332-333; ***Pekuakamiulnuatsh***, at paras 26 and 28.
[73] ***Dominique,*** at para 155; ***Takuhikan***, at para 108.
[74] ***Dominique,*** at paras 328 and 337.
[75] ***Dominique***, at para 328.

i. That Canada's discriminatory actions have violated the Honour of the Crown[76];

j. That underfunding exacerbates existing discrimination against Indigenous communities by increasing their dependency on the federal Crown[77]; and

k. That Canada cannot justify its discriminatory conduct based on its excuse that the FNIPP is a "contribution program".[78]

71. However, Canada has already demonstrated in this case that it is choosing to ignore the outcome of those rulings. Notably, on cross-examination, Canada objected to a question about whether any training had been provided to employees about *Dominique* and related rulings. Such refusal to disclose information may permit a court to draw an adverse inference, particularly in a situation such as this one – where a Crown witness is being cross-examined.[79] To that end, The Moving Party submits that an adverse inference presents itself that Canada has not, in fact, implemented any training.[80]

72. Similarly, Canada's affiant has indicated his belief that because this is "not a finalized legal matter" (due to the pending FCA appeal), Canada is not obligated to take steps to address its discriminatory conduct. This too presents an adverse inference, i.e., that Canada operates on the basis that it need not comply with the law until the outcome of an appeal is determined.[81] Respectfully, Canada cannot be permitted to play this "cat and mouse" game with the victims of its discrimination.

C. The Moving Party Meets the Three-Part Test for Injunctive Relief

i. <u>There is a Serious Issue to be Tried *and* There is a Strong *Prime Facie* Case</u>

---

[76] ***Takuhikan***, at paras 72-74.
[77] ***Dominique***, at paras 328 and 337.
[78] ***Dominique***, at para 310.
[79] ***Babcock v. Canada (Attorney General)***, 2002 SCC 57, at para 36.
[80] **Malone Transcript**, p. 122, lines 17-25 to p. 123, lines 1-3.
[81] **Malone Transcript**, p. 109, lines 14-17; see also **Malone Transcript**, p. 110, lines 2-15.

73. The requested order amounts to, in part, a declaration from this Honourable Court that the Respondent's discriminatory conduct, which it has already been directed to cease, is discriminatory. Alongside this declaratory relief, the Moving Party has specified that the immediate prohibitive relief sought is a suspension of Canada's most discriminatory restrictions – the "ineligible expenditures" at section 6 of the FNIPP T&Cs.

74. The Moving Party also requests a mandatory order that Canada reinstate funding to three Indigenous police services whose funding expired as a result of Canada's refusal to negotiate in good faith. To that end, the Moving Party submits that a strong *prima facie* case arises from the high likelihood that the underlying human rights complaint will ultimately succeed, given that it is predicated on findings previously made by the Tribunal and appeal courts. Notwithstanding the existence of the pending FCA appeal, the law is, for all intents and purposes, settled: Canada does discriminate, and that finding is unlikely to change.

ii. There is a Risk of Irreparable Harm

75. This case is about harm caused by the Respondent's defiance of multiple court directions to cease discriminatory conduct. The harm caused by these actions is not merely speculative. As set out in the accompanying affidavits, once funding runs out, dozens of Indigenous communities, with tens of thousands of residents, immediately lose access to the programs and services provided by their designated Indigenous police service. This harm – though caused by a lack of funding – is not in itself "financial": it is harm to public safety.

76. The short- and long-term consequences of a cessation of policing cannot be quantified in monetary terms. This includes impacts on community safety, the relationship between police and Indigenous peoples, access to guaranteed services, triggering of police-related trauma, and absolute undercutting of Indigenous sovereignty and self-determination. It also involves

the real risk of a non-Indigenous police service, lacking cultural competence, entering communities uninvited and attempting to "replace" these Indigenous police services.

77. At the same time, there is a substantial risk of reintroduction of the very model of non-Indigenous policing rejected by these communities – and which Canada's own 1996 Policy rejected. The long, fraught history of non-Indigenous policing of Indigenous communities is well known, subject to widespread judicial notice.[82] There will be no way to repair the harm caused by the return of, for example, the OPP to communities where it is unwanted – including, as it happens, the very community (now served by APS) where, in 1995, Dudley George was killed by an OPP officer. Canada's own affiant has acknowledged that the return of non-Indigenous policing would even violate Canada's own Policy, since the OPP could not fulfil the cultural competency requirements of the FNIPP.[83]

78. In the long term, any suspension, let alone total cessation of the activities of the three Indigenous police services involved, would represent a profound step backwards, in communities which are already reeling from multiple, overlapping community safety crises. Once services break down, they cannot be so easily reinstated and patched up.[84]

79. At the same time, any crisis in confidence affects both the staff of these services and the communities which they serve. If officers and civilian staff are laid off or cease receiving pay, they will look elsewhere for employment – and it will be highly difficult to draw them back, given the existing challenges of policing in what are often remote, under-resourced, and difficult working conditions, leading to severely high rates of mental health challenges.[85]

---

[82] **Affidavit of Chief Liu**, at para 49; ***R. v. Gladue***, [1999] 1 SCR 688; ***R. v. Ipeelee***, 2012 SCC 13.
[83] **Malone Transcript**, p. 78, lines 15-22.
[84] **Affidavit of Chief Liu**, at paras 42-43 **Affidavit of Chief Skye** at paras 29-30, and 35; **Affidavit of Chief Killeen** at paras 29-30, and 35.
[85] **Affidavit of Chief Liu**, at para 48.

iii. The Balance of Convenience Weighs in Favour of the Moving Party

80. In the circumstances, the balance involves two central questions: For the Respondent, what is the inconvenience in being forced to release funding which (i) the Respondent already has available, and (ii) is only being withheld in an effort to attach terms to the funding which it knows to be discriminatory; and for the Moving Party, what is the inconvenience in losing access to urgently needed funding to assure the safety of forty-five Indigenous communities?

(a) Inconvenience to the Respondent

81. This motion arises from Canada's steadfast refusal to take any steps to reform a program which the Courts have found to be discriminatory. Rather than take any actions to reform the FNIPP – or even to ask the Court to "stay" the various rulings against Canada, pending reform efforts – Canada persists in seeking to impose the same discriminatory clauses.

82. However, Canada appears to be acting on the premise that because it has a pending appeal of the FCA, it does not need to take any steps to cease its discriminatory conduct, despite its failure to avail itself of the option to request a stay.[86] To be clear: a stay might have been available had Canada requested it. For example, in *Canada (Attorney General) v. Bedford* (the "sex worker" reference), Canada requested a stay to revise its laws pending a Supreme Court ruling that certain *Criminal Code* provisions were unconstitutional.[87]

83. In the absence of seeking such a stay, Canada is legally bound to take immediate steps to cease its discriminatory conduct. Failure to do so can result in orders to update its "policies, procedures, and agreements" under the program/service, and to implement immediate reform measures. However, Canada cannot use a promise of "consultation and reform at a

---

[86] **Malone Transcript**, p. 124, lines 12-25.
[87] ***Canada (Attorney General) v. Bedford***, 2013 SCC 72, at para 169. See also: ***Canada (Attorney General) v. First Nation Child and Family Caring Society of Canada***, 2019 FC 1529.

later date" as excuse for avoiding immediate action, since this would result in Canada perpetuating the same discrimination it has been directed to cease.[88]

84. Canada cannot simply continue proffering similar policies and practices to those that were found to be discriminatory. Any new programs, policies, practices, or funding implemented by Canada should be informed by the prior court findings and should not simply be an expansion of previous practices that did not work and resulted in discrimination.[89]

85. Canada already has the funding available – it has indicated as much. In other words, the "inconvenience" to Canada is simply that it would be required to, on the one hand, comply with prior court rulings, and, on the other hand, to release funding without forcing Indigenous police services to submit to the worst aspects – specifically, Section 6 – of Canada's discriminatory FNIPP T&Cs. The Moving Party does not even request a complete suspension of all FNIPP terms, only section 6.

(b) Inconvenience to the Moving Party

86. The issues at stake here are of the highest order of risk, involving a potential cessation in the policing delivered to approximately 30,000 individuals. In the absolute "best" of circumstances under the current trajectory, by as early as the end of this month, these communities could see the complete halt to their designated Indigenous policing services, replaced by unwanted, uninvited non-Indigenous police services as "substitutes". These communities are entitled to the Indigenous police services they have chosen -- Canada's own

---

[88] ***Canada (Attorney General) v. Johnstone***, 2013 FC 113 at paras. 165 and 167; ***Canada (Attorney General) v. McAlpine* (1989)**, 1989 CanLII 9428 (FCA), at para 6, ***First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada,*** 2016 CHRT 16, at paras 137 and 157; ***First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada,*** 2016 CHRT 10, para 21.; ***First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada***, 2016 CHRT 16, at para 34.

[89] ***First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),*** 2017 CHRT 14, paras 73 and 74. Emphasis added.

Policy clearly commits the Crown to support adequate, effective, culturally responsive policing, comparable to what is available everywhere else.[90]

87. Canada's only other justification appears to be that Ontario has statutory responsibility for policing. While true that the provincial statute, the *Police Services Act*, R.S.O. 1990, c. P.15 ("*PSA*") governs policing[91], Canada has itself taken over responsibility for on-reserve policing by adopting the Policy and the FNIPP – in effect, "occupying the field" of Indigenous policing, with legal obligations to not discriminate in doing so.[92]

IV. ORDER SOUGHT

88. The Moving Party respectfully requests the following:

a. Declaratory relief reaffirming the CHRT decision in *Dominique*, the decision of this Honourable Court in *Pekuakamiulnuatsh*, and the decision of the Quebec Court of Appeal in *Takuhikan*:

i. That the First Nations and Inuit Policing Program ("FNIPP") is a service that is provided to Indigenous communities by Canada as defined in paragraph 5(B) of the *Canadian Human Rights Act*;[93]

ii. That the implementation of the FNIPP deprives Indigenous communities from being able to access basic policing services, which results in the perpetuation of existing discrimination faced by Indigenous people;[94]

---

[90] **Affidavit of Chief Liu**, at para 19.
[91] **Malone Transcript**, p. 68, lines 21-25; see also **Affidavit of Daniel Malone**, at para 4.
[92] ***Dominique***, at para 55.
[93] ***Dominique***, 2022 CHRT 4, at paras 190-191.
[94] ***Dominique,*** at para 328.

iii. That the implementation of the FNIPP violates Canada's Honour of the Crown obligations by failing to fund Indigenous police services at a level comparable to that of surrounding communities with similar conditions.[95]

b. Injunctive relief:

i. Enjoining Canada from enforcing specific identified clauses in section 6 of the FNIPP Terms and Conditions (prohibiting essential police services, prohibiting financing of infrastructure and prohibiting expenditures on legal representation); and/or

ii. In the alternative, an order relieving APS, T3PS, and UCCM from any obligation of compliance with the specific identified clauses in section 6 of the FNIPP Terms and Conditions (prohibiting essential police services, prohibiting financing of infrastructure and prohibiting expenditures on legal representation);

c. Mandatory injunction ordering Canada to flow funds to APS, T3PS, and UCCM for a twelve-month period, consistent with the FNIPP Policy and in at least the amounts flowed through the last tripartite funding agreement funding agreement for the 2022-2023 fiscal period;

d. An Order for the costs of this motion; and

e. Such further and other relief as counsel may request and this Honourable Court may order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of June 2023.

[95] ***Takuhikan***, 2022 QCCA 1699, at paras 118 and 124.

V. AUTHORITIES

1. *Ahousaht First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2019 FC 1116
2. *Air Passengers Rights v. Canada (Transportation Agency)*, 2020 FCA 92
3. *Babcock v. Canada (Attorney General)*, 2002 SCC 57
4. *Canada (Attorney General) v. Bedford*, 2013 SCC 72
5. *Canada (Attorney General) v. First Nation Child and Family Caring Society of Canada*, 2019 FC 1529
6. *Canada (Attorney General) v. Johnstone*, 2013 FC 113
7. *Canada (Attorney General) v. McAlpine* (1989), 1989 CanLII 9428 (FCA)
8. *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626
9. *Canada (Procureur général) c. Première Nation des Pekuakamiulnuatsh*, 2023 CF 267
10. *Colasimone v. Canada (Attorney General)*, 2017 FC 953
11. *Dominique (on behalf of the members of the Pekuakamiulnuatsh First Nation) v. Public Safety Canada*, 2022 CHRT 4
12. *Drennan v. Canada (Attorney General)*, 2008 FC 10
13. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 10
14. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 16
15. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2017 CHRT 14
16. *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255
17. *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34,
18. *Groia v. Law Society of Upper Canada*, 2018 SCC 27
19. *Letnes v. Canada (Attorney General)*, 2020 FC 636.
20. *Lukács v. Canada (Citizenship and Immigration)*, 2023 FCA 36
21. *Operation Dismantle v. The Queen*, [1985] 1 SCR 441
22. *R v Canadian Broadcasting Corp*, 2018 SCC 5
23. *R. v. Gladue*, [1999] 1 SCR 688
24. *R. v. Griffin*, 2020 ABCA 319
25. *R. v. Ipeelee*, 2012 SCC 13

26. *R. v. McDonald*, 2013 BCSC 314

27. *RJR-Macdonald Inc. v. Canada (Attorney General)* [1994] 1 SCR 311

28. *Stoney First Nation v. Shotclose*, 2011 FCA 232

29. *Takuhikan c. Procureur général du Québec*, 2022 QCCA 1699

30. *Toutsaint v. Canada (Attorney General)*, 2019 FC 817

31. *VisionWerx Investment Properties Inc. v. Strong Industries, Inc*., 2020 FC 378