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Court File No.

FEDERAL COURT

B E T W E E N:

(Court Seal)

MARLEN HORSE, ANDREA BEAR, JONAS THUNDERCHILD, DERRICK HORSE, MICHAEL LINKLATER, WALLY AWASIS, TAYLOR LINKLATER, CHRIS MOYAH, BRANDON BEAR, VIRGIL AWASIS, WILLIAM WEEKUSK, NOREEN MEETOOS, JAVEN JIMMY, DRAYTON ANGUS, GLORIA BADGER, YVETTE MCCALLUM, DONNA WAPASS, KENNETH AWASIS, SHELLEY ANGUS, ANDREA SEMAGANIS, HENRY JIMMY, LEIF HORSE, GERALDINE MEETOOS, WARREN MEETOOS, MELANIE PASKEMIN, MABEL ANGUS and THE BAND MEMBERS ALLIANCE AND ADVOCACY ASSOCIATION

Applicants

and

THUNDERCHILD FIRST NATION,
as represented by its Chief and Headmen

Respondent

APPLICATION UNDER sections 10 and 11 of the *First Nations Financial Transparency Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicants. The relief claimed by the Applicants appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Regina, Saskatchewan.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor or, if the Applicants are self-represented, on the Applicants, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date May 3, 2024 Issued by _____
(Registry Officer)

Address of
local office: The Court House
2425 Victoria Avenue
Regina SK S4P 4W6

TO: **THUNDERCHILD FIRST NATION, as represented by its Chief and Council**

Attention: Steve Carey and Logan Newlove
Maurice Law Barristers & Solicitors
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APPLICATION

1. This is an application pursuant to sections 10 and 11 of the *First Nation Financial Transparency Act*, S.C. 2013, c. 7 (the “*Act*”).

THE APPLICANTS MAKE APPLICATION FOR:

2. an Order pursuant to section 10 of the *Act* requiring the Respondent, through its Council, to carry out the duties imposed under section 7 of the *Act* within a period of time specified by this Honourable Court, and directing the Respondent’s continual and ongoing compliance with its obligations under section 7 of the *Act*;
3. an Order pursuant to section 11 of the *Act* requiring the Respondent, through its Council, to carry out the duties imposed under section 8 of the *Act* within a period of time specified by this Honourable Court, and directing the Respondent’s continual and ongoing compliance with its obligations under section 8 of the *Act*;
4. the costs of this Application; and
5. such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

A. The Parties

6. The Applicants, Marlen Horse, Andrea Bear, Jonas Thunderchild, Derrick Horse, Michael Linklater, Wally Awasis, Taylor Linklater, Chris Moyah, Brandon Bear, Virgil Awasis, William Weekusk, Noreen Meetoos, Javen Jimmy, Drayton Angus, Gloria Badger, Yvette Mccallum, Donna Wapass, Kenneth Awasis, Shelley Angus, Andrea Semaganis, Henry

Jimmy, Leif Horse, Geraldine Meetoos, Warren Meetoos, Melanie Paskemin, and Mabel Angus (collectively, the “**Individual Applicants**”) are members of Thunderchild First Nation.

7. The Applicant, the Band Members Alliance and Advocacy Association (“**BMAAAC**”) (together with the Individual Applicants, the “**Applicants**”), is a national not-for-profit society incorporated under the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23. BMAAAC’s mission is to assist band members in obtaining access to justice and ensuring good governance and financial accountability for First Nations in Canada.
8. BMAAAC asserts public interest standing in the Court and supports the Individual Applicants’ desire to ensure that the Respondent fulfils its obligations under the *Act*. These matters transcend the rights of the Individual Applicants and BMAAAC’s evidence and submissions will focus on the implications of Indigenous governments, like the Respondent, denying access to the financial information to which their members are entitled.
9. The Respondent is a band as defined in the *Indian Act*, R.S.C. 1985, c. I-5. Thunderchild First Nation is located in Turtleford, Saskatchewan, Canada, in Treaty 6 territory.
10. The Respondent is represented by its Council, comprised of Chief Delbert Wapass and Councillors Katrina Frank, Walter Jimmy, John Noon, Gerald Okanee Sr., Leonard Sapp, Melvin Thunderchild and Billy Yellowhead.
11. At all material times, the Respondent was subject to the *Act*. The Respondent acted in this case as a First Nation within the meaning of section 2 of the *Act*.

B. The Respondent's Duties under the *Act*

12. Sections 5 and 6 of the *Act* require the Respondent to prepare audited consolidated financial statements and schedules of remuneration paid and expenses reimbursed to the Chief and Councillors by Thunderchild First Nation and by entities required to be consolidated with Thunderchild First Nation in accordance with generally accepted accounting principles, as follows:

- (a) subsection 5(1) of the *Act* requires the Respondent to maintain its accounts and prepare its consolidated financial statements annually in accordance with generally accepted accounting principles;
- (b) subsection 5(2) of the *Act* requires that these financial statements be audited, by an independent auditor, in accordance with generally accepted auditing standards;
- (c) subsection 6(1) of the *Act* requires that the Respondent prepare, annually, a document entitled Schedule of Remuneration and Expenses (the “**Schedule**”) that sets out, separately, the remuneration paid and expenses reimbursed to its Chief and each of its Councillors by Thunderchild First Nation and by any entity that, in accordance with generally accepted accounting principles, is required to be consolidated with Thunderchild First Nation;
- (d) subsection 6(2) of the *Act* specifies that the Schedule does not form part of the consolidated financial statements; and
- (e) subsection 6(3) of the *Act* requires that an auditor's report, or a review engagement report, must accompany the Schedule.

13. Section 7 of the *Act* requires the Respondent to provide copies of the following documents without delay on request of any member of Thunderchild First Nation:

- (a) its audited consolidated financial statements;
- (b) the Schedule;
- (c) the auditor's written report respecting the consolidated financial statements; and

- (d) the auditor's report or the review engagement report, as the case may be, respecting the Schedule.

- 14. Section 8 of the *Act* requires the Respondent to publish the same documents listed in the paragraph above on an internet site within 120 days after the end of each financial year.

C. The Respondent's Failure to Fulfill its Duties under the *Act*

- 15. Over the course of several years, various members of Thunderchild First Nation have requested that the Respondent provide copies of some or all of those documents identified in section 7 of the *Act*. The Respondent has refused or ignored these requests.

- 16. On April 4, 2024, counsel to the Individual Applicants sent a letter to the Respondent requesting that the Respondent fulfill its obligations under the *Act* (the "**Written Request**"). The Written Request asked that the Respondent provide the following by April 12, 2024:

- (a) Audited consolidated financial statements, and the auditor's reports respecting the same, for fiscal years 2014-2015, 2020-2021, 2021-2022, and 2022-2023; and
- (b) Schedules of remuneration and expenses, and the auditor's reports or the review engagement reports respecting the same, for fiscal years 2013-2014, 2014-2015, 2015-2016, 2020-2021, 2021-2022, and 2022-2023.

- 17. The Written Request further asked that the Respondent:

- (a) provide Thunderchild First Nation's audited consolidated financial statements and schedule of remuneration and expenses for the 2023-2024 fiscal year ending March 31, 2024, and the related auditor's reports or review engagement reports for each, without delay; and
- (b) undertake to provide on members' request and publish Thunderchild First Nation's audited consolidated financial statements and schedules of remuneration and expenses for future fiscal years without delay and within 120 days from the end of each fiscal year.

18. Despite attempts by counsel to the Individual Applicants to follow up on these requests, to date, the Respondent has failed to provide the Individual Applicants with copies of the documents specified in the Written Request, and has failed to publish these documents on an internet site. The Respondent has therefore failed to fulfill its duties under section 7 and 8 of the *Act*.
19. Pursuant to section 10 of the *Act*, the Individual Applicants may apply to a superior court, including this Honourable Court, for an order requiring the Council to carry out its duties under section 7 of the *Act* within a period specified by the Court.
20. Pursuant to section 11 of the *Act*, the Applicants may apply to a superior court, including this Honourable Court, for an order requiring the Council to carry out the duties under section 8 of the *Act* within a period specified by the court.
21. Pursuant to section 12 of the *Act*, the Application is made more than 120 days after the expiry of Thunderchild First Nation's fiscal year ending March 31, 2023.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

22. Affidavit(s) to be filed;
23. *First Nation Financial Transparency Act*, S.C. 2013, c. 7;
24. *Federal Courts Rules*, Part 5; and
25. Such further material as the Applicants may advise and this Honourable Court may permit.

26. All of which is respectfully submitted.

DATED at Toronto, Ontario this 3rd day of May, 2024.

OSLER, HOSKIN & HARCOURT LLP

Per: 

Marleigh Dick

May 3, 2024

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