

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

BETWEEN:

**JESSICA RIDDLE, WENDY LEE WHITE
AND CATRIONA CHARLIE**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

**MOTION RECORD OF THE PLAINTIFFS
(SETTLEMENT APPROVAL)**

VOLUME 2 OF 6

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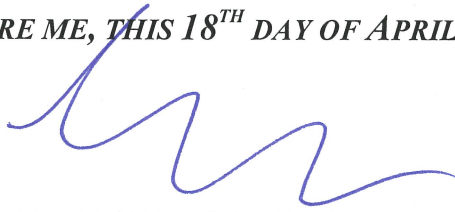
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*THIS IS EXHIBIT "8" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*

A handwritten signature in blue ink, appearing to be 'G. Myers', written over the text of the affidavit.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Court File : CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

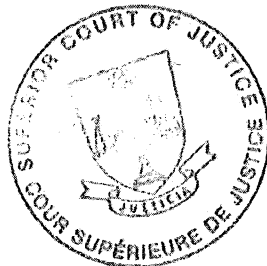
THE HONOURABLE.
JUSTICE EDWARD BELOBABA

FRIDAY, SEPTEMBER 27, 2013

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs



- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

THIS MOTION made by the Plaintiffs for certification of the within action as a Class Proceeding, and a motion made by the Defendant to strike out the Plaintiffs' pleadings and to dismiss the action pursuant to Rule 21.01(1)(b), were heard on July 15 and 16, 2013, at Toronto, Ontario.

ON READING the the Motion Record filed by the Plaintiffs, and the Motion Record of the Defendant, and on hearing submissions from counsel,

1. THIS COURT ORDERS THAT the Plaintiffs' motion for certification of this action as a Class Proceeding is granted.
2. THIS COURT FURTHER ORDERS THAT the definition of the Class is as follows:

"Indian children who were taken from their homes on reserves in Ontario between December 1, 1965 and December 31, 1984 and were placed in the care of non-aboriginal foster or adoptive parents who did not raise the children in accordance with the aboriginal person's customs, traditions and practices."

3. THIS COURT FURTHER ORDERS THAT the common issue of this Class Proceeding is as follows:
- When the Federal Crown entered into the Canada-Ontario Welfare Services Agreement on December 1, 1965 and at any time thereafter up to December 31, 1984:
- i. Did the Federal Crown have a fiduciary or common law duty of care to take reasonable steps to prevent on-reserve Indian children in Ontario who were placed in the care of non-aboriginal foster or adoptive parents from losing their aboriginal identity?
 - ii. If so, did the Federal Crown breach such fiduciary or common law duty of care?
4. THIS COURT FURTHER ORDERS THAT Marcia Brown is appointed representative Plaintiff on behalf of the Class.
5. THIS COURT FURTHER ORDERS THAT the Defendant's Motion to strike the Claim under Rule 21 is dismissed.
6. THIS COURT FURTHER ORDERS THAT the Notice of Certification to the Class shall be given pursuant to the revised Litigation Plan of Proceeding attached to the Plaintiffs' Notice of Motion. Class members who elect to opt out of the class proceeding must do so within 60 days of the date of the Notice of Certification. The Defendant shall be responsible for all costs associated with giving Notice of this action to the Class.
7. THIS COURT FURTHER ORDERS THAT the representative Plaintiff is entitled to her costs of the Motions, quantum to be determined following receipt of Costs Submissions from both parties.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.



C. CHIBA

REGISTRAR, SUPERIOR COURT OF JUSTICE
GREFFIER ADJOINT, COUR SUPÉRIEURE DE JUSTICE

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AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR: *W*

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MARCIA BROWN and ROBERT COMMANDA v. THE ATTORNEY GENERAL OF CANADA

Court File: CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced in Toronto, Ontario



ORDER

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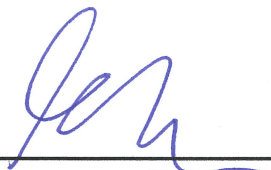
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AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

CITATION: Brown v. Canada (Attorney General), 2014 ONSC 1583
 DIVISIONAL COURT FILE NO.: 523/13
 DATE: 20140311

**SUPERIOR COURT OF JUSTICE – ONTARIO
 DIVISIONAL COURT**

RE: Marcia Brown and Robert Commanda, Plaintiffs

AND:

The Attorney General of Canada, Defendant

Proceedings under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6

BEFORE: W. Matheson J.

COUNSEL: *Owen Young*, for the Plaintiffs

Morris Cooper and Jeffery Wilson, for the Defendant

HEARD: December 4, 2013

ENDORSEMENT

[1] The defendant moves for leave to appeal to the Divisional Court from the decision of Belobaba J. released September 27, 2013, which certified this action as a class action and dismissed the defendant's motion to strike out the amended statement of claim under Rule 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] This motion for leave to appeal arises in unusual circumstances. Due to its procedural history, the underlying motions were heard twice, by different Ontario Superior Court judges, based upon different versions of the statement of claim. Both judges certified the action (one conditionally) and dismissed the Rule 21 motion. However, they did so for different reasons. Those differences form part of the defendant's argument that leave to appeal should be granted, among other reasons.

[3] In brief, this claim is brought on behalf of Aboriginal children who were removed from their homes as children in need of protection, and adopted or placed into non-Aboriginal homes, in Ontario in the period from 1965 to 1984. It is alleged that, as a result of this course of conduct, these Aboriginal children lost their birth Aboriginal cultural identities and suffered mental and physical health problems. Ontario is not sued. The court orders under which various child protection steps were taken in Ontario are not being challenged, at least not directly. It is alleged, however, that the Federal Crown should have but did not prevent the harmful effects of

Ontario's child welfare system, and should have but did not ensure maintaining an Aboriginal cultural identity for these children. Negligence and breach of fiduciary duty are alleged.

[4] Part of the factual matrix of this claim, if not also the legal matrix, is an agreement entered into between Canada and Ontario in 1965 called the Canada-Ontario Welfare Services Agreement (the "1965 Agreement"). It is the reason why the class period begins in that year. It is at least a funding agreement, under which Ontario agreed to extend its provincial welfare programs to "Indians with Reserve Status" and Canada agreed to reimburse Ontario for doing so. It is referred to in the amended statement of claim and therefore forms part of the pleading for the purposes of both Rule 21 and s. 5(1)(a) of the certification test under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, which requires that the claim disclose a cause of action.

[5] As set out in the preamble to the 1965 Agreement, it arose from a Federal-Provincial conference where it was determined that "in charting desirable long-range objectives and policies applicable to the Indian people, ... the principle objective was the provision of provincial services and programs to Indians on the basis that needs in Indian Communities should be met according to standards applicable in other communities." The preamble to the 1965 Agreement recites its purpose:

AND WHEREAS Canada and Ontario in working towards this objective desire to make available to the Indians in the Province the full range of provincial welfare programs...

[6] Under the 1965 Agreement, Ontario agreed, among other things, to provide services to Aboriginal children including for the protection of those children, under *The Child Welfare Act*, R.S.O. 1960, c. 53. The 1965 Agreement further provided that the Schedule listing the statutes covered by it could be amended from time to time.

[7] The end of class period arises from Ontario's passage of the 1984 *Child and Family Services Act*, S.O. 1984, c. 55, which incorporated protections regarding cultural identity into the legislation.

[8] Perell J. heard the first certification motion and parallel Rule 21 motion. His decision was released May 26, 2010 (the "Original Decision"). He found that entering into the 1965 Agreement was "the crucial allegation of wrongdoing" in the statement of claim: *Brown v. Canada (A.G.)*, 2010 ONSC 3095, 102 O.R. (3d) 493, at para. 10.

[9] A number of causes of action were advanced including breach of fiduciary duty and negligence. On the alleged fiduciary duty claim, Perell J. held that "based upon entering and implementing the [1965 Agreement]" the plaintiffs had "not disclosed a cause of action for breach of fiduciary duty": at para. 124. However, he also held that it was not plain and obvious that there was no viable cause of action in fiduciary duty: at paras. 124 and 148. With respect to negligence, he also found that the plaintiffs had no cause of action based upon the Federal Crown

entering into the 1965 Agreement, but it was not plain and obvious that there was no viable cause of action in negligence on some other basis: at paras. 150-152.

[10] The fiduciary duty and negligence claims were struck out with leave to amend. The other proposed causes of action were struck out without leave to amend. The result, on the cause of action question, was summarized as follows at para. 10:

I would not have certified the class action in its current form, which makes the Federal Crown's signing a welfare services agreement with the province of Ontario the crucial allegation of wrongdoing. The practical effect of my conclusions is that I grant the Federal Crown's motion to strike out the current statement of claim but I grant leave to [the plaintiffs] to amend their pleading in a way, which is described below, that would support a class proceeding. If they do not amend their proposed class action, then I dismiss their motion for certification and I grant the Federal Crown's motion to dismiss the action.

[11] A "conditional certification" process was employed, granting the motion for certification provided that the plaintiffs took certain steps, including amending their statement of claim. The plaintiffs then amended their statement of claim, presumably with the objective of conforming to the Original Decision and therefore achieving certification. The amended statement of claim no longer pleads the 1965 Agreement as a basis for the alleged duties. However, the defendant challenged the conditional certification process itself and the Court of Appeal ultimately overturned it on January 17, 2013: *Brown v. Canada (A.G.)*, 2013 ONCA 18, 114 O.R. (3d) 355.

[12] The Court of Appeal held that there must be a new hearing based upon the amended statement of claim. The new certification motion and related Rule 21 motion was then heard by Belobaba J., and his decision was released September 27, 2013 (the "Current Decision"): *Brown v. Canada (A.G.)*, 2013 ONSC 5637, 2013 CarswellOnt 13591.

[13] The defendant seeks leave to appeal under subrule 62.02(4)(b), which provides as follows:

(4) Leave to appeal shall not be granted unless,

...

(b) there appears to the judge hearing the motion good reason to doubt the correctness of the order in question and the proposed appeal involves matters of such importance that, in his or her opinion, leave to appeal should be granted.

[14] The focus of the oral argument was s. 5(1)(a) of the certification test, which requires that the amended statement of claim disclose a cause of action, and the parallel Rule 21 test. Both s. 5(1)(a) and Rule 21 require that to succeed, the defendant must show that it is plain and obvious that the pleaded claim does not disclose a cause of action. The causes of action that the plaintiffs seek to advance in the amended statement of claim are negligence and breach of fiduciary duty.

Matters of sufficient importance?

[15] I am satisfied that the second branch of the leave test is met with respect to the cause of action issue. The question of whether the pleading discloses these causes of action will have significant ramifications for the important relationship between the Federal Crown and the Aboriginal peoples. These are serious claims being made against the Federal Crown regarding historical events, over a lengthy period of time, with important consequences. The proposed appeal on the cause of action test involves matters of sufficient importance for the granting of leave.

[16] Some other issues of alleged importance were raised in the defendant's factum, which were more focused on class action process. Those issues were not the focus of the defendant's oral argument, for good reason in my view. They are not matters of such importance that leave would be granted.

Good reason to doubt correctness?

[17] It therefore remains to consider whether or not there is good reason to doubt the correctness of the decision that the amended statement of claim discloses a cause of action. On this motion, the defendant need not show that the Current Decision is wrong or even probably wrong. The defendant must only show that its correctness is open to serious doubt or debate: *Brownhall v. Canada (Ministry of National Defence)* (2006), 80 O.R. (3d) 91 (S.C.), at paras. 26-30.

[18] There are two aspects of the Current Decision that give rise, in my view, to serious doubt or debate. Both relate to the role of the 1965 Agreement. The first issue is an inconsistency between the basis for the Current Decision and the amended statement of claim itself. The Current Decision relies upon the 1965 Agreement in finding an arguable fiduciary duty and a duty of care. But that agreement is not pleaded as the basis for either duty. The second issue is the differing legal treatment of the 1965 Agreement by the two judges who heard the above motions in this action. The judges differed in certain respects, "which stemmed from the fact that it was the 1965 Agreement ... that 'gave rise to these claims'": *Brown v. Canada (A.G.)*, 2013 ONSC 6887, 2013 CarswellOnt 15475, at para. 2.

[19] Both issues are important to the decision that the amended statement of claim disclosed a cause of action in fiduciary duty and negligence.

[20] The amended statement of claim sets out the alleged bases for these duties, not including the 1965 Agreement (see the amended statement of claim, at paras. 24 and 37-38). That agreement is pleaded as part of the allegations of breach of these duties.

[21] On the question of whether the amended statement of claim discloses a cause of action in fiduciary duty, the Supreme Court of Canada has made it clear that “the fiduciary duty imposed on the Crown does not exist at large but in relation to specific Indian interests”: *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245, at para. 81.

[22] The Supreme Court has also recently articulated the proper approach to the question of where a new fiduciary duty may be found in the Aboriginal context, in *Manitoba Métis Federation Inc. v. Canada (A.G.)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at paras. 49-51. Fiduciary obligations may arise in two ways:

- 1) a fiduciary duty may arise if there is a specific and cognizable Aboriginal interest and a Crown undertaking of discretionary control over that interest; and
- 2) a fiduciary duty may also arise from an undertaking if the following conditions are met: (1) an undertaking by the alleged fiduciary to act in the best interest of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary’s control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the beneficiary that stands to be adversely affected by the alleged fiduciary’s exercise of discretion or control.

[23] In either case, there must be an undertaking of discretionary control. In the Current Decision, this requirement was satisfied by the Federal Crown entering into the 1965 Agreement, holding that “it is at least arguable that a fiduciary duty arose” on the basis that “the Federal Crown exercised or assumed discretionary control over a specific Aboriginal interest (i.e. culture and identity) by entering into the 1965 Agreement”: at para. 44; see also para. 48. This is not pleaded (see the amended statement of claim, at paras. 37 and 38). And it appears from the history of this action that it was omitted deliberately, because the Original Decision held that entering into the 1965 Agreement could not found a fiduciary duty claim.

[24] Similarly, in the Current Decision at para. 60, the duty of care analysis was founded on the 1965 Agreement:

The 1965 Agreement also (arguably) created proximity with the intended targets - the on-reserve children that were potentially in need of protection. Is it not at least arguable that it would be just and fair having regard to this unique and important historical relationship and the intended impact of the 1965 Agreement to impose a duty of care upon the Federal Crown?

- Page 6 -

[25] Again, the 1965 Agreement is not pleaded in support of the alleged duty of care (see the amended statement of claim, at para. 24), presumably because the Original Decision found it could not support a negligence claim.

[26] Plaintiffs' counsel emphasized the very low threshold that must be met for a claim to disclose a cause of action. I agree that it is a very low threshold. I have also taken into account the note of caution that it is especially low for Aboriginal law: *Shubenacadie Indian Band v. Canada (A.G.)*, 2001 FCT 181, 2001 CarswellNat 443, at paras. 5-6.

[27] This principle is tempered, as least regarding fiduciary duty, by the Supreme Court of Canada decision in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261. In that case, the court held that "claims against the government that fail to satisfy the legal requirements of a fiduciary duty should not be allowed to proceed in the speculative hope that they may ultimately succeed": at para. 54. They should be tested at the pleadings stage, as for any cause of action: at para. 54.

[28] This is not a case where the alleged role of the 1965 Agreement is unclear on the pleadings. It does not form part of the allegations made in support of the alleged duties. Perell J. determined that the 1965 Agreement could not fill that role. He did so after an extensive consideration of a substantial body of case law about the circumstances in which a fiduciary duty will be found, especially with respect to government and Aboriginal interests. That analysis is not fully addressed in the Current Decision, given that the 1965 Agreement had been removed as a foundation for the alleged duties.

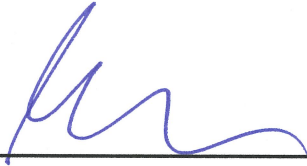
[29] I conclude that, because of the inconsistency between the Current Decision and the allegations in the amended statement of claim and the inconsistency between the two judges regarding the legal significance of the 1965 Agreement, the second requirement for leave is met.

[30] I therefore grant leave to appeal, with costs of the leave motion in the discretion of the panel hearing the appeal.

W. Matheson J.

Date: March 11, 2014

*THIS IS EXHIBIT "10" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

CITATION: Brown v. Attorney General of Canada 2014 ONSC 6967
DIVISIONAL COURT FILE NO.: 523/13
DATE: 20141202

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

SACHS, NORDHEMER & POMERANCE JJ.

BETWEEN:)	
)	
MARCIA BROWN and ROBERT)	<i>J. Wilson, M. Cooper & J. Gagne, for the</i>
COMMANDA)	respondents
)	
)	Respondents
)	(Plaintiffs)
)	
- and -)	
)	
THE ATTORNEY GENERAL OF)	<i>O. Young, P. Evraire, Q.C. & M. Bader,</i>
CANADA)	<i>Q.C. for the appellant</i>
)	
)	Appellant
)	(Defendant)
)	
)	HEARD at Toronto: November 13, 2014

2014 ONSC 6967 (CanLII)

NORDHEIMER J.:

[1] This is an appeal, with leave, from the decision of Belobaba J. certifying this proceeding as a class action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

Background

[2] This action has already had a significant procedural history, as I shall explain. The claim itself involves the period between 1965 and 1984, when welfare authorities in Ontario removed many Indian and aboriginal children from their families and communities and placed them with foster or adoptive parents that were non-aboriginals. It is alleged that many of these children lost their identity as aboriginal persons, and their connection to their aboriginal culture, that

ultimately led to them suffering emotional, psychological and spiritual harm. More specifically, it is alleged that these children were deprived of their culture, customs, traditions, language and spirituality. This led them to experience loss of self-esteem, identity crisis and trauma in trying to re-claim their lost culture and traditions.

[3] The respondents, Marcia Brown and Robert Commanda, are aboriginal persons from Ontario.¹ They were two of these displaced children. In this proposed class action, they sue only Canada, as represented by the Attorney General of Canada, (and who I shall hereafter refer to as “Canada”) and not Ontario. In essence, the respondents accuse Canada of failing to ensure that the Ontario child welfare system, which Canada arranged to extend to aboriginal children in Ontario, would protect them generally, and in particular, would ensure the maintenance of their identities as aboriginal persons. The respondents bring their action on behalf of approximately 16,000 aboriginals who, they allege, were the victims of this policy in Ontario between December 1, 1965 and December 31, 1984.

[4] The reason that the claim involves Canada, and not Ontario, is the fact that in the early part of 1966, Canada and Ontario entered into the Canada-Ontario Welfare Services Agreement (“the 1965 Agreement”) by which Canada agreed to pay Ontario for the per capita cost of extending certain Provincial welfare programs to “Indians in the Province” as I shall describe in more detail later. The effective date of the 1965 Agreement was December 1, 1965.

[5] The respondents allege that, during the years between December 1, 1965 and December 31, 1984 (when new child welfare legislation came into force in Ontario), Canada wrongfully delegated its exclusive responsibility as guardian, trustee, protector, and fiduciary of aboriginal persons by entering into an agreement with Ontario that authorized a child welfare program that systemically eradicated the aboriginal culture, society, language, customs, traditions, and spirituality of these children.

¹ Only Marcia Brown was appointed as a representative plaintiff. The certification judge found that Robert Commanda could not be a representative plaintiff because he was neither a registered Indian nor entitled to be registered. He also did not have reserve status. Mr. Commanda was, consequently, not representative of the claims of the class members.

[6] The respondents allege that they personally suffered from Ontario's child protection program in that they experienced psychological problems associated with a loss of culture, self-esteem, and identity. They seek a declaration that Canada breached its fiduciary obligation and duty of care to the class members and, as a consequence of those breaches, claim general damages of \$50,000 for each class member; special damages of \$25,000 for each class member and punitive, exemplary and aggravated damages of \$10,000 for each class member.

[7] Returning to the procedural history of this action, in April 2010, the respondents sought certification of the proceeding as a class action. At the same time, Canada sought, pursuant to Rule 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to strike out the statement of claim as disclosing no reasonable cause of action. On May 26, 2010, Perell J. "conditionally" certified this proceeding as a class action provided that the respondents delivered an amended statement of claim. In his reasons, Perell J. found that some of the claims that had been advanced by the respondents were unsustainable as pleaded and, consequently, he struck them out. In particular, he found that the 1965 Agreement could not form the basis of a fiduciary duty, and thus an allegation of breach, but allowed that such an action could be maintained, if differently pleaded. He reached the same conclusion regarding the claim in negligence that the respondents had advanced. In the end result, Perell J. certified the proceeding as a class action "[c]onditional upon Ms. Brown and Mr. Commanda delivering a properly pleaded fresh as amended statement of claim", in accordance with his reasons.

[8] Canada sought leave to appeal the decision of Perell J. On February 22, 2011, Swinton J. granted leave. In the interim, the respondents had amended their statement of claim in accordance with the suggestions that Perell J. had made in his reasons. On December 28, 2011, the Divisional Court allowed the appeal. The court found that there was no basis to conditionally certify a class action since, among other things, it would preclude Canada from challenging any amended statement of claim that might be delivered. Consequently, the court struck out the

“existing” statement of claim but with leave to amend.² The court also ordered that any certification motion that followed was to be heard before a different judge.

[9] The respondents appealed to the Court of Appeal from the decision of the Divisional Court. On January 17, 2013, the Court of Appeal dismissed their appeal. The Court of Appeal essentially agreed with the Divisional Court’s reasoning that one could not conditionally certify a class action because it would restrict the right of a defendant to challenge the sufficiency of any amended statement of claim. As Rosenberg J.A. said, at para. 52:

As both Swinton J. and the Divisional Court noted, it is not self-evident that there are viable causes of action. The plain and obvious test sets a low threshold, but it will still be necessary for a court to determine whether the causes of action suggested by the case management judge can pass that test. The [Attorney General of Canada] is entitled to an opportunity to show that the causes of action are not viable.

[10] The respondents sought certification for the second time in July 2013. The certification motion was heard by Belobaba J. Canada again brought a motion, under Rule 21, to strike out the statement of claim as still not disclosing a reasonable cause of action. On September 27, 2013, Belobaba J. certified the proceeding as a class action. He dismissed Canada’s Rule 21 motion.

[11] Canada sought leave to appeal the decision of Belobaba J. On March 11, 2014, Matheson J. granted leave. This is how the matter arrives before the Divisional Court for the second time.

[12] Central to the issues raised by all of these proceedings is whether the respondents have advanced a proper claim for breach of fiduciary duty and/or for negligence arising out of the actions that were taken by Canada, both in entering into the 1965 Agreement and thereafter. Before this court, no other issues are raised respecting the certification of this proceeding as a class action. It is only the issue whether a proper cause of action is pleaded that is in dispute. Consequently, it is really the dismissal of the Rule 21 motion that is at the heart of this appeal. The propriety of the certification order is, of course, nonetheless engaged because s. 5(1)(a) of

² I am assuming that the Divisional Court’s reference to the “existing” statement of claim was intended as a reference to the first statement of claim, and not the amended statement of claim that was prepared subsequent to the decision of Perell J.

the *Class Proceedings Act, 1992*, requires that the statement of claim disclose a cause of action as a prerequisite to certification.

Analysis

[13] I believe that it is worthwhile to start my analysis with a review of the basic principles that apply to a motion under Rule 21. Those principles are well-established. They are:

- (a) the statement of claim should not be struck out unless it is “plain and obvious” that the claim discloses no reasonable cause of action: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959;
- (b) the allegations in the statement of claim are to be taken as being true or capable of being proven unless they are patently ridiculous or incapable of proof: *Nash v. Ontario* (1995), 27 O.R. (3d) 1 (C.A.);
- (c) the statement of claim is to be read generously with due allowance for drafting deficiencies: *Operation Dismantle Inc. v. Canada*, [1985] 1 S.C.R. 441;
- (d) the court should not, at this stage of the proceedings, dispose of matters of law that are not fully settled in the jurisprudence: *Hunt v. Carey Canada Inc.*

[14] These principles must be applied, however, in the context of the case that is before us. Aboriginal claims are ones that are particularly undeveloped and fluid. This point was made in *Bonaparte v. Canada (Attorney General)*, [2003] 2 C.N.L.R. 43 (Ont. C.A.) where the court said, at para. 32:

Further, as Binnie J.’s review of the law in *Wewaykum Indian Band* reveals, fiduciary law in Canada, particularly in respect of the Crown’s relationship with Aboriginal peoples, is a very dynamic area of Canadian law. The nature and extent of the particular obligations that may arise out of this relationship are matters that remain largely unsettled in the jurisprudence.

[15] The court should, therefore, approach with considerable caution any invitation to strike out, at this preliminary stage, a claim such as this one.

A. Fiduciary duty

[16] I begin with the asserted claim for breach of fiduciary duty. I do so because the fiduciary duty claim appears to be the more significant and broader claim of the two. It is also clear, as will become apparent later, that the determination of the survival of the fiduciary duty claim will, for all intents and purposes, preordain the result respecting the claim in negligence.

[17] An appropriate starting point for the challenge to the fiduciary duty claim is the Supreme Court of Canada's decision in *Alberta v. Elder Advocates of Alberta Society*, [2011] 2 S.C.R. 261. This was also a proposed class action and it also involved a challenge to the causes of action asserted that included a claim for breach of fiduciary duty involving, in that case, the Province of Alberta. In the course of her reasons, McLachlin C.J.C. set out three elements that would identify the existence of a fiduciary duty in situations that were not covered by an existing category in which fiduciary duties have been recognized. I note that the parties are agreed that the claim being advanced here does not fall into any previously recognized category of fiduciary duty. It is acknowledged to be a "novel" claim.

[18] The three elements identified by McLachlin C.J.C. are (paras. 30-34):

- (i) the evidence must show that the alleged fiduciary gave an undertaking of responsibility to act in the best interests of a beneficiary;
- (ii) the duty must be owed to a defined person or class of persons who must be vulnerable to the fiduciary in the sense that the fiduciary has a discretionary power over them;
- (iii) to establish a fiduciary duty, the claimant must show that the alleged fiduciary's power may affect the legal or substantial practical interests of the beneficiary.

[19] The decision in *Alberta* then went on to consider how fiduciary duties can arise in the government context. McLachlin, C.J.C. noted that governments will owe fiduciary duties "only in limited and special circumstances". This was due to the fact that public law duties will not typically give rise to a fiduciary relationship because of the necessary exercise of discretion that accompanies public law duties. In this respect, however, it is again important to remember that this is an aboriginal claim. The relationship between Canada and its aboriginal peoples is

distinct. On that point, I note that it is conceded in this case that Canada stands in a fiduciary relationship to aboriginal peoples.³ The issue is whether that fiduciary relationship gives rise, in turn, to a fiduciary duty.

[20] The decision in *Alberta* makes reference to the issue of fiduciary duties as they relate to aboriginal peoples. In particular, the decision refers to the Supreme Court's earlier decision in *Guerin v. The Queen*, [1984] 2 S.C.R. 335 and observes that, in *Guerin*, the court had noted:

... that the fiduciary duty owed to the Aboriginal peoples of Canada is unique and grounded in analogy to private law ...

[21] That point made, McLachlin C.J.C. went on to distinguish the fiduciary duty as it relates to aboriginal peoples from other types of fiduciary relationships. In essence, McLachlin C.J.C. sets up this particular form of fiduciary duty as a category unto itself arising from the "unique and historic nature of Crown-Aboriginal relations". She said, at para. 38:

Noting the unique nature of the fiduciary duty owed by the Crown in the Aboriginal context, courts have suggested that this duty must be distinguished from other relationships: [citation omitted]

[22] The existence of fiduciary duties between the Crown and aboriginal peoples was, more recently, directly addressed in *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 S.C.R. 623. This was a land claim case but it raised the issue of whether a fiduciary duty had arisen in the context of that case. In considering when a fiduciary duty can arise, McLachlin C.J.C. and Karakatsanis J. said, at para. 49:

In the Aboriginal context, a fiduciary duty may arise as a result of the "Crown [assuming] discretionary control over specific Aboriginal interests": *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, at para. 18. The focus is on the particular interest that is the subject matter of the dispute: *Wewaykum Indian Band v. Canada*, 2002 SCC 79, [2002] 4 S.C.R. 245, at para. 83. The content of the Crown's fiduciary duty towards Aboriginal peoples varies with the nature and importance of the interest sought to be protected: *Wewaykum*, at para. 86.

³ That concession would appear to be unavoidable given various decisions by the Supreme Court of Canada on this issue including *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at 1108.

[23] With those principles in mind, I have concluded that the asserted claim of a fiduciary duty in this case is sufficiently made out on the facts as pleaded that it cannot be said that it is plain and obvious that the claim does not raise a reasonable cause of action. I reach that conclusion for the following reasons.

[24] Returning to the three elements set out in *Alberta*, it is at least arguable that Canada had a responsibility to act in the best interests of the members of the class. Each member of the proposed class was, at the relevant time, a child who was in need of protection. No issue is taken with that latter fact nor is any challenge raised to the court orders that removed these children from their aboriginal homes and placed them in non-aboriginal homes. In my view, the 1965 Agreement can be argued to be evidence of the obligation that Canada considered that it had to the aboriginal peoples generally and these children in particular. The preamble to the 1965 Agreement states that:

... the principal objective was the provision of provincial services and programs to Indians on the basis that needs in Indian Communities should be met according to standards applicable in other communities;

That conclusion is also consistent with the “high degree of discretionary control gradually assumed by the Crown over the lives of aboriginal peoples”: *Wewaykum Indian Band v. Canada*, [2002] 4 S.C.R. 245 at para. 79.

[25] In making that observation, I am aware that the mere fact that the argument can be made, does not mean that it will be successful. However, that is not the point on a motion under Rule 21. As I earlier noted, it is only necessary to conclude that the allegations are capable of proof. The merits are up to a trial judge to determine.

[26] Returning to the elements identified in *Alberta*, it is clear that there is a defined class of persons who were vulnerable to the discretionary authority that Canada held over them. All of the persons covered by the 1965 Agreement were “Indians with Reserve Status”. Canada had a discretionary power over those persons as such. It is acknowledged by Canada that it could have set up its own child welfare system to deal with these persons. Instead, it chose to delegate that responsibility to Ontario, which was already providing such services to all other residents of the

Province. While that approach undoubtedly made good sense from a practical and efficiency point of view, Canada cannot avoid its responsibilities as a fiduciary by delegating its discretionary authority to another.

[27] Like any other fiduciary, if Canada does so delegate, it remains responsible for ensuring that its delegate carries out those fiduciary responsibilities in a proper manner: *Reference re Broome v. Prince Edward Island*, [2010] 1 S.C.R. 360 at para. 54. The allegation here, among others, is that Canada failed to do so. The finding that a fiduciary duty arises and that Canada's actions in negotiating and signing the 1965 Agreement might be a breach of that duty is consistent with the *sui generis* relationship between Canada and its aboriginal peoples. It also reflects the risk, commented on in *Wewaykum*, where Binnie J. said, at para. 80:

... but the degree of economic, social and proprietary control and discretion asserted by the Crown also left aboriginal populations vulnerable to the risks of government misconduct or ineptitude.

It is, of course, the respondents' claim that the 1965 Agreement reflects government misconduct or ineptitude.

[28] Finally, I do not take Canada to quarrel with the fact that its actions could affect the legal or substantial practical interests of the beneficiaries, i.e., the members of the class. In any event, it would be hard to see how it could be suggested that removing a child from his/her family and placing the child in the care of others could do anything other than affect the child's most basic interests.

[29] I conclude, therefore, that each of the three elements set out in *Alberta* for the creation of a fiduciary duty are, at least arguably, met in this case. That is sufficient to get the respondents over the relatively low threshold for defeating a motion under Rule 21.

[30] In reaching that conclusion, I am mindful of the fact that a fiduciary duty does not arise between the Crown and aboriginal peoples with respect to all aspects of the relationship between the two. As was clearly stated in *Wewaykum*, the fiduciary duty arises only in relation to specific aboriginal interests. Cases, such as *Guerin*, have imposed a fiduciary duty in respect of aboriginal lands because of the central role that land played in aboriginal economies and culture.

Here, we are not dealing with just one aspect of that culture. Rather, we are dealing with a person's connection to that culture as a whole. It is difficult to see a specific interest that could be of more importance to aboriginal peoples than each person's essential connection to their aboriginal heritage. In addition, on this point, the importance of aboriginal rights cannot be disputed. They are specifically "recognized and affirmed" by s. 35(1) of the *Constitution Act, 1982* and a long line of authorities.

B. Negligence

[31] The respondents also assert a claim in negligence. Canada complains that the motion judge did not undertake a proper *Anns/Cooper* analysis of the negligence claim. I do not agree. Not only did the motion judge expressly refer to the *Anns/Cooper* test, he clearly applied it in reaching his decision.

[32] The components of the *Anns/Cooper* test are set out in *R. v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45 where McLachlin C.J.C. said, at para. 39:

At the first stage of this test, the question is whether the facts disclose a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If this is established, a *prima facie* duty of care arises and the analysis proceeds to the second stage, which asks whether there are policy reasons why this *prima facie* duty of care should not be recognized: [citation omitted]

[33] The motion judge found that there was a sufficient relationship of proximity demonstrated between Canada and the respondents. As may be apparent from my analysis of the fiduciary duty claim, I reach the same conclusion. Canada acknowledges that there is a fiduciary relationship between Canada and aboriginal peoples. As I have explained above, Canada assumed an obligation towards aboriginal peoples regarding the provision of Provincial welfare programs to them. Canada chose to fulfill that obligation by entering into the 1965 Agreement with Ontario. It is certainly arguable that, by taking those steps, Canada demonstrated a sufficient relationship of proximity to the members of the proposed class. It is equally arguable that, in doing so, Canada ought to have recognized that the failure to take reasonable care, to ensure that the welfare programs were administered properly, might foreseeably cause harm to

the members of the class. This is especially so given that the persons affected, in this particular instance and by this particular welfare program, were children.

[34] Canada says that proximity cannot be established because the respondents “do not plead that federal actors had any direct, supervisory or other operational role in the design or delivery of the child welfare programs delivered to Indians on reserves in Ontario”.⁴ I do not accept that the plaintiffs need to plead that fact in order to establish an arguable case on proximity. As I have already said, it is not the fact that Canada negligently designed or negligently delivered the child welfare program that is in issue in this case. Rather, the allegation is that Canada failed to ensure that Ontario delivered an appropriate child welfare program when Canada delegated its obligations, in this regard, to Ontario through the 1965 Agreement. That allegation, among others, is specifically pleaded.⁵

[35] Canada also complains that the respondents have not pleaded that they relied on any “expectations, representations, communications or other interactions of a ‘close and direct’ nature with Canada’s officials following their apprehension or removal from their parental homes”. With respect, it is not reasonable to expect children to have that degree of awareness. Indeed, if such an allegation had been made, I suspect that Canada would have argued that it was one that was “patently ridiculous”. The respondents, as children, were entitled to rely on the basic premise that any authority dealing with them would do so with due consideration for their best interests. In this case, the respondents plead that Canada did not ensure that that was done.

[36] In terms of the second stage of the Anns/Cooper test, Canada submits that the motion judge did not:

...address the significant concern that, to impose a private law duty of care or fiduciary duty in this case, would effectively penalize Canada for having used its spending power to ensure that Ontario had the capacity to provide Indian children in need of protection with that very protection.⁶

⁴ Appellant’s factum, para. 67

⁵ Statement of claim, para. 29

⁶ Appellant’s factum, para. 70

[37] The fact is, as the motion judge found, there was nothing that prevented Canada from ensuring, as part of the 1965 Agreement, that Ontario would carry out its welfare programs in an appropriate way. The fact that Canada was trying to do something positive for these children does not remove the need for Canada to undertake its good work free of negligence. In other words, a duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act.

[38] No other policy reasons are advanced for why Canada should not be subject to a duty of care in carrying out its responsibilities to aboriginal peoples regarding their ability to access appropriate welfare programs. Certainly, it is difficult to see any policy reason that would negate that duty in the situation where children are directly affected. I note, in passing on this point, that the argument that was advanced before the motion judge that Canada could not impose conditions on Ontario as part of the 1965 Agreement, because it would involve a constitutionally improper interference with Provincial jurisdiction, was not advanced here.

[39] Before concluding, I make four other observations. The first observation is that I accept that the amended statement of claim may not plead these two causes of action flawlessly. However, the causes of action are sufficiently pleaded to permit Canada to understand the nature of the claims and to be able to respond to them. Much time and effort has already been spent in this case over the adequacy of the statement of claim and I do not believe that it serves the interests of any of the parties to engage, any further, in the exercise of trying to create the perfect pleading. If Canada requires any particulars regarding the allegations in the amended statement of claim in order to plead to it, then Canada can utilize its rights under the *Rules of Civil Procedure* to seek those particulars.

[40] I would add, on that point, the caution, recently expressed by the Supreme Court of Canada, regarding the problems that are inherent in crafting a pleading in a case such as this. In *Tsilhqot'in Nation v. British Columbia*, [2014] S.C.J. No. 44, McLachlin C.J.C. said, at para. 23:

Third, cases such as this require an approach that results in decisions based on the best evidence that emerges, not what a lawyer may have envisaged when drafting the initial claim. What is at stake is nothing less than justice for the Aboriginal group and its descendants, and the reconciliation between the group and broader

society. A technical approach to pleadings would serve neither goal. It is in the broader public interest that land claims and rights issues be resolved in a way that reflects the substance of the matter. Only thus can the project of reconciliation this Court spoke of in *Delgamuukw* be achieved. [emphasis added]

[41] The second observation is that I recognize that my reasoning in this matter may differ, in some respects, from that employed by the motion judge. I mention this because a central facet of Canada's submissions was its criticism of the motion judge's reasoning. In particular, Canada criticized the motion judge for engaging in reasoning regarding the effect of the 1965 Agreement, and its role in this claim, which was said to be directly contrary to the reasoning used by the first motion judge. On this appeal, however, it must be remembered that the issue is not whether the motion judge reached his decision for the right reasons. The issue is whether the decision is correct.

[42] The third observation follows on the second. Much was made of an alleged conflict between the two motion judges' reasons regarding the 1965 Agreement. Indeed, it is this alleged conflict that appears to have been central to the decision of Matheson J. to grant leave to appeal. As I have already said, any conflict between those reasons is not particularly relevant to my conclusion that the amended statement of claim discloses reasonable causes of action. The first motion judge found that the 1965 Agreement could not form the basis for a claim for breach of fiduciary duty. That conclusion does not preclude reliance on the 1965 Agreement to prove the material fact that there was a breach of that fiduciary duty or a breach of the duty of care. In other words, while I agree with the first motion judge that the 1965 Agreement could not, by itself, be relied on for the creation of the fiduciary duty, the 1965 Agreement is still very much a relevant fact to the allegation that Canada failed to honour its fiduciary duty or failed to fulfill its duty of care. In my view, that is the way in which the 1965 Agreement is used in the amended statement of claim, and that use does not offend the reasons of the first motion judge.

[43] The fourth observation involves what happened after the hearing. Five days after the hearing concluded, counsel for the respondents wrote to the court to draw to our attention the decision in *Anderson v. Canada (Attorney General)*, [2011] N.J. No. 445 (C.A.) and to make brief submissions regarding its relevance. In light of this development, we permitted the appellant to file brief written submissions, which the appellant did. I make two comments on

this situation. One is that it runs afoul of the point that Borins J. made in *Walker Estate v. York Finch General Hospital*, [1998] O.J. No. 2271 (Gen. Div.) where he spoke about the “practice” that had developed of counsel corresponding with the court after a hearing has been completed. In complaining about that practice and urging that it be stopped, Borins J. encapsulates the very problem regarding that practice into which this court was placed. He said, at para. 34:

The practice of communicating directly with a motions judge, or a trial judge, after a hearing has been concluded, puts the judge in a difficult position. The judge feels that it might be unfair to the party to ignore the communication, with the result that the judge re-opens the hearing, or takes the additional material into consideration. In my view, a judge need not consider uninvited communications sent directly to him or her after the conclusion of the hearing. Indeed, I do not believe that I would be criticized if I ignored the materials sent to me by counsel in this case.

I note in this regard that this was not a “late breaking” decision to which counsel could not have referred during the course of the argument.

[44] Nonetheless, we have considered the decision. Having done so, I do not find that it adds much to the analysis already undertaken in terms of the proper principles to be applied. It does, however, represent an example where another court has permitted, what might be referred to as a “novel” claim, to proceed in circumstances that have some similarity to the circumstances here. It does serve to reinforce the conclusion, that I have already reached, that aboriginal claims are ones that are particularly undeveloped and fluid and, consequently, greater latitude should be accorded to them in terms of the “plain and obvious” test.

Conclusion

[45] The appeal is dismissed.

[46] If the parties cannot agree, they may file written submissions on the costs of the appeal. The respondents shall file their submissions within thirty days of the date of the release of these

Page: 15

reasons and the appellant shall file its submissions within fifteen days thereafter. The submissions of each party shall not exceed ten pages in length. No reply submissions shall be filed without leave of the court.

NORDHEIMER J.

SACHS J.

POMERANCE J.

Date of Release:

CITATION: Brown v. Attorney General of Canada 2014 ONSC 6967
DIVISIONAL COURT FILE NO.: 523/13

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

SACHS, NORDHEMER & POMERANCE JJ.

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Respondent

– and –

THE ATTORNEY GENERAL OF CANADA

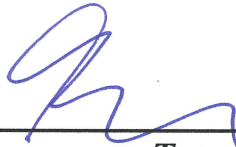
Appellant

REASONS FOR JUDGMENT

NORDHEIMER J.

Date of Release:

*THIS IS EXHIBIT "11" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

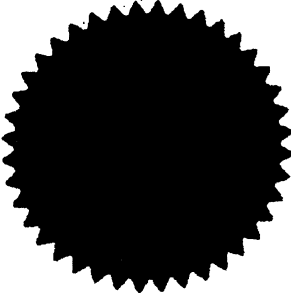
Divisional Court File No. 52^{F. Ct.}3/13
(Superior Court File No. CV-09-00372025-00CP)

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

THE HONOURABLE JUSTICE SACHS)
THE HONOURABLE JUSTICE NORDHEIMER)
THE HONOURABLE JUSTICE POMERANCE)

TUESDAY, DECEMBER 2, 2014

BETWEEN:



MARCIA BROWN and ROBERT COMMANDA

Respondents (Plaintiffs)

- and -

THE ATTORNEY GENERAL OF CANADA

Appellant (Defendant)

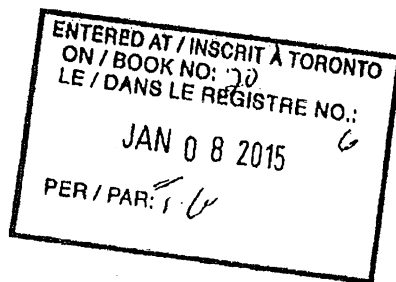
Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

ORDER

THIS APPEAL, with leave, by the Attorney General of Canada for an order that the September 27, 2013 of the Honourable Justice Belobaba providing for the certification of the within action as a class proceeding and dismissing the Defendant's motion under Rule 21.01 of the *Rules of Civil Procedure* be set aside and that the Plaintiff's action be dismissed, was heard November 13, 2014, at Toronto.

ON READING the Appeal Book and Compendium, the Supplementary Appeal Book and the Exhibits Books, Volumes 1 and 2 of the Attorney General of Canada, and the Facta and Supplementary Facta of the parties, and on hearing the submissions of counsel for the parties, and on reading the written submissions of counsel for the parties delivered subsequent to the November 13, 2014 hearing, the Court's decision having been reserved to this day,

1. **THIS COURT ORDERS** that the appeal by the Attorney General of Canada be, and is hereby dismissed.
2. **THIS COURT FURTHER ORDERS AND DIRECTS** that, if the parties cannot agree, they may file written submissions on the costs of the appeal. The respondents shall file their submissions within thirty days of December 2, 2014, and the appellant shall file its submissions within fifteen days thereafter. The submissions of each party shall not exceed ten pages in length. No reply submissions shall be filed without leave of the Court.



Registrar, Divisional Court

BROWN ET AL.
Respondents (Plaintiffs)

- and -

THE ATTORNEY GENERAL OF CANADA
Appellant (Defendant)

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

Proceeding Commenced at Toronto

ORDER

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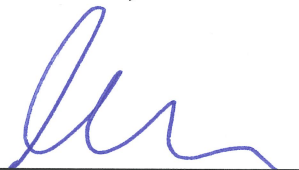
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Counsel for the Respondents (Plaintiffs)

*THIS IS EXHIBIT "12" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Paragraphs 6 to 14 of the amended statement of claim.

DEFENCE OF CANADA

7. The class represented by the plaintiff consists of “Indian children who were taken from their homes on reserves in Ontario between December 1, 1965 and December 31, 1984 and were placed in the care of non-aboriginal foster or adoptive parents who did not raise the children in accordance with the aboriginal person’s customs, traditions and practices.” ~~As pleaded in their response to particulars of August 7, 2009,~~ The plaintiffs and the members of the proposed class were all, by definition, children whose personal and family circumstances required the intervention of Ontario child welfare authorities to address their needs of protection, support and care.

8. The claim alleges that Canada has variously breached a fiduciary duty owed to the plaintiffs and to the members of the proposed class, ~~infringed their aboriginal rights and breached a duty of care in negligence grounded in the honour of the Crown, and violated international human rights conventions.~~ The Attorney General denies the allegations and defends Canada on all of the claims.

THE CROWN

9. The Sovereign has an historical jurisdiction as *parens patriae* to protect the welfare of children. The Crown, whether in right of Canada or in right of Ontario, presently exercises this jurisdiction through the superior courts of the provinces.

10. The equitable principles that govern the application of the Crown’s *parens patriae* jurisdiction in cases of children needing protection, support and care are those of the doctrine of “best interests of the child.”

11. The principles expressed and applied in the doctrine of “best interests of the child” reflect, at any given point in time, a continuing evolution in judicial, legislative and social

attitudes and thought concerning the values to be considered and applied and the place and role of the state in the welfare of children.

PARLIAMENT

12. Ontario has legislative jurisdiction with respect to the welfare of children in the province, including Indian and other aboriginal children. Enacted provincial child welfare legislation represents laws of general application that extend, of their own force, to Indian and other aboriginal children, whether on or off reserve.

13. Canada has legislative authority under s.91(24) of the *Constitution Act, 1867* with respect to the subject of "Indians". This authority includes the non-exclusive ability to legislate with respect to the welfare of Indian children in Ontario. Parliament has not used its s.91(24) authority to enact child welfare legislation and is under no positive legal duty to do so. There is no cause of action for failure to legislate.

14. Parliament has, however, approved the use of the federal spending power to provide Ontario with the capacity to extend provincially regulated and supported child welfare services to Indian children. In its funding support of Ontario's child welfare regime, Canada has promoted principles consistent with the established doctrine of "best interests of the child".

15. Canada's use of the federal spending power to contribute to the capacity of Ontario child welfare authorities to deliver child welfare services to Indian children represents an exercise in cooperative federalism and is not a delegation of its constitutional authority under s.91(24) of the *Constitution Act, 1867*.

16. The Attorney General pleads and relies on the provisions of ss. 91(3), 91(1A) and 106 of the *Constitution Act, 1867*.

HISTORY OF LEGISLATION AND FEDERAL-PROVINCIAL AGREEMENTS

17. The claim is made in respect of the approximately twenty year period from 1965 to 1985. This period includes a series of legislative and other events that were aspects of the continuing evolution of the values and attitudes brought to bear in cases of children needing protection, support or care through state child welfare regimes. Throughout this period Canada was, and remained, in step with this continuing process of change through its use of the federal spending power to provide Ontario with the capacity to extend provincially regulated and supported child welfare services to Indian children.

Background

18. In 1893 Ontario enacted the province's first *Children's Protection Act*. This statute provided for, *inter alia*, the protection of children against abuse or neglect. Children's Aid Societies, which began as charitable organizations during the late nineteenth century, were granted authority for the protection, care and control of abused or neglected children and were authorized to remove children from environments that put them at risk. Through subsequent amendments and other changes, the statutory authority to protect abused and neglected children remained in Children's Aid Societies.

19. Until the Second World War, Children's Aid Societies continued to be administered by private citizens. The concept of the welfare state emerged following the War with the concomitant value that government has a responsibility to ensure all citizens were being treated equally. Such changing attitudes and values contributed to progressive change in child welfare regimes marked by increasing public and governmental concern for Indians and their needs which unfolded over the next decades.

1946 Federal Joint Committee

20. In 1946, Parliament established a Special Joint Committee of the Senate and House of Commons to investigate and report on, *inter alia*, the social and economic status of

Indians compared with other Canadians with a view to making recommendations for amendments to the *Indian Act*.

21. Over the course of the next two years, this Joint Committee held hearings and received briefs from, among others, the Canadian Welfare Council and Canadian Association of Social Workers which described the lack of comparable social services available to children residing on reserves. From the evidence gathered, the Joint Committee concluded that Indians were not being provided access to most provincial programs in the fields of education, health and welfare.

22. The 1946 Joint Committee recommended that the federal and provincial governments consider agreeing to financial arrangements that would make provincial welfare programs available to Indians, as an alternative to establishing a separate duplicative federal welfare regime.

1953 Ontario Select Committee

23. In 1953, the Ontario Legislature established a Select Committee of the Legislature to study, report and make recommendations to improve the standard of living and equality of opportunity of Indians in Ontario.

24. The Select Committee visited and received submissions from various First Nations and other interest groups. Its report included a recommendation that agreements be negotiated between the federal Department of Indian Affairs and the province on behalf of individual Children's Aid Societies to provide for the extension of their services on reserves in Ontario.

25. In 1954, Ontario enacted the *Child Welfare Act* which consolidated the *Children's Protection Act*, the *Children of Unmarried Parents Act* and the *Adoption Act*. The Act did not specifically address whether the services to be provided by Children's Aid

Societies included Indian children and their families either on or off reserve. However, the *Child Welfare Act* did authorize the appropriate Ontario Minister to make arrangements with Canada by which Canada could provide funding to provincial Children's Aid Societies for delivering services to Indians, whether residing on or off reserve.

26. Following the delivery of the Select Committee's report, Ontario also passed the *Indian Welfare Act, 1955*. The Act entitled every Indian resident in Ontario to benefits to the same extent as any other person resident in the province under the *Blind Persons Allowance Act*, the *Disabled Persons Allowance Act*, the *Mother's Allowance Act* and the *Old Age Assistance Act*.

1956 Memorandum of Agreement

27. In February 1956, in accordance with the authority provided under the 1954 Act, a *Memorandum of Agreement Respecting Child Welfare Services for Indians in Ontario* was concluded between Canada and Ontario. Under its terms, Ontario undertook to approve the extension of child welfare services by Children's Aid Societies to Indians throughout the province and for which Canada would compensate each Society under separate agreements.

28. By 1958, Canada, with the approval of Ontario, had entered into twenty-three such agreements with individual Children's Aid Societies.

1959-61 Federal Joint Committee

29. The 1959-61 Joint Committee of the House of Commons and Senate recommended that, whenever possible, existing provincial welfare legislation and services should be used for the benefit of Canada's Indian population. Accordingly, it proposed that the matter be placed on the agenda of the next federal-provincial conference dealing with Indian Affairs.

1963 and 1964 Federal-Provincial Conferences

30. In 1963, a Federal-Provincial Conference on the Administration of Indian Affairs was convened for the purpose of considering the recommendations of the 1959-61 Joint Committee. Briefs were received from provincial governments indicating their willingness to deliver a number of welfare services to provincial Indian populations as long as proper financial arrangements were made.

31. It was also agreed that a further federal-provincial conference should be held devoted solely to a more thorough and detailed examination of the needs of Indian people and how those needs could be addressed jointly by Canada and the provinces.

32. In 1964 a second Federal-Provincial Conference on Indian Affairs was held in Ottawa with the objective of encouraging all provinces to deliver their whole range of welfare services to Indians, whether on or off reserve, on the same basis as they were being provided to all other provincial residents.

1964 Hawthorn Report

33. In 1964, *A Survey of Contemporary Indians of Canada* (the "Hawthorn Report"), a federally sponsored study undertaken by more than forty social scientists on the economic, social and educational needs of aboriginal people, was delivered.

34. Through its recommendations the Hawthorn Report reinforced the concept that welfare services on reserve should be delivered by the provinces and that the federal government should avoid creating a parallel system of welfare as it would be unnecessarily duplicative and would compete with provincial departments for scarce human resources.

1965 Federal-Provincial Indian Welfare Agreement

35. In 1966, Canada and Ontario entered into a *Memorandum of Agreement Respecting*

Welfare Programs for Indians. Under this federal-provincial agreement, known as the “1965 Indian Welfare Agreement”, Canada agreed to reimburse Ontario for a share of provincial costs for several programs delivered to Indians pursuant to provincial legislation. This arrangement included services under the province’s *Child Welfare Act*, effectively replacing the previous 1956 federal-provincial agreement. The 1965 Agreement advanced both governments’ objective of broadening the range of provincial welfare programs available to Indians in Ontario. With amendments to its schedules, the 1965 Agreement is still in effect.

1982: Section 35

36. In 1982, following a lengthy period of continuing and active political and legal debate about the place of aboriginal people in the Canadian constitutional family, Canada’s constitution was amended to include the *Canadian Charter of Rights and Freedoms* and Section 35 of the *Constitution Act, 1982*. Section 35 recognized and affirmed existing aboriginal rights and treaty rights, providing protection to distinctive practices, customs and traditions of aboriginal cultures.

1985 Ontario Child and Family Services Act

37. In 1985 Ontario proclaimed the *Child and Family Services Act*, S.O. 1984, c.55. The Act provides for the establishment of Aboriginal Child and Family Services organizations to complement Children’s Aid Societies as a means of delivering child welfare and other such services. Federal funding supporting the delivery of child welfare services to Indians and already available to Children’s Aid Societies became available to support services delivered through Aboriginal Child and Family Services.

38. Ontario’s *Child and Family Services Act* also expands the principles to be applied in assessing the “best interests of the child” to legislatively ensure that child welfare services for aboriginal children and their families are provided in a manner that includes

recognition of their culture, heritage and traditions and the concept of the extended family. The plaintiffs ~~have~~ has pleaded that the inclusion of these principles in Ontario's child welfare legislation brought to an end Canada's alleged breaches of duty and infringement of rights.

39. The inclusion of such principles reflected the state, in 1985, of judicial, legislative and social attitudes and thought concerning the values to be considered and applied through an evolving doctrine of "best interests of the child". Throughout the approximately twenty year period in respect of which the plaintiff's claims are made, Canada was, and remained, in step with this continuing process of change through its use of the federal spending power to provide Ontario with the capacity to extend provincially regulated and supported child welfare services to Indian children.

THE PLAINTIFF'S CLAIM IN BREACH OF FIDUCIARY DUTY

40. The Attorney General denies the existence or breach by Canada of a fiduciary duty or obligation owed to the plaintiffs or to the proposed class.

41. The Attorney General acknowledges that the relationship between the federal Crown and the aboriginal peoples of Canada is a fiduciary one; however, the facts as alleged do not give rise to a fiduciary duty owed by the Crown to the plaintiffs or to the proposed class. No specific fiduciary duty is triggered or exists in respect of the circumstances pleaded by the plaintiffs.

41a. The 1965 Indian Welfare Agreement was made between the federal and provincial Crowns and was not intended to be, and did not constitute, an undertaking by Canada to the plaintiff or to the members of the class in respect of their personal well-being or other cognizable interests.

42. The federal Crown, by funding the delivery of provincial child welfare services to

Indian children and their families, did not put its own interests ahead of those of aboriginal children, either at all or in any way that could be conceived to be a betrayal of trust or loyalty. Further, at no time did the Crown act in its own self-interest or against the protected interests of the plaintiffs or of the members of the proposed class. Nor has the Crown taken advantage of relationships of trust with the plaintiffs or members of the proposed class for its own benefit.

43. Alternatively, to the extent that specific duties to the plaintiffs or members of the proposed class may have arisen from the Crown's general fiduciary relationship with aboriginal peoples, they are met by Canada's conduct, including its promotion of principles consistent with the doctrine of "best interests of the child" in its funding support of Ontario's child welfare regime.

THE PLAINTIFF'S CLAIM IN NEGLIGENCE

43a. The Attorney General denies that the Crown or servants of the Crown owed a common law duty of care to the plaintiff or to any members of the class in respect of the interests or losses for which compensation is claimed in this action.

43b. The Attorney General also denies that there is, or has been, a proximate relationship between the Crown and the plaintiff or members of the class by virtue of the *Indian Act*, any other federal statute, or the Constitution of Canada.

43c. Any conduct of the Crown in entering into the 1965 *Indian Welfare Agreement* and other agreements with Ontario or in providing funding under the agreements to support Ontario's child welfare regime did not, and does not, give rise to a proximate relationship between the Crown and the plaintiff or members of the class [formerly Paragraph 61].

43d. The Attorney General also alleges that the *Indian Act* does not provide for a federal child welfare regime applicable to Indians on reserves and is not a source of authority for

federal Crown officials to design, implement or participate in the child welfare regime that is the subject of this action. Further to its pleading in Paragraphs 14 and 15, Canada, as a matter of policy, has used the federal spending power to contribute to the provincial capacity to deliver child welfare services to Indian children on reserves under provincial legislation; this does not represent a delegation of constitutional authority. In addition, no individual Crown officers or servants have, or had, any direct supervisory or other operational role in the design or delivery of the child welfare programs provided to the Indians on reserves in Ontario, including the plaintiff and class members, or in the disposition of their cases.

43e. Further, to the extent that the plaintiff or class members sustained harm with respect to their aboriginal cultural identity and, consequentially, to their mental and physical health, this harm was not a foreseeable consequence of Canada's entering into and performing its obligations to Ontario under the 1965 *Indian Welfare Agreement*.

43f. A duty of care, if one is found to exist, would be negated by policy considerations in this case, including but not limited to the need to respond to the individual circumstances of the plaintiff and class members as children at risk and in need of protection. Further, the Crown's decision to enter into the 1965 *Indian Welfare Agreement* was grounded in policies to make provincial welfare services accessible and available to Indian children on reserves and on a basis and standard that were commensurate with such services in other Ontario communities.

43g. Alternatively, if a duty of care is found to be owed by the Crown or Crown officers or servants and is not negated by policy considerations, that duty was met and fulfilled at all material times in the period from December 1, 1965 to December 31, 1984 through the Crown's reliance on the evolving standard of care associated with the principles of "best interests of the child".

THE PLAINTIFF'S CLAIM RE THE CROWN'S "DUTY OF HONOUR"

44. The Attorney General denies that the plaintiffs or members of the proposed class have a separate and independent cause of action based on an alleged breach of a duty flowing from the honour of the Crown. The defendant denies that the Crown has dealt unfairly with the plaintiffs or the class as alleged, or at all, or acted in a way that can be described as dishonourable.

45. Alternatively, to the extent that the principle that the Crown has assumed a responsibility of honourable dealing with the aboriginal peoples of Canada is engaged by the plaintiff's claims, its responsibility to the plaintiffs and to the proposed class has been met by Canada's conduct, including its promotion of principles consistent with the doctrine of "best interests of the child" in its funding support of Ontario's child welfare regime.

THE PLAINTIFF'S CLAIM TO ABORIGINAL RIGHTS

46. [Paragraph deleted].

47. [Paragraph deleted].

48. [Paragraph deleted].

THE PLAINTIFF'S ASSERTION OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS

49. [Paragraph deleted].

50. Canada is a party to numerous international human rights conventions. Canada has ratified, and is therefore bound by, the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* (which came into force for Canada on December 2, 1952), the *International Covenant on Civil and Political Rights* (which came into force for Canada on August 19, 1976) and the *Convention on the Rights of the Child* (which

came into force for Canada on January 12, 1992).

51. International human rights treaties binding on Canada may be relevant aids in interpreting the scope and content of constitutional rights. Where applicable they may also form the basis of an interpretative presumption of conformity between the treaty and ordinary legislation. However, these treaties are not directly enforceable in Canadian law.

52. [Paragraph deleted].

53. [Paragraph deleted].

54. [Paragraph deleted].

55. [Paragraph deleted].

56. [Paragraph deleted].

57. In any event, in entering into funding arrangements with Ontario, it was not the intent or objective of the federal Crown to destroy or eradicate the aboriginal identity of the plaintiffs or of members of the proposed class. If as a consequence of the making of federal-provincial agreements the plaintiffs or members of the proposed class suffered harm in respect of their aboriginal identity, which is denied, such harm was unintended and was not reasonably foreseeable.

THE PROPOSED CLASS

58. [Paragraph deleted].

(a) [sub-Paragraph deleted];

(b) [sub-Paragraph deleted];

(c) [sub-Paragraph deleted];

(d) [sub-Paragraph deleted];

(e) [sub-Paragraph deleted].

59. [Paragraph deleted].

60. [Paragraph deleted].

61. [Paragraph deleted].

62. The proposed class is not a rights-holding collective on whose behalf a sustainable aboriginal rights, or other collective rights, claim can, as a matter of law, be advanced.

63. The claim makes allegations of Crown infringement of different rights and breaches of different duties prospectively owed to different members of the proposed class based on their status, circumstances and relationship to different identifiable groups and communities, with the result that any of the alleged duties or breaches of duty were not, and could not be, owed to or suffered by all of them uniformly or in common there is little, if any, commonality amongst them.

64. The proposed class consists of individuals whose personal and family circumstances, as children, required intervention by child welfare authorities in order to address their needs of protection, support and care, thereby requiring a judicial or other disposition in accordance with equitable and statutory principles that were, and are, by definition, to be applied on a case by case basis in response to the unique circumstances and best interests of each individual child. Such dispositions, which underpin the claims of the plaintiffs and of the members of the proposed class, are, and were, necessarily informed by individual, rather than common, considerations.

65. Further, the family, community and cultural experiences and connections of each proposed class member both before and after apprehension by Ontario child welfare authorities are, and will be, as unique and individual as the members themselves such that

there is little, if any, commonality amongst ~~them and~~ the issues of duty and breach associated with each of their claims.

DAMAGES CLAIMED

66. If the plaintiffs or the members of the proposed class suffered any damage, losses or injuries as alleged, such damage, losses or injuries were not caused by any acts or omissions of the Crown or for which the Crown is liable. Rather, such damage, losses or injuries were caused by factors unrelated to the Crown's conduct, including events prior and subsequent to their apprehension by provincial Children's Aid Societies involved and their subsequent placement in foster care and/or adoption.

VICARIOUS LIABILITY IN TORT

67. To the extent that any of the breaches alleged constitutes a tort, a claim in tort against the Crown can only be maintained by way of vicarious liability committed by a servant of the federal Crown. The Attorney General pleads and relies on the provisions of s. 3(a) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, Chap. C-50 and the *Crown Liability Act*, S.C. 1952-53, c.30.

LIMITATIONS ISSUES

68. The plaintiff's claims are out of time and statute-barred. The defendant pleads and relies on s. 7 of Ontario's *Public Authorities Protections Act*, R.S.O. 1990, Chap. P.38 as amended, ss. 45(1)g and (h) of the *Limitations Act*, R.S.O. 1990, Chap. L. 15, as amended. The defendant also relies upon the equitable doctrines of laches and acquiescence and upon the *Crown Liability and Proceedings Act*, R.S.C. 1985, Chap. C-50 and the *Crown Liability Act*, S.C. 1952-53, c.30.

RELIEF

69. The Attorney General of Canada therefore asks:

- (a) ~~that certification pursuant to the *Class Proceedings Act, 1992* be denied; and~~
- (b) that the action be dismissed, with costs.

DELIVERED AT TORONTO, ~~October 23, 2009~~, September 25, 2015.

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Per: Owen Young (LSUC #17656Q)
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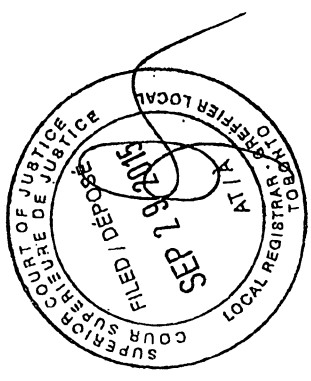
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MARCIA BROWN and ROBERT COMMANDA AND
Moving Party/Plaintiffs

CV-09-00372025-00CP
THE ATTORNEY GENERAL OF CANADA
Respondent/Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Toronto

AMENDED STATEMENT OF DEFENCE
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*THIS IS EXHIBIT "13" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Brown v. Canada (Attorney General) 2017 ONSC 251
COURT FILE NO.: CV-09-372025-CP
DATE: 20170214

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Marcia Brown / Representative Plaintiff

AND:

The Attorney General of Canada / Defendant

Proceeding under the *Class Proceedings Act, 1992*

BEFORE: Justice Edward P. Belobaba

COUNSEL: *Jeffery Wilson, Morris Cooper and Jessica Braude* for the Plaintiff

Owen Young and Gail Sinclair for the Defendant

HEARD: August 23, December 1 and 2, 2016 and written submissions

The “Sixties Scoop”

SUMMARY JUDGMENT ON THE COMMON ISSUE

[1] After eight years of protracted procedural litigation,¹ the Sixties Scoop class action is before the court for a decision on the first stage of the merits. The representative

¹ *Brown v. Canada (Attorney General)* was certified as a class proceeding by Perell J. at 2010 ONSC 3095. Two appeals followed, first to the Divisional Court at 2011 ONSC 7712 and then to the Court of Appeal at 2013 ONCA 18. The Court of Appeal reversed the certification decision and directed that the matter be reheard by a different class action judge. I reheard the matter and again certified the action as a class proceeding at 2013 ONSC 5637. The defendant sought and was granted leave to appeal from my decision at 2014 ONSC 1583. The Divisional Court dismissed the appeal and affirmed the certification at 2014 ONSC 6967.

plaintiff brings this motion for summary judgment asking that the certified common issue, which focuses on the liability of the federal government, be answered in favour of the class members. If the common issue is answered in favour of the class members, the class action will proceed to the damages stage. If the common issue is answered in favour of the federal government, the class action will be dismissed.

[2] Both sides agree that the common issue can be summarily decided. I do as well. For ease of reference I will refer to the defendant government as “Canada” or “the Federal Crown.”

Background

[3] The background facts, as set out in the six previous decisions,² are by now well-known, not only to the parties but to many Canadians, and will not be repeated here. In any event, the factual background is not in dispute.

[4] The Sixties Scoop happened and great harm was done.

[5] There is no dispute about the fact that thousands of aboriginal children living on reserves in Ontario were apprehended and removed from their families by provincial child welfare authorities over the course of the class period – from 1965 to 1984 – and were placed in non-aboriginal foster homes or adopted by non-aboriginal parents.

[6] There is also no dispute about the fact that great harm was done. The “scooped”³ children lost contact with their families. They lost their aboriginal language, culture and identity. Neither the children nor their foster or adoptive parents were given information about the children’s aboriginal heritage or about the various educational and other benefits that they were entitled to receive. The removed children vanished “with scarcely

² *Ibid.*

³ It was Patrick Johnson, the author of a 1983 research study on “Native Children and the Child Welfare System” that coined the name “Sixties Scoop.” He took this phrase from the words of a British Columbia child-protection worker who noted that provincial social workers “would literally scoop children from reserves on the slightest pretext.” See Chambers, *infra*, note 4, at 122.

a trace.”⁴ As a former Chief of the Chippewas Nawash put it: “[i]t was a tragedy. They just disappeared.”⁵

[7] The impact on the removed aboriginal children has been described as “horrendous, destructive, devastating and tragic.”⁶ The uncontroverted evidence of the plaintiff’s experts is that the loss of their aboriginal identity left the children fundamentally disoriented, with a reduced ability to lead healthy and fulfilling lives. The loss of aboriginal identity resulted in psychiatric disorders, substance abuse, unemployment, violence and numerous suicides.⁷ Some researchers argue that the Sixties Scoop was even “more harmful than the residential schools”:

Residential schools incarcerated children for 10 months of the year, but at least the children stayed in an Aboriginal peer group; they always knew their First Nation of origin and who their parents were and they knew that eventually they would be going home. In the foster and adoptive system, Aboriginal children vanished with scarcely a trace, the vast majority of them placed until they were adults in non-Aboriginal homes where their cultural identity and legal Indian status, their knowledge of their own First Nation and even their birth names were erased, often forever.⁸

[8] One province, Manitoba, has issued a formal apology. On June 18, 2015, the premier of Manitoba apologized on behalf of the province for the “historical injustice” of the Sixties Scoop and “the practice of removing First Nation, Métis and Inuit children from their families and placing them for adoption in non-Indigenous homes, sometimes

⁴ Fournier and Grey, *Stolen from our Embrace: The Abduction of First Nations Children and the Restoration of Aboriginal Communities* (1997) as cited in Chambers, *A Legal History of Adoption in Ontario*, (2016) at 120. I referred this recent publication of the Osgoode Society to counsel because one of the chapters was directly on point.

⁵ Affidavit of former Chief Wilmer Nadjiwon (December 14, 2015) at para. 6.

⁶ *Brown v. Canada (Attorney General)*, 2010 ONSC 3095 at para. 1.

⁷ *Ibid.*, at para. 59. The loss of culture and identity is particularly devastating to an aboriginal person because Canada has had a “particularly destructive relationship with its First Nations.” (Affidavit of psychiatrist Harvey Armstrong, May 28, 2009 at para. 10.)

⁸ *Supra*, note 4. Also see *Brown v. Canada (Attorney General)*, 2013 ONSC 5637 at para. 12.

far from their home community, and for the losses of culture and identity to the children and their families and communities.”⁹

[9] All of this, however, is background and is not determinative of the legal issue that is before the court. The court is not being asked to point fingers or lay blame. The court is not being asked to decide whether the Sixties Scoop was the result of a well-intentioned governmental initiative implemented in good faith and informed by the norms and values of the day, or was, as some maintain, state-sanctioned “culture/identity genocide”¹⁰ that was driven by racial prejudice to “take the savage out of the Indian children.”¹¹ This is a debate that is best left to historians and, perhaps, to truth and reconciliation commissions.

[10] The issue before this court is narrower and more focused. The question is whether Canada can be found liable in law for the class members’ loss of aboriginal identity *after* they were placed in non-aboriginal foster and adoptive homes.

Common issue

[11] The certified common issue that is before the court for adjudication is this:

When the Federal Crown entered into the *Canada-Ontario Welfare Services Agreement* in December 1, 1965 and at any time thereafter up to December 31, 1984:

(1) Did the Federal Crown have a fiduciary or common law duty of care to take reasonable steps to prevent on-reserve Indian children in Ontario who were placed in the care of non-aboriginal foster or adoptive parents from losing their aboriginal identity?

(2) If so, did the Federal Crown breach such fiduciary or common law duty of care?¹²

⁹ Manitoba, Legislative Assembly, *Official Report of Debates (Hansard)*, 40th Parl., 4th Sess., No. 49(b) (18 June 2015), at p. 1993, Hon. Greg Selinger (Premier).

¹⁰ *Brown v. Canada (Attorney General)*, 2013 ONSC 5637 at para. 11. Also see Chambers, *supra*, note 4, at 122 and 123.

¹¹ *Supra*, note 5.

¹² The term “Indian” will be used throughout this judgment in its legal sense only. The court is aware of the derogatory meaning of this term outside of this context.

[12] Three observations should be made. First, the *Canada-Ontario Welfare Services Agreement* entered into on December 1, 1965 (“the 1965 Agreement” or “the Agreement”) is obviously at the core of the common issue. Second, the focus of the common issue is the action or inaction of Canada, not Ontario; and, three, the focus of attention is only on the time period after the aboriginal children had been placed in non-aboriginal foster or adoptive homes. The actual apprehension and removal of the children from the reserves by provincial child-care workers is not an issue that is before the court.

[13] Put simply, the common issue asks whether Canada had and breached any fiduciary or common law duties (when it entered into the 1965 Agreement or over the course of the class period) to take reasonable steps in the post-placement period to prevent the class members’ loss of aboriginal identity.

Class definition

[14] The class is defined to include the estimated 16,000 aboriginal children who were removed from reserves in Ontario and placed in non-aboriginal foster homes or were adopted by non-aboriginal parents. The class period covers 19 years - from December 1, 1965 (when Canada entered into the 1965 Agreement) to December 31, 1984 (when Ontario amended its child welfare legislation to recognize for the first time that aboriginality should be a factor to be considered in child protection and placement matters.¹³)

The 1965 agreement

[15] The genesis of the 1965 Agreement can be found in the discussions that took place at the 1963 Federal-Provincial Conference. According to the preamble in the 1965 Agreement, the 1963 Conference “determined that the principal objective was the provision of provincial services and programs to Indians on the basis that needs in Indian Communities should be met according to standards applicable to other communities.” The stated goal of the 1965 Agreement was to “make available to the Indians in the province the full range of provincial welfare programs.”

¹³ *Child and Family Services Act*, S.O. 1984, c. 55. The CFSA took effect on January 1, 1985. Section 1(f) of the CFSA provides that “Indian and native people should be entitled to provide, whenever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.”

[16] Under s. 2(1) of the 1965 Agreement, Ontario undertook to extend some 18 provincial welfare programs to “Indians with Reserve Status in the Province.” The provincial programs in question, as listed in Schedules A and C to the Agreement, included blind and disabled person allowances, mothers’ allowances, care of the aged and child welfare services, that is “services to children, including the protection and care of neglected children, the protection of children born out of wedlock and adoption services provided under the [Ontario] *Child Welfare Act*...”

[17] There is no doubt that Canada could have enacted its own child protection statute aimed only at Indian children on reserves¹⁴ or, indeed, any of the other 17 provincial laws that formed part of the 1965 Agreement. But it chose not to do so. Ontario already had operating provincial programs in place. And even though the province could have extended these laws to the reserves as “laws of general application” under s. 88 of the *Indian Act*,¹⁵ it was clearly not doing so. It made sense, therefore, for Canada to fund the provincial extension to the reserves of the 18 listed provincial laws as an exercise of its spending power. Canada’s financial obligation under the 1965 Agreement was to reimburse the province for the per capita cost of the provincial programs that were so extended, in accordance with the formula that was set out in the Agreement.

[18] It is important to understand, however, that the 1965 Agreement was more than a federal spending agreement. It also reflected Canada’s concern that the extension of the provincial laws would respect and accommodate the special culture and traditions of the First Nations peoples living on the reserves, including their children.

[19] That is why section 2(2) was added.

Obligation to consult under section 2(2)

[20] Ontario’s undertaking to extend the provincial welfare programs as set out in s. 2(1) was made “subject to (2).” Sub-section 2(2) of the Agreement said this:

No provincial welfare program shall be extended to any Indian Band in the Province unless that Band has been consulted by Canada or jointly by Canada and by Ontario and has signified its concurrence.

¹⁴ Given its exclusive jurisdiction over “Indians and lands reserved for Indians” under s. 91(24) of the *Constitution Act, 1982*. Also see *Brown v. Canada (Attorney General)* 2014 ONSC 6967 (Div. Ct.) at para. 26.

¹⁵ *Indian Act*, R.S.C. 1970, c. I-16, s. 88. And see *NIL/TU-O Child and Family Services Society v. B.C. Government and Service Employees' Union*, 2010 SCC 45, at paras. 34 and 35.

[21] It is obvious not only from the plain meaning of this provision but also from the circumstances surrounding the execution of the 1965 Agreement that the obligation to consult with Indian Bands and secure their concurrence was intended to be a key component of the Agreement. One only has to consider what was said in a background memorandum prepared by Canada for use at the 1963 Federal-Provincial Conference:

The utmost care must be taken ... to ensure that the Indians are not again presented with a *fait accompli* in the form of a blueprint for their future which they have had no part in developing and which they have been given no opportunity to influence. This means that the Federal Government should make crystal clear that before any final arrangements are made, the Indians must be fully consulted.

[22] Consider as well what was said by Mr. Tremblay, the federal Minister of Citizenship and Immigration, in October 1964 to the Federal-Provincial Conference, as summarized in the minutes of the meeting:

Consultation with Indians. Mr. Tremblay, in introducing this topic, said that it is an extremely important one as the success of any federal-provincial effort to extend a provincial service will depend on the Indians accepting the proposal and participating in its development. From past experience, we believe acceptance and cooperation by the Indians will not be secured without adequate consultation with them.

[23] And, in a “circular” dated December 9, 1964, the Assistant Deputy Minister of the Indian Affairs Branch of the federal Department of Citizenship and Immigration advised his federal colleagues that he would view it as a “serious breach of faith with the Indian people if any provincial services were forced on a Band against its wishes”:

It is departmental policy ... to encourage the extension of provincial services to reserves in those areas where Provinces are competent to provide services but under no circumstances must action be taken towards this end – that is to actually extend a service to a reserve – without the consent of the Indians concerned ...

If an agreement can be arrived at, the next step will be to explain it to each individual Band in the Province and to ascertain whether the Band wishes the provincial service extended to it. If it is unacceptable to any Band, no extension of that particular service will be made to that Band and the service provided by the Federal Government will continue.

It is important that the Indians understand Federal policy in this regard and this circular may be helpful to you in your future discussions with them. *I would consider it to be a serious breach of faith with the Indian*

- Page 8 -

people if any provincial services were forced on a Band against its wishes. (Emphasis added).

[24] In short, Canada was prepared to exercise its spending power to fund the extension of the provincial programs to reserves but only with the advice and consent of every affected Indian Band to every one of the 18 provincial programs that were being so extended. It is obvious from the record that the obligation to consult, as set out in s. 2(2) of the 1965 Agreement, was intended to include explanations, discussions and accommodations. It was meant to be a genuinely meaningful provision.

The obligation to consult applied to child welfare services

[25] Canada argues that the obligation to consult in section 2(2) of the 1965 Agreement did not apply to Ontario's extension of its child welfare services to the reserves because some level of child protection services had already been extended to some reserves *before* the 1965 Agreement.

[26] It is true that some provincial programs, such as blind and disabled person allowances, care of the aged, and some child welfare services had already been extended to some of the reserves in Ontario. For example, child welfare services were being provided to some reserves in the late 1950's under private agreements between certain Children's Aid Societies (CAS) and the federal government with the latter providing the funding.

[27] However, as Canada itself made clear at the 1963 Federal-Provincial Conference, the provincial services being provided were at best "piecemeal" and "rudimentary." The level of federal funding was "minimal."¹⁶ The 1963 Federal-Provincial Conference was told that provincial services "needed to be increased several times over to bring them up to provincial standards." Canada explained that from its point of view, "it would be highly desirable to accelerate, enlarge and broaden the pace and scope [of these piecemeal arrangements] with the objective eventually of negotiating master agreements covering the whole field of welfare ... on a province wide basis."

[28] Hence, the 1965 Agreement. The Agreement extended, amongst other things, the whole field of "services to children, including the protection and care of neglected children, the protection of children born out of wedlock and adoption services provided under the *Child Welfare Act*" to Indian reserves, on a province-wide and provincial

¹⁶ Chambers, *supra*, note 4, at 118.

standards basis. The level of federal funding was now significant¹⁷ as was the impact on the reserves.¹⁸

[29] If any of the provincial programs proved “unacceptable” to any Band, as was made clear in the federal memorandum of December 9, 1964 discussed above, then “no extension of that particular service will be made to that Band and the service provided by the Federal Government will continue.” In other words, absent consultation and acceptance by the individual Band of the provincial child welfare regime, the pre-existing “piecemeal” and “rudimentary” service provided by the federal government (via private contractual agreements with certain CAS organizations in certain parts of the province) would continue.

[30] Canada’s submission that the obligation to consult in section 2(2) of the 1965 Agreement did not apply to child welfare services does not succeed. The language in section 2(2) is clear and unambiguous and there is nothing in the discussion papers or other documents surrounding the formation of the 1965 Agreement that suggests in any way that the obligation to consult set out in section 2(2) was not intended to apply to the extension of provincial child welfare services.¹⁹

[31] Indeed, it strains credulity to think that Canada would repeatedly emphasize the importance of genuine consultation and how it would be “a serious breach of faith” if *any* of the provincial programs were “forced on a Band against its wishes”, all the while intending that child welfare services, probably the most intrusive of the provincial programs, could be extended to the reserve without any consultation whatsoever.

¹⁷ Between 1965 and 1966 Reserve Status Indian (RSI) child-in-care costs “jumped over ten times.” And by 1972, the RSI costs were “40 times higher than their costs in 1957. See Expert Report of Dr. Joyce Timson (Affidavit of November 7, 2016) at 19 and 22.

¹⁸ *Ibid.*, at 1: “After 1965” aboriginal children were taken into care “in disproportionate numbers.”

¹⁹ Canada referred to federal memoranda that post-dated the 1965 Agreement to suggest that the obligation to consult under s. 2(2) did not apply to the extension of child welfare services because some of these services were already being provided (in the late 1950’s) on some reserves by certain CAS under contracts with the federal government. In my view, this submission fails for the reasons already noted. It also fails because evidence of subsequent conduct or “evidence of the behavior of the parties *after* the execution of the contract” is not part of the factual matrix or surrounding circumstances at the date of the agreement and “should be admitted only if the contract remains ambiguous after considering its text and factual matrix” (emphasis added): *Shewchuk v Blackmont Capital Inc.*, 2016 ONCA 912 at paras. 41 and 46. Here, as I have already found, there is no such ambiguity in the meaning of s. 2(2) of the 1965 Agreement.

[32] In sum, the 1965 Agreement was a watershed event that extended some 18 provincial welfare programs, including child welfare services, on a province-wide and provincial standards basis to Indians on the reserves. The obligation to consult as set out in section 2(2) applied plainly and unambiguously to every provincial welfare program, including child welfare services. There was no carve-out for child protection services.

[33] For the balance of my analysis, I will focus on the obligation to consult as it related to the extension of the provincial child welfare regime to the reserves.

No Indian bands were ever consulted

[34] The plaintiff says no Indian Bands were ever consulted and the full reach of the provincial child welfare regime was extended to all of the reserves without any consultation and concurrence on the part of any Indian Band.

[35] The plaintiff is right.

[36] On the record before me, I find that no Indian Bands were ever consulted before provincial child welfare services were extended to the reserves and no Bands ever provided their “signified concurrence” following such consultations. The evidence supporting the plaintiff on this point is, frankly, insurmountable. In any event, Canada offered no evidence to suggest otherwise.

Canada breached the 1965 Agreement

[37] I find that by failing to consult the Indian Bands, Canada breached section 2(2) of the 1965 Agreement. This finding may seem self-evident but it requires some explanation.

[38] Under section 2(1) of the Agreement, Ontario undertook to extend the listed provincial welfare programs to Indians on reserves but did so “subject to (2)” which required consultation by Canada. One could argue that it was Ontario that breached sections 2(1) and (2) of the Agreement because it proceeded to extend the named provincial programs to the reserves even though Canada had not consulted any Indian Band. The plaintiff, however, filed this class action against Canada, not Ontario.

[39] The question therefore is whether Canada breached section 2(2) of the Agreement. Strictly speaking, there is nothing in section 2(2) which explicitly obliges Canada to actually undertake the consultations referred to therein. However, the undertaking to do so can be implied from the language and context of this provision. The law is clear that a contractual term can be implied if it is a contractual term that must

have been intended by the parties and is necessary or obvious in light of the particular circumstances of the agreement.²⁰ The law is also clear that “where the approval of a third party is necessary in order to enable a contract to proceed, it may be implied that the party in a position to seek that approval must make reasonable efforts to do so.”²¹

[40] I therefore have no difficulty concluding that under section 2(2) of the 1965 Agreement, Canada undertook to consult with the Indian Bands, that it failed to do so and thus breached this provision of the Agreement.

If the Indian Bands had been consulted

[41] Canada argues that even if it had consulted with the Indian bands, as it was obliged to do under section 2(2), there is no evidence that any of the Indian bands would have provided any ideas or advice that could have prevented the Indian children who had been removed and placed in non-aboriginal foster or adoptive homes from losing their aboriginal identity. Counsel for Canada put it this way: “[W]ould life have been different had they been consulted?”

[42] This is an odd and, frankly, insulting submission. Canada appears to be saying that even if the extension of child welfare services to their reserves had been fully explained to the Indian Bands and if each Band had been genuinely consulted about their concerns in this regard, that no meaningful advice or ideas would have been forthcoming.

[43] In the documentation produced by Canada over the course of the class period, there are numerous memoranda and letters from both federal and First Nations representatives setting out in some detail the kinds of things that could have been done to prevent the loss of aboriginal identity post-placement. For example: educating non-aboriginal foster and adoptive parents about the relevant cultural differences and providing them with information about the aboriginal child’s entitlement to various federal benefits and payments.

[44] Direct evidence from Indian Band representatives as to what they would have said or advised had they been consulted in 1965 was presented, but in broad brush. Wilmer Nadjiwon, former Chief of the Chippewas Nawash, filed an affidavit that stated if his Indian Band had been consulted he would have “done whatever [he] could” to assist the

²⁰ McCamus, *The Law of Contracts*, (2nd ed.) at 779-81.

²¹ *Ibid.*, at 783-84.

removed Indian child “to re-connect with his or her family or learn about their First Nations identity.” I required more specificity.

[45] I therefore directed a mini-trial under Rule 20.04(2.2) for the purposes of clarification²² and ordered that the representative plaintiff present oral evidence on the following issue:

If Canada had consulted with Indian Bands (as per s. 2(2) of the 1965 Agreement) what ideas or advice would have been provided that could have prevented the Indian children who had been removed and placed in non-Aboriginal foster or adoptive homes from losing their Aboriginal identity?

[46] The plaintiff filed two brief affidavits for the mini-trial: one from Wilmer Nadjiwon who had been the Chief of the Chippewas Nawash from 1964 to 1978 and the other from Howard Jones who had been a Band Councillor on the same reserve over some 15 years beginning in 1965. Upon receiving the affidavits, Canada advised that it would not cross-examine and that the two affidavits could stand as the oral testimony. As a result, it was agreed that there was no need for the formal mini-trial.

[47] The uncontroverted evidence of Mr. Nadjiwon and Mr. Jones was that if they had been consulted they would have suggested that some contact be maintained with the removed children during the post-placement period so that they would know that they were loved and “could always come home”; and that the “white care-givers” be provided with information about the removed child’s Indian Band, culture and traditions and the various federal educational and financial benefits that were available to the Indian children.

[48] There is no reason to believe that similar ideas would not have been provided by other Indian Bands had they been consulted and Canada has not adduced any evidence to the contrary.

[49] If these ideas and suggestions had been implemented as part of the extension of the provincial child welfare regime – that is, if the foster or adoptive parents had been

²² *Hryniak v. Mauldin*, [2014] 1 S.C.R. 87, at para. 51: “...concerns about credibility or *clarification of the evidence* can be addressed by calling oral evidence on the [summary judgment] motion itself.” (emphasis added). I am satisfied that my proposed use of a mini-trial to clarify the evidence in question falls squarely within the Supreme Court’s decision in *Hryniak* and within the letter and spirit of Rule 20.04(2.2). See my decision as the summary judgment judge in *Combined Air v. Flesch*, 2010 ONSC 1729 at para. 38, confirmed on appeal, *sub. nom. Hryniak v. Mauldin*.

provided with information about the aboriginal child's heritage and the federal benefits and payments that were available when the child became of age, and if the foster or adoptive parents had shared this information with the aboriginal child that was under their care,²³ it follows in my view that it would have been far less likely that the children of the Sixties Scoop would have suffered a complete loss of their aboriginal identity.

[50] Canada says things were different back then. Canada argues that in 1965 and in the years immediately following, it was not foreseeable, given the state of social science knowledge at the time, that trans-racial adoptions or placements in non-aboriginal foster homes would have caused the great harm that resulted.

[51] Canada's submission misses the point.

[52] The issue is not what was known in the 1960's about the harm of trans-racial adoption or the risk of abuse in the foster home. The issue is what was known in the 1960's about the existential importance to the First Nations peoples of protecting and preserving their distinctive cultures and traditions, including their concept of the extended family. There can be no doubt that this was well understood by Canada at the time. For example, focusing on adoption alone, Canada knew or should have known that the adoption of aboriginal children by non-aboriginal parents constituted "a serious intrusion into the Indian family relationship" that could "obliterate the [Indian] family and...destroy [Indian] status."²⁴

[53] Recall as well that the Indian Affairs Branch was of the view that "it would be a serious breach of faith with the Indian people if any provincial services were forced on a Band against its wishes." Indeed, as I have already noted, it was this very understanding, namely the importance to the First Nations peoples of protecting and preserving their distinctive cultures and traditions, that best explains why section 2(2) and the obligation to consult was added to the 1965 Agreement in the first place.

[54] In sum, information about the aboriginal child's heritage and his or her entitlement to various federal benefits was in and of itself important to both the Indian Band and the removed aboriginal children - not only to ensure that the latter knew about

²³ One does not know how many of the foster and adoptive parents, having received this information, would have shared the information with the aboriginal child that had been placed in their home. Probably most, but this is an issue that will have to be determined on evidence that will be presented at the damages stage.

²⁴ As Laskin C.J.C. noted in *Natural Parents v. British Columbia (Superintendent of Child Welfare)* [1976] 2 S.C.R. 751 at 756-57.

their aboriginal roots and “could always come home” but also about the fact that they could apply for the various federal entitlements, including a free university education, and other financial benefits once they reached the age of majority.

[55] Much of this information was finally provided by the federal government in 1980.

The federal booklet

[56] Until the publication of the federal informational booklet in or around 1980, Canada had little to no interaction with the removed children or their foster or adoptive parents in the post-placement period. The evidence indicates that on occasion the Indian Affairs Branch of the federal Department of Northern Affairs and National Resources would receive a letter of inquiry from the adoptive parent of a removed aboriginal child. Here is how the registrar of the Indian Affairs Branch responded on January 7, 1966 to one such letter:

... [*Names redacted*] are registered as Indians. They have no band number, however, as Indian children who are adopted by non-Indians are removed from their natural parents' band number and registered in a special index so that the facts of their adoption may be kept confidential. This index also enables us to identify them as Indians in future if they are informed of their Indian status and make inquiries as to their funds, enfranchisement, or other relevant matters. Whether or not they are informed of their Indian status is left to their adoptive parents.

It is now the policy of the Branch to administer the funds of children adopted by non-Indians and keep them available for the children until they become of age. The funds are held in trust in savings accounts and paid out to the children on application at any time after twenty-one years of age.

[57] Three points are made clear in this response: (i) the Indian Affairs Branch maintained a special registry of adopted Indian children that would allow them to be identified as Indians in the future but only “if they are informed of their Indian status and make inquiries as to their [entitlements]”; (ii) the Indian Affairs Branch was not providing any such information to the adoptive parents (“whether or not [the children] are informed of their Indian status is left to their adoptive parents”); and (iii) the Indian Affairs Branch was holding the monies that were payable to the adopted children in trust accounts, to be released when they turned 21 and made the required “application”.

[58] In short, the only way that an apprehended aboriginal child would ever learn about his or her aboriginal identity or the various federal entitlements was if he or she had the good fortune to be placed in a home where the non-aboriginal foster or adoptive parents themselves knew and shared this information with the aboriginal child or if the child or

his non-aboriginal parents made the effort to obtain this information by writing to the federal government. Canada, however, took no steps to provide any of this information on its own – at least not until 1980.

[59] In or around 1980, the federal department of Indian and Northern Affairs published a detailed informational booklet titled *Adoption and the Indian Child* that was “meant to encourage adoptive parents to inform their adopted Indian children of their heritage and rights.”²⁵ The booklet provided information about the adopted child’s aboriginal heritage and status, the various federal benefits and entitlements that were available, including band payments and treaty annuities. It also explained that the Department was placing these monies into trust accounts and that the child could apply to have these amounts paid out once he or she reached the age of majority. The informational booklet was published in response to “concerns expressed by First Nations individuals and groups that adoptions of Indian children by non-Indian parents would result in the children not learning of their heritage as registered Indians”²⁶

[60] Canada’s evidence is that the booklets were provided to the province so that CAS workers could distribute them to non-aboriginal adoptive parents. The plaintiff, however, says there is no evidence that any CAS workers ever received these booklets and certainly no evidence that they were ever distributed to the adoptive parents. In any event, the evidence is clear that Canada took no steps to provide such information until this booklet was published in 1980, some fifteen years after the 1965 Agreement – and then only directed to adoptive parents, not foster parents.

[61] What would have happened if Canada had honoured its obligation to consult the Indian Bands under s. 2(2) of the 1965 Agreement? In all likelihood, as the evidence filed for the mini-trial shows, the Indian Bands would have expressed the same concerns (in 1966) that years later prompted Canada to publish *Adoption and the Indian Child*. If Canada had honoured its obligation to consult the Indian Bands under s. 2(2) of the 1965 Agreement, the information about the child’s aboriginal identity and culture and the available federal benefits would have been provided years sooner and would probably have been provided, via the CAS, to both foster and adoptive parents and not just the latter.

Returning to the common issue

²⁵ As explained by one of Canada’s non-expert witnesses with Indigenous and Northern Affairs Canada, (Affidavit of Eric Guimond, August 15, 2016) at para. 7.

²⁶ *Ibid.*

[62] Let me sum up what I have found thus far. I have found that Canada was obliged under section 2(2) of the 1965 Agreement to consult with each Indian Band before any provincial welfare program, including child welfare services, was extended to the reserve in question. I have found that no such consultations ever took place. I have also found that if the Indian Bands had been consulted they would have suggested, amongst other things, that information about the apprehended child's aboriginal heritage and the availability of federal benefits be provided to the foster or adoptive parents. This booklet alone, assuming that the foster and adoptive parents would have shared this information with the aboriginal child in their care,²⁷ would probably have prevented the loss of the apprehended child's aboriginal identity.

[63] That is, Canada failed to take reasonable steps to prevent the loss of aboriginal identity in the post-placement period by failing, *at a minimum*, to provide to both foster and adoptive parents (via the CAS) the kind of information that was finally provided in 1980 and thereafter.

[64] Was Canada legally obliged to provide such information? The plaintiff says yes and makes two submissions, one based on fiduciary law and the second based on the common law. For the reasons that follow, I find that Canada's liability cannot be established under fiduciary law but can be established under the common law. I will explain each of these findings in turn.

Fiduciary duty of care

[65] The law of fiduciary duty as it applies in the aboriginal context is not in dispute. Although the Federal Crown stands in a fiduciary relationship with Canada's aboriginal peoples,²⁸ a fiduciary relationship alone does not necessarily give rise to a fiduciary duty.²⁹ In the aboriginal context, a fiduciary duty may be imposed on the Federal Crown in one of two ways.

[66] First, a duty may arise as a result of the Crown's assumption of discretionary control over a specific aboriginal interest. The interest must be a communal aboriginal

²⁷ *Supra*, note 23.

²⁸ *Guerin v. The Queen*, [1984] 2 S.C.R. 335 and *Quebec (Attorney General) v. Canada (National Energy Board)*, [1994] 1 S.C.R. 159.

²⁹ *Lac Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574 at 647.

interest in land that is integral to the nature of the aboriginal community and their relationship to the land and must be predicated on historic use and occupation.³⁰

[67] Second, in cases other than ones involving lands of historic use or occupation, a fiduciary duty may arise if three elements are present: (1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary; (2) a defined person or class of persons vulnerable to a fiduciary's control; and (3) a legal or substantial practical interest of the beneficiary that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control.³¹ The degree of discretionary control must be "equivalent or analogous to direct administration of that interest."³²

[68] In my view, a fiduciary duty under the first category cannot be established in this case. The aboriginal interest in question is not an interest in land and the action herein is not being advanced as a communal claim but as a class action seeking individualized redress.

[69] The attempt to establish a fiduciary duty under the second category also does not succeed on the evidence herein. Even if I were to agree with the plaintiff that the first two elements are satisfied – that the obligation to consult was an undertaking to act in the Indian Band's best interests and there existed a vulnerable group, namely children in need or protection – I would still have difficulty with the third element.

[70] I cannot find on the evidence before me that when Canada undertook the obligation to consult under s. 2(2) of the 1965 Agreement that it assumed such a degree of discretionary control over the protection and preservation of aboriginal identity that it amounted to a "direct administration of that interest." There is no doubt that the obligation to consult was breached and this resulted in great harm but the degree of discretionary control that is required before a fiduciary duty can be imposed is not present on the evidence before the court.

³⁰ *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013] 1 S.C.R. 623 at para. 53.

³¹ *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, at para. 36; *Manitoba Metis*, *ibid*, at para. 50.

³² *Elder Advocates of Alberta Society*, *ibid*, at para. 53.

[71] Fiduciary duty has meaning as a legal term and should not be used “as a conclusion to justify a result.”³³ I therefore find on the applicable law that a fiduciary duty of care has not been established.

Common law duty of care

[72] A duty of care at common law, however, has been established. In my view, section 2(2) and the obligation to consult creates a common law duty of care and provides a basis in tort for the class members’ claims.

[73] The common law duty of care arises out of the fact that the 1965 Agreement is analogous to a third-party beneficiary agreement. Canada undertook the obligation to consult in order to benefit Indian Bands (and by extension, Indians living on the reserves, including children). The Indian Bands are not parties to the Agreement. But a tort duty can be imposed on Canada as a contracting party in these circumstances. As a leading contracts scholar explains:

There are...cases in which the tort duty owed to the third party appears to arise directly from the breach of contract. In recent English cases, for example, solicitors have been held liable to prospective beneficiaries for their failure to draw up a will or execute it properly. Such failures would constitute breach of contractual duties owed to their clients that could not be enforced in a contract claim by the prospective beneficiaries because of the third-party beneficiary rule. Their claim in tort, which avoids the third-party beneficiary rule, appears to flow directly from the initial breach of contract.³⁴

[74] Similarly here, the plaintiff’s claim in tort (the existence and breach of a common law duty of care) flows directly from the fact that at the time of entering the 1965 Agreement, Canada assumed and breached the obligation to consult with the third-party Indian Bands. If the circumstances of a solicitor drafting a will for the benefit of a third party beneficiary is “sufficient to create a special relationship to which the law attaches a duty of care”³⁵, the same should follow even more where there is not only a unique and

³³ *Lac Minerals*, *supra*, note 29, at 652.

³⁴ McCamus, *The Law of Contracts* (2nd ed.) at 315. And see Waddams, *The Law of Contracts*, (5th ed.) at 198 and *Whittingham v. Crease & Co.*, [1978] B.C.J. No. 1229; *Ross v Caunters*, [1980] 1 Ch. 297; and *White v. Jones*, [1995] 2 A.C. 207.

³⁵ *White v. Jones*, *ibid.*, at 276.

pre-existing “special relationship” based on both history and law but a clear obligation to consult the beneficiaries about matters of existential importance.

[75] I pause here to acknowledge that strictly speaking the third-party beneficiaries under the 1965 Agreement were the Indian Bands not the apprehended children – that is, not the class members. It is certainly open to Canada to take the position that the breach of the Agreement and the duty of care that flowed from this breach applied only to the Indian Bands and not to the removed Indian children. I remain confident, however, that such a formalistic argument, fully acceptable in the commercial context, will not be advanced in the First Nations context where notions of good faith, political trust and honourable conduct are meant to be taken seriously,³⁶ and where Canada’s breach of the 1965 Agreement was so flagrant.

[76] If I am wrong in my conclusion that the common law duty of care as alleged herein can be established under existing law as just described, and instead is better understood as a novel claim, I now turn to the analysis that applies when dealing with a novel claim.

[77] The applicable legal approach is the “two stage” analysis known as the *Anns-Cooper* test.³⁷ The first stage question is whether the facts disclose a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If this is established, a *prima facie* duty of care arises and the analysis proceeds to the second stage, which asks whether there are any residual policy reasons why this *prima facie* duty of care should not be recognized.³⁸

[78] In my view, under the first stage of the analysis, a *prima facie* duty of care is established. It is beyond dispute that there is a special and long-standing historical and constitutional relationship between Canada and aboriginal peoples that has evolved into a unique and important fiduciary relationship.

³⁶ As the Supreme Court noted in *R. v. Sparrow*, [1990] 1 S.C.R. 1075 at 1108: “[t]he relationship between the Government and aboriginals is trust-like rather than adversarial” and in *Manitoba Métis*, *supra*, note 30, at para. 77: “... an honourable interpretation of an obligation cannot be a legalistic one that divorces the words from their purpose.”

³⁷ The analysis set out by the House of Lords in *Anns v. Merton London Borough Council*, [1978] A.C. 728 (H.L.) was refined and applied by the Supreme Court of Canada in *Cooper v. Hobart*, 2001 SCC 79.

³⁸ *Knight v. Imperial Tobacco Canada Ltd.*, [2011] 3 S.C.R. 45 at para. 39.

[79] It is also beyond dispute that given such close and trust-like proximity it was foreseeable that a failure on Canada's part to take reasonable care might cause loss or harm to aboriginal peoples, including their children. As the Supreme Court noted in *Cooper v. Hobart*, by looking at the "expectations" and "interests involved" the court can evaluate "the closeness of the relationship between the plaintiff and the defendant" and can "determine whether it is just and fair having regard to that relationship to impose a duty of care in law upon the defendant."³⁹

[80] Even in the absence of section 2(2) and the obligation to consult, Canadian law, during the time period in question, "accepted" that Canada's care and welfare of the aboriginal peoples was a "political trust of the highest obligation."⁴⁰ And there can be no doubt that the aboriginal peoples' concern to protect and preserve their aboriginal identity was and remains an interest of the highest importance. As the Divisional Court put it: "[i]t is difficult to see a specific interest that could be of more importance to aboriginal peoples than each person's connection to their aboriginal heritage."⁴¹

[81] The content of the 1965 Agreement and Canada's clear obligation to consult and secure the signified concurrence of the affected Indian Band before the child welfare regime was extended to that reserve reinforces the conclusion that the proximity criterion is easily satisfied on the evidence herein and that it is indeed just and fair to impose a duty of care upon the defendant. All the more so when the focus of the extended child welfare regime was a highly vulnerable group, namely children in need of protection. I therefore find that a *prima facie* duty of care has been established.

[82] I can now turn to the second stage of the *Anns-Cooper* analysis. In my view, Canada has not advanced any credible policy consideration that would negate the common law duty of care. Canada says that imposing a duty on the federal government to provide essential information about aboriginal identity and federal financial benefits to the non-aboriginal foster and adoptive parents would "penalize Canada for having used its spending power to ensure that Ontario had the capacity to provide Indian children on

³⁹ *Cooper, supra*, note 37, at para. 34.

⁴⁰ In *St. Ann's Island Shooting and Fishing Club Ltd. v. The King*, [1950] S.C.R. 211 at 219, the Supreme Court described the aboriginal peoples as "wards of the state, whose care and welfare are a political trust of the highest obligation." The language used was paternalistic and condescending, but according to the Supreme Court it was the "accepted view" in the 1950's – a view that at the very least acknowledged the historic partnership between the Federal Crown and the First Nations and the importance of respecting the latter's way of life.

⁴¹ *Brown v. Canada (Attorney General)*, 2014 ONSC 6967 at para. 30.

reserves in need of protection with that very protection.” In my view, this submission does not succeed. Imposing a duty of care to provide said information would not have “penalized” anybody. All that would have happened in this case is that Canada would have provided the much-needed information in and around 1965 and not fifteen years later.

[83] I therefore find that a common law duty to take steps to prevent aboriginal children who were placed in the care of non-aboriginal foster or adoptive parents from losing their aboriginal identity has been established.

Answering the common issue

[84] In my view, the common issue must be answered as follows.

[85] For the reasons set out above, when Canada entered into the 1965 Agreement and over the years of the class period, Canada had a common law duty of care to take reasonable steps to prevent on-reserve Indian children in Ontario, who had been placed in the care of non-aboriginal foster or adoptive parents, from losing their aboriginal identity. Canada breached this common law duty of care.

Disposition

[86] The common issue is answered in favour of the plaintiff. Canada is liable in law for breaching a common law duty of care to the class members. This is not an issue that requires a trial.

[87] The class action now moves forward to the damages assessment stage. Counsel should schedule a case conference to discuss next steps.

[88] The plaintiff is entitled to the costs of this summary judgment motion. These costs are likely to be substantial. If the parties cannot agree on the costs I would be pleased to receive brief written submissions from the plaintiff within fourteen days and from the defendant within fourteen days thereafter. A brief reply from the plaintiff may follow.

[89] Order to go accordingly.

Justice Edward P. Belobaba

Date: February 14, 2017

*THIS IS EXHIBIT "14" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018*



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**PLAINTIFF'S DAMAGES RECORD
(Volume 1)**

April 28, 2017

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Counsel for the Defendant

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Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF MARCIA BROWN, also known as Marcia Martel

**I, MARCIA BROWN, also known as Marcia Martel, of Kirkland Lake, Ontario, MAKE
OATH AND DO SAY AS FOLLOWS:**

1. I am the representative Plaintiff. I know of the matters in this affidavit. If I reference information from 3rd parties, I believe that information to be true.
2. This affidavit outlines the evidence that I have caused to be presented concerning the damages claim.
3. The evidence includes reliable First Nations' community information on the number of Ontario Sixties Scoop survivors who were lost to their Bands. The Defendant Canada has no record of this number, as far as I can tell, and based upon information learned from my counsel. Although Canada expressly denied the pleaded number of 16,000 in its Statement of Defence, it has, to my knowledge, produced not a single record attesting to the actual number covered by the 1965 Canada-Ontario Agreement for the years 1965 to the end of 1984.
4. The evidence, therefore, concerning the number of survivors, is at Tabs 3 to 15 of the Record.
5. Also to my knowledge, and that of my counsel, and further relying upon knowledge from my mandate as an Ontario Chief, Canada did not, in fact, establish any financial trust agreements in spite of what their officials stated in the evidence that was previously filed in the case, as

noted at paragraphs 56 and 57 of the February 14th, 2017 decision of the Honourable Justice Belobaba.

6. I have not seen produced a single trust document within the thousands of pages Canada has produced since 2009, when the Honourable Justice Perell ordered the exchange of documentation in the possession of either party that was relevant to the case.
7. I entered into my pre-college years living in mainstream non-aboriginal society. Although attending college or university was certainly a fact of mainstream non-aboriginal society, I had no knowledge that Canada was responsible for paying all of my post-secondary education costs. I did not ever hear my adopting parents say anything to suggest that they were aware that this benefit existed.
8. It was only when I finally returned to my Band, Beaverhouse that I learnt of these entitlements from my community. At this stage I was already very behind in schooling. I had to go back and first complete high school before I could pursue any higher education. Had I known of this entitlement, my educational goals would have been different. I would have pursued a higher degree which would have afforded me better opportunities
9. I know of no survivor, whether adopted or placed in long-term guardianship with non-aboriginal parent caregivers, who knew that the benefit of free post-secondary accredited education exists for First Nations people. I certainly have much contact with Ontario survivors owing to my responsibilities as the representative Plaintiff and also, in my capacity, as a Chief. Financial responsibility for us ended when we turned 18, if not earlier, because we were no longer in anyone's legal guardianship.
10. At tab 23 to the Record is the expert opinion affidavit of Dr. Christopher Bruce and Kelly Rathje. I caused it to be commissioned to assist the Court. They provide a loss of lifetime income value to a university or college education. Their reports also look at the loss of housing allowances, health benefits, fishing and hunting entitlements, all of which were also available to survivors, but effectively denied because of Canada's failure to provide them and their guardians with information about their availability.
11. At tabs 16-21 are the observations of persons, whose evidence was previously filed in the case. These persons speak to the fact of the various entitlements. The evidence is from adopted and long term parent care-givers, adoptees and crown wards. All of them state that they had no knowledge of the financial entitlements.
12. At tab 2 is the further expert observations of Kenneth Denis Richard. Mr. Richard answered questions that were posed to him by my counsel.

13. I also adopt as evidence the paragraphs of the amended Statement of Claim insofar as they relate to material facts in my life. Although I eventually found my First Nations community, the years I lost have had a profound and irreparable impact on my being. The expert opinions of Drs. Bodnar and Armstrong, Mr. Richard and Vernon Harper at tabs 24-29, accurately describe part of my struggles when I lost a sense of belonging and cultural identity.

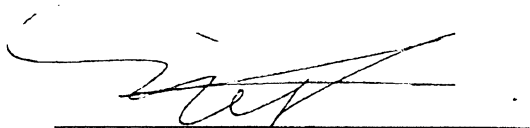
14. In my work with members of the Class, I have witnessed other survivors experience those struggles, as outlined in the expert reports, and as I also experienced. Unfortunately, most survivors have not had the same opportunity as I have had for re-connection. I have seen how this loss affects their capacity to trust, to believe in one's self and others, to enjoy a sense of comfort with intimacy, a capacity to concentrate or commit, and to live a life with a sense of hope and betterment.

15. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the City of
Greater Sudbury, in the Province of
Ontario this 26th day of April 2017.



A Commissioner for Taking Affidavits



Marcia Brown, also known as Marcia Martel

**Elizabeth Maria Schmidt, a Commissioner, etc.,
District of Sudbury, for Gerald D. Brouillette,
Barrister and Solicitor.
Expires January 8, 2020.**

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF KENNETH DENIS RICHARD
(sworn April 21, 2017)

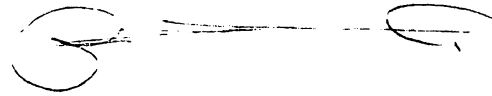
I, **KENNETH DENIS RICHARD**, of the City of Toronto, Province of Ontario, Social Worker and Adjunct Professor, MAKE OATH AND DO SAY and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I previously swore two affidavits in this matter, those dated March 23, 2009 and November 21 2016.
2. I attach an updated CV as Exhibit "A".
3. On March 29, 2017, Jeffery Wilson asked me to consider some further questions as set out in his letter to me, dated March 29, 2017. I attach his letter to me as Exhibit "B".
4. I answered his letter in my note of April 1, 2017. I attach my note as Exhibit "C", and adopt its contents.

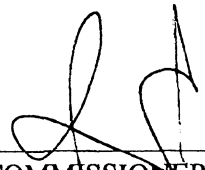
5. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at
the City of Toronto
in the Province of Ontario
this 21st day of April 2017

)
)
)
)
)
)



KENNETH DENIS RICHARD



A COMMISSIONER, ETC.

JUSTICE BRUNEAU

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KENNETH DENIS RICHARD
SWORN BEFORE ME THIS 21ST DAY
OF APRIL 2017

A handwritten signature in black ink, appearing to read 'JB', is written over the text 'OF APRIL 2017'.

A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE

KENNETH DENIS RICHARD

EDUCATION

- Master of Social Work, University of Manitoba, 1978
- Bachelor of Social Work (Honours), University of Manitoba, 1973

PROFESSIONAL EMPLOYMENT

Native Child and Family
Services of Toronto
30 College Street
Toronto, Ontario M5G 1K2

Executive Director
April 1988 - Present
Chief Executive Officer of Canada's First off
Reserve Native Child Welfare Authority.

The Municipality of Metro Toronto
Community Services Department
Policy and Planning Division
55 John Street, 9th Floor
Toronto, Ontario

Community Development Officer
April 1987 - April 1988
Social Planning, locality development, issue organizing
Liaison to community on policy, management,
funding, and service development.

Children's Aid Society of
Metropolitan Toronto
33 Charles Street East
Toronto, Ontario

Community Development Staff
September 1981 - September 1987
Duties similar to above with focus on child welfare
related community based service development.

Family Service Worker
1979 - 1981
Child protection/Abuse investigations.

Children's Aid Society of Winnipeg
114 Garry Street
Winnipeg, Manitoba

Intake Worker/Emergency after Hours
1973 - 1978 (Part-time)
Child protection/Abuse investigations.

The Knowles Centre
2005 Henderson Highway
Winnipeg, Manitoba

Team Leader/Social Worker
1975 - 1976
Residential treatment, staff supervision, case management
Focused on behavioural/developmental issues with
Aboriginal youth.

ACADEMIC APPOINTMENTS

University of Toronto
Faculty of Social Work
246 Bloor Street West
Toronto, Ontario M5S 1A1

Senior **Sessional Lecturer**, MSW/PhD. Program
"Cross Cultural Social Work Practice"
January 1992 - 2010
"Working with Communities and Organizations"
"Social Work with Aboriginal Peoples"
Sept. 2011-Present

Kenneth Denis Richard

Seneca College
Social Service Worker Program
1750 Finch Avenue East
North York, Ontario

Instructor, Diploma Program
“Community Studies”
April 1987 - April 1989
“Selected Social Issues”
January 1990 - April 1990

York University
School of Social Work
Fort Garry Campus
Winnipeg, Manitoba

Tutorial Leader, BSW Program
“Human Behaviour and the Social Environment”
September 1976 - May 1977

Trent University
Faculty of Native Studies
Peterborough, Ontario

Adjunct Professor, **Member**, PhD Program Advisory
Committee
1998-Present

RELATED ACADEMIC

- Developed and marketed training programs on cross cultural literacy and competence for human service professionals. Clients have included the Hincks, the Catholic Children’s Aid Society of Toronto, J.D. Griffin Centre, York Family Services, Dellcrest Children’s Centre, Children’s Aid Society of Hamilton-Wentworth and others.
- Have provided numerous workshops and panel presentations on Native Child Welfare and community development at professional forums across Canada, the USA and internationally.
- Have been recognized and have appeared as an “expert witness” to Parliamentary committees, Child Welfare proceedings, and have acted in the same capacity for various initiatives of both the Federal and Provincial governments.

MEMBERSHIPS

Varied and Active Participation and Leadership in a number of settings including:

- Director, Save the Children Canada;
- Anti-Racism, Multi-Culturalism, and Native Issues Committee, Faculty of Social Work, University of Toronto;
- Director, Institute for the Prevention of Child Abuse (1995);
- Aboriginal Child and Family Services Association of Ontario (Founding President);
- Toronto Aboriginal Social Services Association (Past Chairperson);
- International Society for the Prevention of Child Abuse and Neglect (Chicago)
- Director, Defence of Children International (Geneva);
- Community Reference Group on Ethno-racial Access to Metropolitan Toronto Services (1996);
- Toronto Task Force on Access and Equity;
- National Advisory Group, Canadian Institute of Child Health;
- Opportunity Planning Provincial Task Group (Chair, 1993);
- Director, Toronto Child Abuse Centre (2001)
- Vice President, First Nations Child Caring Society (current)
- Director, Child Welfare League of Canada (current)
- Sub Committee on Indigenous Children, United Nations

PUBLICATIONS

- “Holism in Social Work: The Differential Impact of Professional Orientation on Practice Methodologies”, **M.S.W. Thesis**, 1978.
- “Native Culture and the Child and Family Services Act”, **O.A.P.S.W. Journal**, 1989.
- “Native Family Well-Being in Urban Settings: A Culture Based Service Model”, **Native Child and Family Services of Toronto**, 1990 (collective authorship).
- “Sexual Abuse on Toronto’s Native Community” **O.A.C.A.S. Journal**, summer, 1991.
- Book Review; “Without Reserve: Stories from Urban Natives”, Lydia Shorten, NuWest Press, Edmonton, 1992 in **O.A.P.S.W. Journal**, 1993.
- “The Urbanization of Native Canada”, **Perception**, Canadian Council on Social Development, Vol. 17, No.4, 1994. Also in “**Images: Canada through Literature**”, John Borovilos, Ginn Canada, 1996.
- “A Commentary Against Intercultural Adoption “ **First Nations Child and Family Review**, Vol.1, No. 1, 2004
- “Toronto Native Agency Makes Child Welfare History” **Journal of the Ontario Association of Social Workers**, Vol.31, No. 3, 2004
- “Remember the Children: Understanding the Overrepresentation of Aboriginal Children in the Child Welfare System”, Multiple Authors, **Assembly of First Nations**, 2011
- “The Other Side of the Door: Working with FNMI People in Child Welfare”, **Ontario Association of Children’s Aid Societies**, 2015

AWARDS

- Torch Bearer, Torch Relay, Toronto Pan Am/Parapan Am Games, 2015
- Diamond Jubilee Medal, Queen of England, 2012
Presented in recognition of community service in honor of the occasion of the Queen’s Anniversary.
- Aboriginal Affaires Award, City of Toronto, 2010
Presented in recognition of many years of community service
- Chief of Police Community Service Award, 1995
Presented in recognition of work done to further police/community relations.
- Salute to the City Award, Toronto Eaton Centre, 1997
Presented in recognition of contribution in making Toronto the best large North American city (Fortune Magazine) in which to live.
- Civic Award of Merit, 1997
This is the highest award bestowed by the City of Toronto and recognizes contributions to improving the quality of life in Toronto.
- Ruth Hindmarsh Atkinson Award, 1998
The largest of its kind in Canada, this award of \$50,000 was granted to Native Child And Family Services of Toronto in recognition of the “best practice” nature of the Prevention programs developed during my tenure as Executive Director.

OTHER RELATED

- Federal Security Screening Certificate Protected A, B, C.
- Have been engaged as a third party reviewer by the Auditor General of Canada Concerning Child Welfare Services in the Yukon and the north West Territories, and both the Province of Saskatchewan and Alberta in their internal reviews of their child welfare systems. All such reviews were high level and my specific expertise related to the efficacy of Aboriginal Services.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF KENNETH DENIS RICHARD
SWORN BEFORE ME THIS 21ST DAY
OF APRIL 2017

A handwritten signature in black ink, appearing to be 'JB' with a large flourish, positioned over the text 'OF APRIL 2017'.

A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE



JEFFERY WILSON

Certified by the Law Society of Upper Canada
as a specialist in family law

jeffery@wilsonchristen.com

direct 416 956 5622

March 29, 2017

Kenn Richard
Executive Director
Native Child and Family Services of Toronto
30 College Street
Toronto, Ontario
M5G 1K2

Dear Mr. Richard:

**RE: Brown and Canada (Attorney General of Canada)
Our Matter No. 3127**

I am writing to respectfully seek out your further expert opinion as this case enters the damages inquiry.

We would ask you that you review your prior affidavits which we enclose.

I would ask you to draw upon your experience to consider a report that is responsive to the following questions:

1. How does the nature of the harm experienced by a survivor of loss of cultural identity compare with those survivors of the residential schools' experience who were *not* the subject of catastrophic physical or sexual abuse harm?
2. What distinction, if any, exists between the harm experienced by an adopted child and a long-term permanent crown ward with no access to his cultural identity by reason of the permanent crown ward/no access status?
3. Is this harm "permanent" in nature? Does it constitute a permanent loss? Are the survivors able to re-integrate and successfully secure a remedy for the harm?
4. Is there a preferred aboriginal approach for such remedy as may exist, if, in your opinion there is a remedy? If there is a preferred aboriginal approach, what does it involve? Over what length of time?

- 2 -

5. Can you give us an estimate of the number of survivors of the 60's Scoop for whom you have provided therapeutic services, and if so, can you estimate the percentage of those survivors who attended and completed post-secondary education?

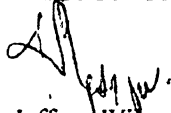
If you are relying upon sources other than yourself drawn from your experience, please provide their names and publications, if any.

You may look to our offices for satisfaction of your reasonable account for services rendered.

We are looking to receive this report before the end of April, 2017.

Yours sincerely

WILSON CHRISTEN LLP



Jeffery Wilson

JW/jld

Enclosures

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF KENNETH DENIS RICHARD
SWORN BEFORE ME THIS 21ST DAY
OF APRIL 2017

A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE

April 1, 2017

Dear Mr. Wilson,

I am answering your recent note of March 29th. As circumstances are taking me out of the country allow me to answer your questions with brevity and with, I hope, an option to elaborate further on my return. I will be returning toward the end of this month and can meet with you as required to assist the Court. My answers are in number form corresponding to your questions, as follows:

1. On the question of whether the harm experienced by a survivor of cultural identity loss compares with the harm experienced by residential schools survivors who were not abused.

Based on my experience the harm is similar but even more severe for children in foster care and adoption. Of course individual experience and resilience within each child is variable the fact is that fostered/adopted children most often were not allowed to return home at any time during their placements. This is very significant as their alienation was most profound, forcing them to be strangers in their own skin and strangers to their natural families and communities, if or when they ever came to return home. Indeed I have seen very few successful integration of families after the fact of long term care with no access.

2. On the question of distinction between the harm experienced by children in adoption placements and those in no access foster care.

Their identity issues, especially for adopted children, were made even more problematic for them as they were also expected to assimilate into the culture of the adopted family. This created even more confusion and anxiety for children, especially as they reached adolescence. Children in long term foster care were in a somewhat different situation but in the end forces played out such that both share the same set of issues. Neither had appropriate reference points for successful identity formation.

3. On the question of permanent harm and permanent loss and can they reintegrate and secure a remedy?

The harm and loss are permanent realities as they can never live, or be, as if they were never removed. The harm however can be ameliorated to some extent by therapeutic interventions that create clinical space for the child (now adult) to work through their issues with a skilled counselor. Whether this constitutes a remedy is up to each individual to say but in my view it's rare that those affected find total relief. Their quest for resolution seems life long and most often unresolved.

As to reintegration my experience tells me that this is difficult and mostly unsuccessful if the measure of success on becoming a fully participant member of a family and community. You cannot go back to a life you never had is a simple way to put this.

4. On a preferred Aboriginal approach.

There is a consensus among those who work with this population that culturally safe and supportive services, provided by Aboriginal practitioners, can be very beneficial. Using a combination of Western, in this case so called Narrative therapies, and Traditional approaches, ceremony, sweat lodge, talking and healing circles and the like, practitioners can help their clients establish a resolved identity that will serve them in the navigation of the world they find themselves in. This is mostly about helping people cope with long term trauma and for a lucky or resilient few it can lead to resolution. It's a long-term process with no quick fix.

5. On the question of number of survivors of the sixties scoop to whom we have provided services and the number who have graduated from a secondary school.

Our agency has been providing clinical support to Indigenous people in Toronto since the early nineties. Of the roughly 250 open cases in a given year I would state that the majority spent some time as children in substitute care, many in permanent adoption/foster care.

Our youth drop on Yonge St., in downtown Toronto, has catered to the needs of homeless and street involved youth for over twenty years. At one point in the late nineties I polled my staff on the number of youth attending who were adoption and foster care breakdowns, youth who had terminated their placements and were on the street. Remarkably and tragically I was told that 9 of 10 in our program at the time were survivors of the child welfare system.

Graduating from high school is elusive for Aboriginal people in general and for this particular population it's even more rare. Graduating from secondary schools is rarer still.

Respectfully Submitted

Kenn Richard, MSW

Court File No. CV-09-372025-CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN ~~and~~ ROBERT COMMANDA

Plaintiffs

- and -

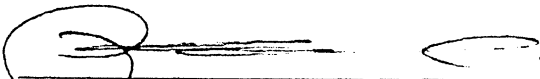
THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Kenneth Denis Richard. I live in the City of Toronto, Province of Ontario.
2. I have been engaged by or on behalf of the Plaintiff, Marcia Brown, to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: April 21, 2017


Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF VICKY HARDISTY

(sworn March 2, 2017)

I, **VICKY HARDISTY**, of the Timmins, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS**, and where I have received information from a third party, with the person so identified, I believe the information be true:

1. I am 49 years old. I was formerly the executive director of Kuuwanimano Child and Family Services, a First Nations child and family service agency in northeastern Ontario, operating out of Timmins.
2. I have been working in the field of child welfare services for approximately 17 years.
3. Jeffery Wilson, counsel to the representative Plaintiff in the court case *Brown v. Canada* has asked me to draw upon my experience to give an estimate as to the number of children the Bands in north eastern Ontario lost before 1985 and the then proclamation into effect of the *Child and Family Services Act*, with all of its amendments designed to provide greater inclusion of our Bands before a child was removed so as to enable our children to receive necessary help without removal.
4. There were 16 Bands/First Nations Communities served by the two Agencies, namely Payukotayno James and Hudson Bay Family Services and Kuuwanimano, and so I limit my consideration of the question to those Bands/First Nation Communities.

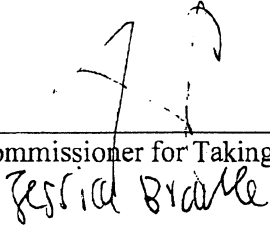
- 5. For the purpose of considering the estimate, I am using recollection as to the work I did with the victims in our agency, victims as children before removal, and then as adults or as parents of children years post-removal.
- 6. It is not that hard for us to estimate because the Band society was very closely-knit, and the experience of the Sixties Scoop was a trauma for our community, and so something that the Bands in Ontario experienced as I also know from my work and meetings with colleagues throughout the province. This was the major concern for us working in the trenches of helping our children during the years in question and thereafter in terms of how to help the children.
- 7. I estimate that before 1985, our Bands in this part of the province lost at least 8000 children, and that this represented approximately 30 percent of the Band's children. This percentage is consistent, as well, with my observations that in any First Nations Family of 4 or 5 children, at least 2 would be removed and lost. (I add that we could not ever figure out how it was decided which children would be removed and why, if the children removed were in need of protection, children of the same family were left behind, indeed children who were younger and more vulnerable).
- 8. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 2nd day of March 2017.

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 VICKY HARDISTY

 A Commissioner for Taking Affidavits



Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF THERESA STEVENS

**I, THERESA STEVENS, of Toronto, Province of Ontario, MAKE OATH AND DO SAY AS
FOLLOWS:**

1. I have worked in the field of First Nations child protection/child welfare in Ontario for more than 20 years, and as such, have knowledge of the matters hereinafter deposed. If I reference information from 3rd parties, I believe that information to be true.
2. My work in the field involved the following positions:
 - Weechi-it-te-win Family Services as Family Counselor and Resource Manager
 - Executor Director of Anishinaabe Abinoojii Family Services, a mandated agency that provides child welfare and prevention services to 14 First Nation communities in the Treaty 3 area, for over 12 years;
 - Executive Director of the Association of Native Child and Family Service Agencies of Ontario
3. This work was done in Northwest Ontario, and involved services to approxir First Nations Communities.

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF ADOLPHUS CAMERON

I, ADOLPHUS CAMERON, of WhiteDog, Province of Ontario, MAKE OATH AND DO SAY AS FOLLOWS:

1. I have worked in the field of First Nations child protection/child welfare in Ontario for more than 15 years, and as such, have knowledge of the matters hereinafter deposed. If I reference information from 3rd parties, I believe that information to be true.
2. My work in this field involved the following positions:
 - Executor Director of Wabaseemoong Child Welfare Authority;
 - Agency worker for protection/prevention services for band members of Wabaseemoong Independent Nation; and
 - Childcare worker for a First Nations Organization, namely, Browndale, which serviced First Nations Communities in North Western Ontario.
3. This work was done in northwestern Ontario, and involved services to approximately 24 First Nations Communities.
4. I have also held leadership roles within my own community, Whitedog. I acted as band councillor for approximately three terms.

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF ROY THUNDER
(sworn March 28th, 2017)


I, Roy Thunder, of the City of Thunder Bay, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I have worked with First Nations Communities and in various capacities in Northern Ontario for more than over 45 years.
2. Previously I worked as the Executive Director of Reverend Tommy Beardy Memorial Wee Che He Wayo Gamik Family Treatment Centre. I began working as Youth Counsellor, I then moved to Family Counselling, Treatment Director and then acted in the Executive Director position with the Family Treatment Centre for six years.
3. During the Sixties scoop I was employed by the Kenora District Children's Aid Society. The work I did there serviced North Western Ontario, and involved approximately 18-20 First Nations Communities.

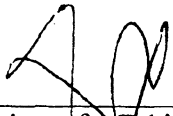
- 4. I witnessed the tragic impact that the Sixties Scoop had, and continues to have, upon First Nations families and communities.
- 5. I have been asked to apply my experience from the work I did in these communities, over the many years, and give my best attention to estimating the number of children lost from the Kenora, Treaty Three, District during the 60's and 70's and early 80's, children apprehended. I estimate that at least 10,000 children were taken before 1985.
- 6. To make this estimate I did not review any records. I do not believe we had records.
- 7. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Thunder Bay,
 the Province of Ontario,
 this 28th day of March 2017.

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 Roy Thunder



 A Commissioner for Taking Affidavits
 Jessica Bravada.

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF STAN BEARDY
(sworn March 24th, 2017)**

I, Stan Beardy, of the Town of Thunder Bay, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I was a Chief of Muskrat Dam First Nations between 1979 and 1984. Thereafter, I was elected and acted as Chief of Muskrat Dam from 1993-1998, Grand Chief of NAN from 2000-2012, and Regional Chief of Ontario from 2012-2015. I continue to serve my community to this day and hold the position of Chief of Muskrat Dam First Nations.
2. Throughout my many years of work in the First Nations Communities I worked closely with the surrounding communities from Treaty Nine, Treaty Five, and Treaty Three. For example some of the communities I worked with and served include: Bear Skin Lake, Big Trout Lake, Kassibonkia, Round Lake, North Spirit, and Sandy Lake.


- 3. I have been asked to give my best attention to estimating the number of children lost from the Kenora, Treaty Three, District during the 60's and 70's and early 80's, children removed. I estimate that at least 10,000 children were taken before 1985.

- 4. We have no records. We left this task to the government, as they were in charge, but it was never done.


- 5. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the Town of Thunder Bay,
 the Province of Ontario,
 this 24th day of March 2017.

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 Stan Beardy



 A Commissioner for Taking Affidavits
 Jessica Brande.

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF TOM KIOKE
(sworn March 24, 2017)

**I, TOM KIOKE, of Cochrane, Province of Ontario, MAKE OATH AND DO SAY AS
FOLLOWS:**

1. I am an Elder of the Taykwa Tagamou Nation, in the Cochrane District near James Bay. For many years I lived in the Moosonee District which is one of approximately 13 First Nation Communities in the Cochrane District.
2. While living in the Moosonee District in the 60's, I provided services to the Children's Aid Society as a translator. Because of my work experience, I have knowledge of the matters hereinafter deposed. If I reference information from 3rd parties, I believe that information to be true.
3. Applying my work experience, and life experiences, from living in these communities, I have been asked to give my best attention to estimating the number of children we lost from Moosonee district during the 60's and 70's and early 80's, children removed from our reserve and never returned.

- 4. Although I cannot be exact with the time period, I believe we lost not less than 1,500 children before 1985. This number represents the children lost in Moosonee district which is only one of 13 First Nations communities in the Cochrane district, located in North Eastern Ontario.

- 5. I have not examined any records of the agencies where services were delivered to provide this number. In fact, I do not believe any records exist. Our community kept no records because we thought the government would take care of that.

- 6. The way Children's Aid Society removed the children was done with little rhyme or reason. I also observed that it was done in a rush and without much thought for the consequences. For example, with little or no notice, the Children's Aid Society would call me up and request my assistance. They would enter the community in the evening, remove the children, and be gone by the time the train left the next morning. It made little sense.

- 7. I make this affidavit in good faith and for no improper purpose.

Handwritten initials and scribbles

SWORN BEFORE ME at the City of)
 Toronto, in the Province of)
 Ontario this 24th day of March 2017.)
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Handwritten signature of Tom Kioke

 Tom Kioke

Handwritten signature of Jessica Bravole

 A Commissioner for Taking Affidavits
 Jessica Bravole

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF WILMER NADJIWON
(sworn March 21, 2017)**

I, Wilmer Nadjiwon, of the Town of Wiarton, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I was a Chief of Chippewas Nawash in 1964 and for 14 years after.
2. I have been asked to give my best attention to estimating the number of children we lost from our Nation during the 60's and 70's and early 80's, children taken off our reserve and who disappeared.
3. I have given this great thought. We have no records. We had the impression that Canada would keep the records so that our children could know one day of their history. This did not happen.
4. I estimate that over the years, we lost not less than 2,500 children from our reserve.

5. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
at the Town of Warton,
the Province of Ontario,
this 21st day of March 2017.

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Wilmer Nadjiwon
WILMER NADJIWON

AP

A Commissioner for Taking Affidavits

Jessica Brant

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF HOWARD JONES
(sworn March 21, 2017)

I, **HOWARD JONES**, of Wiarton, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I was a Band Councillor for my reserve, namely, Chippewas Nawash, during the years 1965-1985. I remained a Band Councillor member for over 15 years.
2. Responding to the question as to the number of our lost children during the Sixties Scoop, I answer as follows:
 - i) To the best of my recollection we kept no records;
 - ii) We kept no records because it was represented to us that Canada would keep the records and would honour the status of the children removed as "Indians" under the *Indian Act*, in respect of which they would not lose the benefits by reason of their removal and placement in homes led by non-Aboriginal long term or adopting parents;

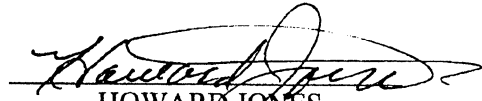
- iii) It was our understanding that the children removed would still receive the capital funds, held in trust by the federal government, when they reached the age of 21. I do not know a single child who was removed and received funds from those kept in trust;
- iv) My estimate is that over the years of the 60's scoop, although I cannot be exact with the time period, we lost approximately 2500-3000 children this way, which represented about 10 percentage of our population; and
- v) Compared to the reserves in Ontario, we are a smaller community, and therefore what we endured was significantly less than what losses of children those Bands experienced.

2. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME

at the Town of Warton,
the Province of Ontario,
this 21st day of March 2017.

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HOWARD JONES

A Commissioner for Taking Affidavit

Jessica Brantley

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF JOHN PAISHK
(sworn April 3, 2017)**

I, John Paishk, of the Town of Whitedog, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I am Chief of Whitedog First Nations Community. I have been acting as chief for two terms. Previously, I served as Band councillor and Band manager. I have been acting in some leadership capacity for my community since 1979.
2. I have been asked to give my best attention to estimating the number of children lost from our community during the 60's and 70's and early 80's, children removed. I estimate that at least 1,500 children were taken before 1985. I estimate this represented approximately 30-50% of our population.
3. We have no records of this. I give my information simply from what I observed and from the many years of work in my community.

- 4. It was strange the way they selected the children from our community. It seemed that the Children's Aid workers made up the rules, with no real rational. They never explained their methodology to us. And although the Children's Aid Society told us that they would return the children, no matter what the parents did, no child was ever given back.

- 5. I make this affidavit in good faith and for no improper purpose.

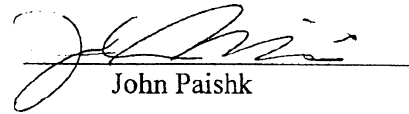
SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 3rd day of April 2017.



 A Commissioner for Taking Affidavits

Jessica Brande

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 John Paishk

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

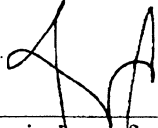
**AFFIDAVIT OF NORMAN STINSON
(sworn April 5, 2017)**

I, Norman Stinson, of the Town of Rama, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I was a Chief of Chippewas Rama in 1968 and for 13 terms after.
2. Chippewas of Rama is part of Chippewas Tri-Council. This alliance represents the Rama, Georgina and Christian Island communities. Throughout the years I have done work in all these surrounding communities.
3. I have been asked to give my best attention to estimating the number of children we lost from our Nation during the 60's and 70's and early 80's, children taken off our reserve and surrounding communities and who disappeared.
4. We have no records because we thought Canada kept them. I estimate that over the years, we lost not less than 1,500 children from our communities.

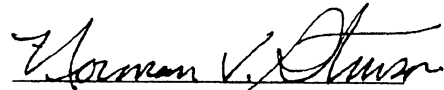
- 5. Our numbers of lost children were lower than the Bands in northern Ontario. As another estimate, we lost about 40-50% of our children during those years.
- 6. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the Town of Rama,
 the Province of Ontario,
 this 5th day of April 2017.



A Commissioner for Taking Affidavits
Jessica Brande

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NORMAN STINSON

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

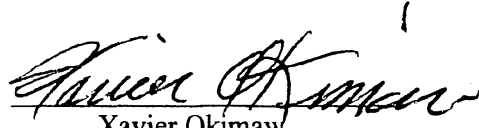
**AFFIDAVIT OF XAVIER OKIMAW
(sworn March 24, 2017)**

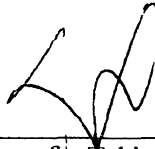
I, Xavier Okimaw, of the Town of James Bay, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I am an Elder of the Attawapiscat First Nation Communities, located in Northern Ontario. I have been living on my reserve for 81 years.
2. I have been asked to give my best attention to estimating the number of children we lost from our Nation during the 60's and 70's and early 80's, children removed from our reserve and never returned. We were never told why these children were taken, but once gone, they were lost forever.
3. I cannot be exact with my estimating but I believe we lost approximately 600 of our children before 1985.
4. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
at the Town of James Bay,
the Province of Ontario,
this 24th day of March 2017.

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)
)


Xavier Okimaw



A Commissioner for Taking Affidavits

Jessica Brewer

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF EDWARD EDMOND JOSEPH
(sworn March 24, 2017)

I, Edwards Edmond Joseph, of the Town of James Bay, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS** and where I have received information from a third party, with the person so identified, I believe the information to be true:

1. I was a Band Councillor of Fort Albany First Nation between 1969 and 1980. I continue to live on this reserve and act as an Elder for my community.
2. I have been asked to give my best attention to estimating the number of children we lost from our Nation during the 60's and 70's and early 80's, children removed from our reserve and never returned.
3. Our community is one of the smaller ones in Northern Ontario. Our population is approximately 950. Although I cannot be exact with the time period, I believe we lost approximately 50 percent of our children's population before 1985. We have no records; I know this information because I observed it.

4. I also observed them coming into our community without telling us. We called them the "kidnappers" because they would take our kids and we would never see them again. It was tragic.

5. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME

at the Town of ~~Kenora~~, Thunder Bay E.E.)
the Province of Ontario,)
this 24th day of March 2017.)
)
)
)
)

Edward Edmond Joseph
Edward Edmond Joseph

A Commissioner for Taking Affidavits

Jessica Brawley

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF BRENICE LAZORE

I, Bernice Lazore, of Cornwall Island, Province of Ontario, MAKE OATH AND DO SAY AS FOLLOWS:

1. I am a member of the First Nations Community Akwesasane. I have been involved and worked, in many capacities; on my reserve for many years, and as such, have knowledge of the matters hereinafter deposed. If I reference information from 3rd parties, I believe that information to be true.
2. Between 1963-1967 I worked for the Welfare Agent, specifically; Mr. J.M. Pauze. Mr. Pauze was responsible for removing the children from the Akwesasne Reserve. I also worked as the District Chief for my reserve throughout the 70's.
3. As a result of my work in my community during the 60's, 70's and early 80's, I was witness to the Sixties Scoop as well as the impact it had on our people. I have been asked to give my best attention to estimating the number of children we lost from our Nation during this period.

- 4. I estimate that over the years, we lost not less than 3,000 children from our reserve.

- 5. I have not examined the former records of the agencies where services were delivered to provide this number. I have focused on my recollection of our cases, planning meetings for the delivery of services, meetings with the Welfare Agents, Chiefs and Band committees that experienced the traumas and aftermath of the Sixties Scoop.

- 6. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the City of)
 Cornwall, in the Province of)
 Ontario this 18th day of April 2017.)

JA

 A Commissioner for Taking Affidavits

Justica Bravide

Bernice Lazore

 Bernice Lazore

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF MARCIA BROWN, also known as Marcia Martel
(sworn May 15, 2009)

I, **MARCIA BROWN**, also known as Marcia Martel, of ^{KIRKLAND LAKE (73)}~~Timmins~~, Ontario, MAKE OATH
AND SAY:

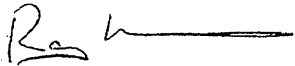
1. I am one of two of two representative Plaintiffs in this action against the Attorney General of Canada, who I understand to be the representative of the Defendant federal Crown.
2. On January 30, 2009, I formalized the retainer agreement with my counsel.
3. Exhibit "A" is a copy of the Statement of Claim that has been issued. It accurately sets out the facts of my case, and this proposed class proceeding.
4. I truly believe that I can fully and adequately represent the interests of the class. I have studied and understand the issues in this case. I believe I understand the nature of the evidence that will be advanced to demonstrate the harm the class members have suffered. I do not have a conflict with the interests of any of the class members. In fact, we share common issues. I have reviewed and approved my counsels' plan for the proceeding that sets out a workable method of

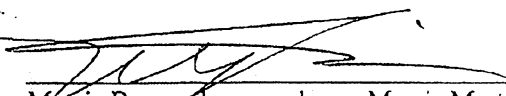
advancing the claims on behalf of the class and the steps, we the Plaintiffs, can take to notify class members of the proceeding. Exhibit "B" is a copy of the plan. With the communications I have had to date, I believe we will have the support of the Band Chiefs and the pre-mandated and mandated Indian Child and Family Services throughout Ontario. The Band Chiefs did pass a resolution on November 20, 2008 supporting our claim. Exhibit "C" is a copy of the resolution.

5. I believe, however, that the Defendant, through the Department of Indian Affairs and Northern Development, has the most comprehensive registry of status on-reserve and off-reserve Indians in Ontario during the class period and currently. I therefore ask that the Defendant be required, at its own cost, to disseminate the fact and nature of this action and of the class constituency to all registered status and non-status Indians in Ontario and do so in a manner as this Court does direct.

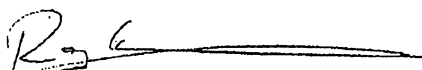
6. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the
City of ^{Timmins} ~~Timmins~~, in the Province
of Ontario this 15 day
of May 2009.


A COMMISSIONER, ETC.
RAYMOND A. WARMAN LL.B.


Marcia Brown, known also as Marcia Martel

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF MARCIA BROWN
SWORN BEFORE ME, THIS 15 DAY
OF MAY 2009



A COMMISSIONER FOR TAKING AFFIDAVITS

CV-09-00372025-00CP

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

-2-

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

Date February 9th, 2009

Issued by *A. Chisholm*
Local registrar

Address of 393 University Avenue
court office 10th Floor
Toronto, Ontario
M5G 1E

TO: THE ATTORNEY GENERAL OF CANADA
Suite 3400, Exchange Tower
Box 36, First Canadian Place
Toronto, Ontario
M5X 1K6

CLAIM

1. The Plaintiffs claim:

- (a) An Order certifying this proceeding as a Class Proceeding pursuant to the Class Proceedings Act and appointing the Plaintiffs as Representative Plaintiffs for the Class;
- (b) A declaration that, by reason of the events described in this action, the Defendant owed and was in breach of its non-delegable fiduciary obligation, duty of care and protection of aboriginal rights, and did commit the actionable wrong of identity genocide of children;
- (c) Non-pecuniary and general damages in the amount of \$50,000.00 for each Class Member;
- (d) Pecuniary and special damages in the amount of \$25,000.00 for each Class Member;
- (e) Punitive, exemplary and aggravated damages in the amount of \$10,000.00 for each Class Member.
- (f) Prejudgment and post judgment interest pursuant to s.128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43 (as am.);
- (g) Substantial indemnity costs; and
- (g) Such further and other relief as this Honourable Court deems just.

Definitions

2. In this claim:

-4-

- (a) "aboriginal", "aboriginal rights", "aboriginal children" are persons with rights protected by the *Constitution Act, 1982*, section 35;
- (b) "Agreement" , "the Agreement" refer to "The Canada-Ontario Welfare Services Agreement", Treasury Board Minute Dated December 1, 1965, P.C. 1965-11/2135.
- (c) "Canada" refers to the Defendant, the Government of Canada as represented by the Attorney General of Canada;
- (d) "Class" or "Class Members" refer to the approximately 16,000 aboriginal persons who, as children in Ontario, were exposed to the consequences of the Defendant's breach of fiduciary obligation, duty of care and protection of aboriginal rights and identity genocide during the Class Period, excluding those who were members of the Class in action 00-CV-192059CP in the Ontario Superior Court of Justice (i.e. Residential Schools' Abuse Class Action);
- (e) "Class Period" means December 1, 1965 to December 31, 1984.
- (f) "constitutional obligations" refer to the obligation of Canada pursuant to section 91(24) of the *Constitution Act, 1867* and the *Indian Act* and section 35 of the *Constitution Act, 1982*;
- (g) "identity" in this claim refers to the culture, social, linguistic, customs, traditions, and spirituality that a child enjoys and necessarily exercises as a member of a particular family, extended family and community which make up the child's distinguishing character or qualities;
- (h) "identity genocide of children" means the damage or harm caused by the deliberate creation and implementation of policy, program and practices that systemically attempt to eradicate the particular cultural, social, linguistic, customs, traditions, and spirituality of the child's indigenous family, extended family and community;
- (i) "Indian" has the same meaning as in the Indian Act, and "native" means a person who was a member of an aboriginal community but was not a member of an Indian band and was not a registered Indian under the Indian Act.
- (j) "Indian Act" means the Indian Act, R.S.C. 1985, c.1-5
- (k) "international convention law" includes the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.
- (l) Ontario refers to the Province and Government of Ontario;

3. The Plaintiffs, Marcia Brown and Robert Commanda, reside in Ontario and are aboriginal and Indian or native persons, and are proper representative plaintiffs on behalf of the Class. At all material times both resided in Ontario and, as children, suffered the consequences of the Defendant's breach of fiduciary obligation, duty of care and protection of aboriginal rights.
4. The Class is made up of approximately 16,000 aboriginal and Indian or native persons known within aboriginal communities and Bands in Ontario as children who experienced the events resulting from the Defendant's breach of fiduciary obligation, duty of care and protection of aboriginal rights during the Class Period because, as children, they were removed from their indigenous family, extended family and community and exposed to the deliberate and prolonged implementation of systemic child welfare policy, practices and programs described herein.
5. The Defendant, Attorney General of Canada, represents the federal government of Canada ("Canada").
6. On December 1, 1965, Canada entered into the "Canada-Ontario Welfare Agreement" whereby Canada delegated the provision of child welfare services to Ontario. Within Canada, the only jurisdiction willing to enter into such an agreement was Ontario. The Agreement was the culmination of prior delegation of arrangements for Indian child welfare services by Canada and Ontario beginning in the mid-1950s. The Agreement meant that authorities other than Canada became directly responsible for the delivery of child welfare services to Indian children exclusively in Ontario. As a result, Indian or native children in Ontario, who were apprehended and removed from their indigenous family and community, were placed in the care of non-Indian and non-native adoptive or foster homes where they were systemically denied the opportunity to preserve their identity.
7. The 1965 Canada-Ontario Welfare Agreement constituted an improper and unlawful delegation of Canada's constitutional obligations, the consequence of which was identity genocide of children targeted at Indian families and communities in Ontario.

-6-

8. Indian children and their families were entitled to a special duty of care, good faith, honour, honesty and loyalty from Canada pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Indian children who were particularly vulnerable.

9. The systemic practices, programs and policy implementation giving rise to identity genocide for the Class effectively ended on January 1, 1985 with the coming into force of the *Child and Family Services Act*, S.O. 1984, c. 55. This legislation, amongst other things, gave necessary status to the native or Indian community in all child welfare decisions concerning Indian or native children, and served as a necessary correction to Canada's breach of its duties. Ontario, having recognized the consequences of Canada's failure to protect the identity of native or Indian children, amended its legislation within its constitutional authority over child welfare.

10. The Plaintiff, Marcia Brown ("Brown"), was born on June 7, 1963 as Sally Susan Mathias, a member of the Temagami First Nation from the Beaverhouse Community, near Kirkland Lake, Ontario.

11. When Brown was 4 or 5 years old, a children's aid society removed her and an older sister from their family. The family consisted of five other siblings, a mother and father, extended maternal and paternal relatives, and an indigenous Indian community. She was later adopted at the age of 9.

12. Thereafter, and until she was 17½ years old, Brown was denied any reasonable contact with her family, relatives and community. Brown was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of her family of birth. She lost the use of the only language she spoke before she was removed. She lost all contact with the other sister who was removed with her. Her name was changed when she was adopted. Her child rearing was as a non-native, non-Indian person with no reference at all to her identity as an Indian.

-7-

13. At the age of 17½ years, her adoptive mother put Brown on a plane. She was residing then in the U.S.A. Her adoptive parent caused her to be sent away to North Bay, Ontario.
14. When she was sent away, the only personal items she had, besides the clothing she wore, were the clothes she had when she had arrived at the non-Indian adoptive home years earlier.
15. Upon arrival in North Bay, Ontario, Brown had no identity as an Indian or native person. She had no legal papers that recognized her status as an Indian or native person. She had no capacity for integrating with the persons to whom she was returned; namely her Indian family, relatives and community.
16. In these circumstances, Brown found that she was unable to cope. She was an Indian but had no capacity to exercise an identity, let alone exercise membership in an Indian family and community. She formed an ambivalent, awkward and angry connection to mainstream non-native society, and as a result, Brown floundered and struggled.
17. As a child, the authorities or persons in charge or care of her gave Brown no information as to her birth name and no information enabling her to make contact with her identity and her Indian family, extended family and community. When she turned 18, Canada took no steps to provide her with any information or documentation that would enable her to have access to her adoption records, the adoption order, or any documentation that would enable her to exercise the benefits available to her under the *Indian Act*, R.S. C. c. I-5.
18. With the help of others, Brown searched for her records as an Indian person. She discovered that, according to the Registrar-General in charge of such records, Sally Susan Mathias was dead. She was not prepared in any way for the process of re-claiming her status.
19. Robert Commanda ("Commanda") was born Bruce Edward Robert Joseph Commanda on March 28, 1959 in Haileybury, Ontario.

-8-

20. A local children's aid society removed him and three brothers from their home in or about 1961, when he was two years old.
21. Commanda was not adopted. He lived in foster homes in Ontario throughout his childhood. He was raised by non-native non-Indian persons with no reference ever made to his native or Indian culture or identity.
22. Commanda was denied any reasonable opportunity to maintain contact with his Indian family, relatives and community. Commanda was also denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of his family of birth and community. Commanda entered adulthood with no knowledge or experience of what it meant to be an Indian.
23. In none of the places where he lived was Commanda offered any opportunity to know of or maintain his cultural identity. No one caring for him showed him pictures or related to him any information about his Indian family, extended family and community.
24. During his childhood Commanda was not registered as a member of his paternal or maternal Indian families and Bands, although there was a large extended maternal family located at the Dokis Reserve in Monetteville, Ontario and a similarly large extended paternal family located at the Garden Village Reserve in Sturgeon Falls, Ontario. His extended family exceeded 3,000 persons and both sides of his parents' families continued to practise their culture and to speak their native language.
25. At the age of 18 years, and upon contact in Toronto with the Native Friendship Centre, he first learned of information that enabled him to begin the process of securing his identity as an Indian person. He also learned then of his entitlement to benefits as an Indian. No one had prepared him for the process of Indian status and benefits. At this time, he finally obtained his birth certificate. No one had previously provided it to him.
26. Commanda was unable to successfully re-integrate into the Indian community.

27. Commanda experienced anger and ambivalence about the mainstream community that had led him to his predicament. He experienced distance and awkwardness with the Indian community with whom he had little or no connection in respect of the traditions, language, customs, heritage, spirituality and culture. He could not settle into ordinary relationships with Indian and non-Indian persons. He experienced depression and suicidal ideation.
28. The experiences of Brown and Commanda are representative of the experiences of the members of the Class.
29. Common to the Class is the fact of childhood isolation from their constitutionally protected identity. Indian or native traditions, language, customs, heritage, spirituality and culture were extinguished through foster or adoptive care by non-Indian or non-native persons and systemic practices, programs and policies that promoted, or did nothing to avoid the extinction of identity. The native or Indian child members of the Class emerged from childhood with a struggle over identity, and a further struggle in the pursuit of information in order to secure an identity. This experience of anger, disappointment and rejection as a foreigner or stranger in both mainstream (non-native/non-Indian) society and the society of the indigenous community is a result of Canada's derogation from, and breach of its duty of care and fiduciary obligation when it participated in the implementation of systemic practices, programs or policies that Canada knew or should have reasonably known would cause irreparable and enduring harm to vulnerable children.
30. The Class consists of aboriginal persons who, as children, enjoyed aboriginal rights, one of which was their right to identity, and which identity existed and was exercised at all relevant times pursuant to section 35(1) of the *Constitution Act, 1982*.
31. Identity genocide of children contravenes international convention law to which Canada is a party, and is an independent actionable wrong.
32. Special damages claimed include the costs for rehabilitative and therapeutic services responsive to the harm experienced by the Class. For some of the Class Members, special

damages include the loss to the enjoyment of a parcel of Band land where a house can be built, which is the entitlement of every Band member. The loss of enjoyment is the result of the experience described above, the effect of which led some Class Members to become so distanced or estranged from their culture that they could not reasonably choose to live within the Band.

33 Due to the egregious and deliberate conduct of the Canada, the Class Members are entitled to punitive, aggravated and exemplary damages. The systemic policy, practices and programs were deliberately targeted against Indian or native children exclusively in Ontario. The actions of Canada violated the fundamental rights of vulnerable children.

34. The Plaintiffs plead and rely upon the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

Place of Trial

35. The Plaintiffs propose that this action be heard in Toronto, Ontario.

Date: February 9, 2009

WILSON CHRISTEN LLP

Barristers
137 Church Street
Toronto, Ontario
M5B 1Y5

Jeffery Wilson
LSUC # 17649K
Tel: 416 956 5622
Fax: 416 360 7912
Email: jeffery@wilsonchristen.com

MORRIS COOPER

Barrister
99 Yorkville Avenue
Toronto, Ontario
M5R 3K5

LSUC # 15904C
Tel: 416 961 2626
Fax: 416 961 4000
Email: cooper@cooperlaw.ca

Counsel for the Plaintiffs

Plaintiffs - and - Defendants
THE ATTORNEY GENERAL OF CANADA c.v.-09-0237 2025-0008

Court File No.

SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Toronto

STATEMENT OF CLAIM

WILSON CHRISTEN
Barristers
137 Church Street
Toronto, Ontario
M5B 1Y5

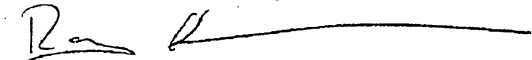
Jeffery Wilson
LSUC #: 17649K
Tel: (416) 360-5952
Fax: (416) 360-1350

MORRIS COOPER
Barrister
99 Yorkville Avenue
Toronto, Ontario
M5R 3K5

LSUC #: 15904C
Tel: (416) 961-2626
Fax: (416) 961-4000

Counsel for the Plaintiffs

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF MARCIA BROWN
SWORN BEFORE ME, THIS 15 DAY
OF MAY 2009


A COMMISSIONER FOR TAKING AFFIDAVITS

Representative Plaintiffs Plan of Proceeding Pursuant to section 5(1)(e)(ii) of the *Class Proceedings Act*, 1992

Step 1: Within 30 days of the issuance of the Order certifying this class proceeding, the Defendant shall deliver its Statement of Defence. The Plaintiffs shall deliver their reply 20 days thereafter.

Step 2: Notification of class members

Within 60 days of the issuance of an Order certifying the class, the following steps shall be taken in order to provide class members with information regarding the proceeding and to enable class members to "opt out" of the proceeding if they wish to do so.

Notice to the class of certification of these proceedings shall be given in a form and manner approved by the Court and with this proposal as to the different forms of notice:

- (a) Notice of the class action in each of the newspapers as set out in Schedule "A";
- (b) In addition to the newspapers, notice be sent out to each and every Native and Child Family Services in the Province of Ontario, a list of which, along with the contact individual information, is attached as Schedule "B";
- (c) In addition to notification via the newspapers and by posting of the notice within the Native Child and Family Services noted above, notice with a covering letter to each and every Chief of every Band in the Province of Ontario, a list of which is attached as Schedule "C"; and
- (d) The Defendant Canada be required, at its own cost, to disseminate the fact and nature of the class action to all registered status Indians in Ontario; and
- (e) the Defendant Canada be required at its own cost to pay for the cost of broadcast advertising of the Claim on aboriginal networks in Canada.

Step 3: Documentary Assembly and Production

Affidavits of Documents shall be exchanged within 60 days of the issuance of the final Order certifying the class.

Step 4: Examinations for Discovery

Examinations, if requested, shall take place within 60 days of the completion of documentary production.

Step 5: Exchange of Expert Reports

Expert reports shall be exchanged within 90 days following the issuance of a final Order certifying the class.

Step 6: Length of time for the trial

This is hard to predict at this point. With the information currently reviewed and without a statement of defence, the best estimate of the trial is that of 2 weeks in duration.

The above are the steps that counsel proposes for a successful conducting of a proceeding under the Class Proceedings Act.

Counsel is asking that the Case Management Judge set a litigation schedule with precise dates and with further case management review on June 25, 2009 following the Plaintiffs' delivery of their materials for the certification motion as directed by the Court to be delivered on June 15, 2009.

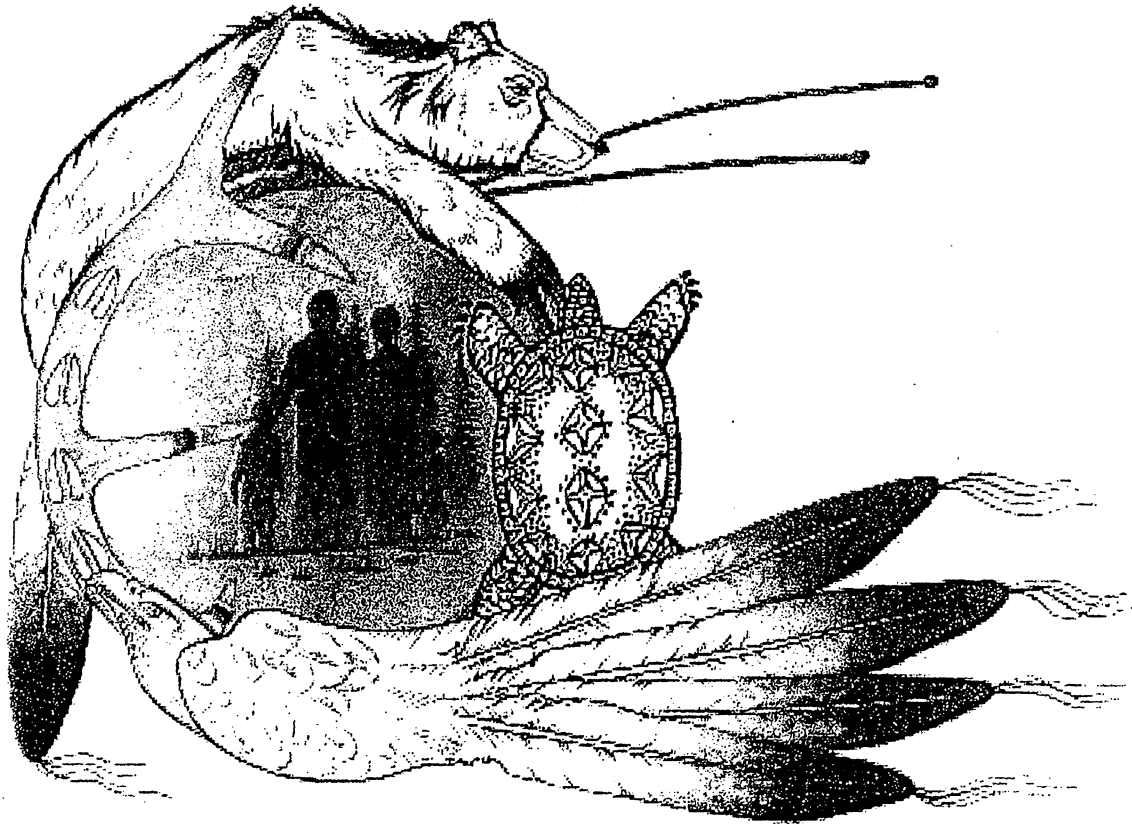
Finally, this is a preliminary plan that counsel understands will be revised under the continued case management authority of the Court and counsel is committed to reviewing and revising it in order to provide for the most efficient administration of this case. Counsel advises that the representative Plaintiffs are willing to participate in mediation or non-binding alternative dispute resolution efforts if the Defendants are prepared to do so but without delay to a reasonable time frame for the resolution of the outstanding issues.

Schedule "A"

The Barrie Examiner
The Chronicle Journal – Thunder Bay
The Expositor - Brantford
First Nations Drum
Globe and Mail
Kenora Daily Miner and News
Lake of the Woods Enterprise – Kenora
Manitoulin Expositor
Métis Voyageur News
Native Journal
Nipigon-Red Rock Gazette
North Bay Nugget
Northern Daily News – Kirkland Lake
The Observer - Sarnia
Ontario Birchbark
The Sault Star
Tekawennake
Thunder Bay's Source
Timmins Times
Toronto Star
Turtle Island News
Wawatay News

SCHEDULE "B"

The Association of Native Child
and
Family Services Agencies of Ontario



Information Package

January 2009

The Association of Native Child and Family Services Agencies of Ontario

106-100 Anemki Drive, Fort William First Nation, Thunder Bay ON P7J 1A5 T. 807-625-0160 F. 807-625-0162

Mission

The Association of Native Child and Family Services Agencies of Ontario will act as a resource in assisting member agencies toward the provision of quality Native child welfare and related services to Aboriginal people.

Vision

The Association of Native Child and Family Services Agencies of Ontario shall serve to build a better life for our children in keeping with our sacred trust of stewardship on behalf of Aboriginal children.

History

The creation of the Association of Native Child and Family Services Agencies of Ontario (ANCFSAO) was the result of a process that began in 1986 when the Association functioned as an informal arrangement where the Executive Directors would meet to discuss matters of common interest. The Association started to organize in a formal manner and became incorporated in 1994.

Goals of the Association

- To preserve traditional culture and community identity among member agencies
- To strengthen and maintain families and, through them, our communities.
- To ensure the growth, support and development of all our children and families within our membership.
- To have ongoing consultations with Native child and family services agencies, the office of the Chiefs of Ontario and any other individual or groups who may be involved in issues facing any of our membership.

Promote quality child and family welfare services to aboriginal communities through:

- Organization and management development services
- Advocacy and liaison services
- Support and advisory services
- Research and development services
- Education and training services
- Cultural competent training and services

The Association of Native Child and Family Services Agencies of Ontario...cont'd

Association Objectives

- Act as a resource agency in assisting its member agencies in their efforts toward the provision of quality child welfare and related services to native children and families.
- Assist in the definition of child welfare services as it applies to Native peoples, and to assist in ensuring that such services are organized and provided in a manner consistent with Native culture, values and traditions.
- Act as a reference group for Native organizations, and to act as a clearinghouse for information on matters related to Native child welfare.
- Make recommendation to the relevant Native political representatives such that they may lobby for improved legislation and related policy and program initiatives
- Ensure that the principle of self-determination, as defined by the Native communities serviced is held as a primary value in the business of the Association and to further the cause of Native childhood and family life in every practicable way

The Association of Native Child and Family Services Agencies of Ontario is not a political organization. We have a responsibility for the protection of Aboriginal interests in child and family matters. We are primarily concerned with policy analysis, operations, and research and advocacy to promote culturally based delivery of quality family services to Aboriginal populations.

The Association acts as a resource in assisting member agencies toward the provision of quality Native Child Welfare and related services to Aboriginal people.

Currently, the ANCFSAO has a membership of nine agencies that are tribally, provincially and federally sanctioned to provide family services to aboriginal children and families. The membership is comprised of four mandated child welfare authorities and five pre-mandated family service agencies.

The Association Membership List – Nine Agency Members

4 Mandated Agencies:

Payukotayno Family Services ✓

Abinoojii Family Services ✓

Weechi-It-Te-Win Family Services Inc. ✓

Native Child and Family Services of Toronto ✓

5 Pre-Mandated Agencies:

Six Nations of the Grand River Child and Family Services ✓

Kina Gbezhgomi Child and Family Services ✓

Kunuwanimano Child and Family Services ✓

Nog-Da-Win-Da-Min Family and Community Services ✓

Mnaasged Child & Family Services Corporation ✓

Payukotayno James & Hudson Bay Family Services

P.O. Box 189, 50 Bay Road, Moosonee, ON P0L 1Y0 T. 705-336-2229 F. 705-336-2492

Mandated in 1987

Head office – Moose Cree First Nation (Moose Factory)

Vision

Healthy families in caring communities.

Mission

Payukotayno ensures the protection, well-being and rights of families.

Servicing 8 First Nation Communities:

- Moose Cree First Nation (Moose Factory)
- Mocrebec Council of the Cree Nation (Moose Factory)
- Local Services Board (Moose Factory)
- Weenusk First Nation (Peawanuck)
- Fort Albany First Nation
- Kashechewan First Nation
- Attawapiskat First Nation
- Town of Moosonee (not a First Nation)

Services currently being provided are as follows:

- Child Protection services
- Foster Care
- Child Care

Integrated services also include:

- Child and Family Intervention (clinical)
- Early Intervention (0-6)
- Awashishuk Centre – Society Operated Group Home
- Residential – 3 Society Operated Receiving Homes
- Youth Justice – Attendance Centre
- Community and Family Support
- Prevention

Anishinaabe Abinoojii Family Services

20 Main Street, Kenora, ON P9N 2T7 T. 807-548-1099 F. 807-548-1020

Administration Office: Wauzhushk Onigum Nation, Apartment Drive,
Kenora ON P9N 2T7 T. 807-548-1099 ext. 34 F. 807-548-1020

Mandated in 1994

Mission

Our Mission is to protect children and to heal and strengthen families through the provision of holistic, bi-cultural services that respect our Anishinaabe heritage, and honours the values, customs and tradition of our people.

Servicing 14 First Nation Communities:

- Noatkamegwaning First Nation – protection & prevention (mandated)
- Wauzhushk Onigum First Nation – protection & prevention (mandated)
- Asubpeechooseewagong First Nation – protection & prevention (mandated)
- Wabaseemoong Independent Nation – protection & prevention (mandated)
- Obashkaandagaang (formerly Washagamis Bay) First Nation protection & prevention (mandated)
- Ochiichagwe'babigo'ining Ojibway Nation – protection and prevention (service agreement)
- Wabigoon Lake Ojibway Nation – protection and prevention (service agreement)
- Northwest Angle #37 – prevention services
- Wabauskang – protection and prevention (service agreement)
- Shoal Lake #39 – prevention services
- Shoal Lake #40 – protection and prevention (service agreement)
- Northwest Angle #33 – protection and prevention (service agreement)
- Migisi Sahgaigan – protection and prevention (service agreement)
- Lac Seul – prevention services

Services currently being provided are as follows:

- Child Protection to children 0-15 years of age
- Alternative Care (foster care)
- After Hours On Call Services
- Customary Care
- Family Involvement
- Community Involvement
- Holistic and Bi-cultural Services
- Prevention Services: Assisting families with services in order to prevent family breakdown.

Weechi-it-te-win Family Services

1457 Idylwild Drive, P.O. Box 812, Fort Frances ON P9A 3N1
T. 807-274-3201 F. 807-274-8435 W. www.weechi.ca

Mandated in 1987
Head office in Fort Frances

Mission

To preserve Indian (Anishinaabe) culture and identity amongst our people; to strengthen and maintain Indian (Anishinaabe) families and through them, the communities; and to assure the growth and development of all our children within our families and communities.

Servicing 10 First Nations communities located in the Rainy River District:

- Big Grassy First Nation
- Big Island First Nation
- Onigaming First Nation
- Rainy River First Nation
- Naicatchewenin First Nation
- Stanjikoming First Nation
- Couchiching First Nation
- Nigigoonsiminikaaning First Nation
- Seine River First Nation
- Lac La Croix First Nation

Services currently being provided are as follows:

- Community Care Program
- Training and Learning Centre (for youth 12-17 years)
- Family Counseling Program
- Treatment Foster Care
- Tele-Psychiatry Program
- Children's Mental Health Services(0-6 years)
- Psychological Services
- Nanaandawe'i diiwinan ziidoniwewin – access to traditional healing approaches
- Clinical support services

Each program was carefully designed to support the cultural restoration process of each of the First Nation communities we serve.

The Elders have advised and informed Weechi-it-te-win that the Agency has Cultural Rites as an Aboriginal Organization. The Cultural Rites arise from the fact that the Agency was born from Aboriginal aspirations and determination and as such was bestowed a Name and Ishoonun.

Weechi-it-te-win Family Services.....cont'd.

In accordance to Aboriginal cultural thought, the Agency's Name came from the Atisookaanug as well as the emblem of the Loon. The loon has provided numerous instructions to Weechi-it-te-win on how the organization needs to operate and perform. Later, Weechi-it-te-win was bestowed pipes, flags, a drum and medicines. Because of these Sacred items, Weechi-it-te-win has a duty to ensure that they are treated in a cultural manner that respects the original instructions from the Elders and ceremony that transferred these items to Weechi-it-te-win.

Additional to the Aboriginal cultural thought, the moment Weechi-it-te-win got its name, it became more than a simple organization that provides services, it in fact became customarily personified in the eyes of the Atisookaanug. This means that Weechi-it-te-win became a person, (much like the idea of a corporation under the Corporations Act). It became a living and breathing Aboriginal entity with a customary responsibility for family and cultural preservation expressed in the concept Abinoojii naaniigaan.

This word (Abinoojii naaniigaan) can take on the character of admonition (teaching). This assertive policy expresses the affirmative need to understand and to protect the emotional, social, cultural, linguistic and spiritual context of an Anishinaabe child – all human relationships, more completely as inode'iziwin. It is in this spirit that Weechi-it-te-win offers the Children's Mental Health services.

From a service perspective, we continue to advocate for a child welfare system that places much greater emphasis on family preservation, community healing and the revitalizing of traditional laws, structures and practices in order to restore balance and meaning to the lives of our people.

Our capacity to provide culturally competent services that reflect the traditions and values of Aboriginal people is a critical component of our commitment to promote community healing and family preservation and reunification.

Six Nations of the Grand River Child and Family services

Box 5001, 1 Sunrise Crt., Ohsweken, ON N0A 1M0 T. 519-445-0230 F. 519-445-0249

Six Nations is an independent First Nation, identified as one Band, but consists of 13 Bands.

Provides service to on-reserve Six Nation members:

- Bay of Quinte Mohawks
- Tuscarora
- Oneida
- Onondaga Clear Sky
- Bearfoot Onondaga
- Upper Cayuga
- Lower Cayuga
- Konadaha Seneca
- Niharondasa Seneca
- Deleware
- Lower Mohawk
- Walker Mohawk
- Upper Mohawk

Services currently being provided are as follows:

- Child and Family Services
- Band Representative Function in relation to child welfare matters.
- Clinical Services Unit provides individual, family and group counselling. The unit also provides psychological assessment and treatment to our children and families who have children experiencing more serious mental health issues.
- Family Support Unit provides individual, family and group counselling to children and families from Six Nations.
- Community Support/Resource Development provides prevention programming to the children, youth and families of Six Nations
- Service Co-ordination provides intake, assessment, screening and case management services to those Six Nations Band members accessing services at Child and Family Services.

Kina Gbezhgomi Child and Family Services

General Delivery, 11 King St., Wikwemikong, ON P0P 2J0 T. 705-869-2100 F. 705-869-2196

Incorporated January 15, 1991

Head office located in Widwemikong Unceded Reserve

Mandate

To facilitate a community development process for family and community healing; in order to create a healthy and safe environment for each Native Child; using as its foundation, the traditional, cultural and spiritual values of our people. Therefore, our responsibility is the care, protection and nurturance of our children.

Servicing 7 First Nations in the District of Manitoulin

- Sheshegwaning First Nation
- Sucker Creek First Nation
- Sheguiandah First Nation
- Wikwemikong First Nation
- Zhiibaahaasing First Nation
- M'Cheenge First Nation
- Whitefish River First Nation

Our focus is the support of children and families on Manitoulin Island.

Services currently being provided are as follows:

- Child and Family services
- Community support services
- Foster Care services – licensed
- Emergency after hours services

Services provided by the Child and Family Service Workers are:

- Networking / Collaborative Assistance
- Assessment and Referral – assess family units to determine the strengths and needs of the family system
- Advocacy and Liaison services - to promote and affirm the efforts of the family to address child welfare related concerns
- Supportive services – encourage families to utilize appropriate resources available within any of the First Nations
- Educational & Life Skills Development – provide educational resources and tools for families who require assistance in dealing with child behaviour management, relationship building, problem resolution and communication techniques.
- Tangible Support services – are temporary/emergency measures which will stabilize a crisis situation and reduce the risk of child protection intervention
- Plans of Care Assistance – assist the Children's Aid Society of the Districts of Sudbury and Manitou to facilitate the development of appropriate plans of care for children in conjunction with the band representatives and parents on child protection matters (protocol agreement).
- Plans for Service – implement a plan for service with families to ensure effective services are provided based on the strengths and needs of the family.

Kunuwanimano Child and Family Services

210-119 Pine Street, Timmins ON P4N 2K3 T. 705-268-9033 F. 705-268-9272

Incorporated – May 15, 1989

Head office located in Timmins

Mandate

To eliminate all forms of abuse by providing services that encourage and support the healthy development of families and individuals in a manner that is appropriate to our First Nations.

Objective

To service the Aboriginal population both on and off reserve within the Kunuwanimano C.F.S. geographical jurisdiction.

The programs take into consideration the best interests and well being of the child, specifically the programs that recognize the uniqueness of First Nations' culture, heritage and traditions of preserving a child's cultural identity.

Servicing 11 First Nations communities:

- Beaverhouse First Nation
- Brunswick House First Nation
- Chapleau Cree First Nation
- Chapleau Ojibwe First Nation
- Constance Lake First Nation
- Hornepayne Native Community
- Matachwan First Nation
- Mattagami First Nation
- Missanabie Cree First Nation
- Taykwa Tagamou (New Post First Nation)
- Wahgoshig First Nation.

Services currently being provided are as follows:

- Family Support and Prevention services
- Advocacy
- Band Representative function in relation to child welfare matters (as outlined in service agreements)
- Counselling and Referral
- Customary Care / Foster Care

Provide information and educate clients and Band/Communities about their rights under the *Child and Family Services Act* and other social services Acts specifically the least intrusive measures and proper representation.

Provide information of other rights of native clients pertaining to social, legal and child welfare matters.

Native Child and Family Services of Toronto

30 College Street, Toronto ON M5T 1K2 T. 416-969-8510 F.416-928-0706

Incorporated August 14, 1986

Mandated July, 2004

Head office located 30 College St., Toronto ON M5G 1K2

Mission Statement

Native Child and Family Services of Toronto strives to provide for a life of quality, well being, caring and healing for our children and families in the Toronto Native Community. It does this by creating a services model that is culture based respecting the supreme values of the Native people, the extended family, and the right to self-determination.

Servicing area of Metropolitan Toronto

Services currently being provided are as follows:

- Child Welfare and Residential Care
- Prevention Services
- Licensed Day Care
- Children's Mental Health and Family Well Being
- Aboriginal Head Start
- Youth Programs, including a high school
- Transitional Housing
- Early Years Centre
- Social / Recreational Programs
- Summer Camp(s)

Native Child and Family Services of Toronto is Ontario's only full service off-reserve child welfare initiative under the direct control and management of the Native community. With a diversity of programs and related funders, it has developed a culturally based service approach unique to serving the needs of urbanized Native people.

Nog-Da-Win-Da-Min Family & Community

405 Gran Street, Sault Ste. Marie ON P6A 6K9
T. 705-946-3700 ext 210 F. 705-946-3717

Incorporated August 1, 1990
Head office located in Batchewan First Nation

Nog-da-win-da-min Family and Community Services is a Native Child Welfare Prevention service agency that works in collaboration with the seven First Nations in ensuring that children, youth and families receive culturally appropriate services.

Nog-da-win-da-min offers various services and programs to the children, youth and families who are members of the First Nation communities.

Our Mission

"To strengthen our families and communities for our children"

Servicing 7 First Nations located on the north shores of Lake Huron:

- Garden River
- Batchewana
- Serpent River
- Thessalon
- Mississauga
- Sagamok Anishnawbek
- Whitefish Lake

Services currently being provided are as follows:

- Family Support/Advocacy
- In-Home Support
- Educational Group/Programs
- Foster Care
- Community Events/Activities

Mnaasged Child and Family Services

Administration Office - 238D Oneida Road, Southwold, Ontario N0L 2G0
Tel: (519) 652-1117 Fax: (519) 652-0695

Carrie Tobobondung, Executive Director
Sue Duxtator, Director of Programs
Alizabeth George, Executive Assistant
Melody Henry, Director of Programs Assistant

Vision

As First Nations people the Creator has entrusted us with the sacred responsibility for protecting all our children based on our customs, culture, values and beliefs.

Mnaasged Child and Family Services aspires to meet this responsibility and to enhance the social harmony in our communities by implementing best practices and shared responsibility to support and improve the quality of life for our families now and for the next generations.

Mnaasged Child & Family Services 7 First Nations:

- Chippewas of the Thames
- Aamjiwnaang
- Caldwell
- Delaware Nation
- Chippewas of Kettle & Stoney Point
- Munsee-Delaware
- Oneida Nation of the Thames

Services currently being provided are as follows:

- Prevention Service Work
- Baby Layettes
- Youth Activities
- Referrals to local and surrounding agencies
- Family Support
- Family/Youth Counseling
- Parenting Education, budgeting
- Resource information
- Community workshops
- Liaison with Children's Aid Society / Community Services
- Network with other First Nations
- Customary care agreements
- Recruiting of foster parents
- Promote healthy lifestyles
- Food Bank assistance
- To promote culturally appropriate programming for the Haudenosaunne, Ojibway and Leni Lenape First Nation cultures
- Children's Christmas Party
- Toys for Tots Program
- Emergency Court transportation

SCHEDULE "C"

MAY 2009

FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
1.	<p>Aamjiwnaang First Nation (Sarnia) 978 Tashmoo Avenue SARNIA, Ontario N7T 7H5</p>	<p>Chief Chris Plain (519) 336-8410 (Fax) 336-0382 CPlain@aamjiwnaang.ca</p>	<p>Anishinabek Nation (Southwest Region)</p>
2.	<p>Alderville First Nation 11696 Second Line P.O. Box 46 ROSENEATH, Ontario K0K 2X0</p>	<p>Chief James R. Marsden (905) 352-2011 (Fax) 352-3242 jbmarsden@eagle.ca</p>	<p>Anishinabek Nation (Southeast Region)</p>
3.	<p>Algonquins of Pikwakanagan P.O. Box 100 GOLDEN LAKE, Ontario K0J 1X0</p>	<p>Chief Kirby Whiteduck (613) 625-2800 (Fax) 625-1149 chiefcouncil@pikwakanagan.ca</p>	<p>N/A</p>
4.	<p>Animbiigoo Zaag'igan Anishinaabek (Lake Nipigon Ojibway) P.O. Box 120 BEARDMORE, Ontario P0T 1G0</p>	<p>Chief Yvette Metansinine (807) 875-2785 (Fax) 875-2786 yvetansinine@lakenipigonijibway.org</p>	<p>INDEP</p>
5.	<p>Anishinaabeg of Naongashling (Big Island) P.O. Box 335 MORSON, Ontario P0W 1J0</p>	<p>Chief Wesley Big George (807) 488-5602 (Fax) 488-5942 keniis@tbaytel.net</p>	<p>GCT #3 (Fort Frances Area)</p>

FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
6.	<p>Aroland First Nation P.O. Box 10 AROLAND, Ontario P0T 1B0</p>	<p>Chief Sam Kashkeesh (807) 329-5970/5333 (Fax) 329-5750 arolandfirstnation@yahoo.ca</p>	<p>NAN</p> <p>Matawa</p>
7.	<p>Atikameksheng Anishnawbek (Whitefish Lake) 25 Reserve Road, P.O. Box 39 NAUGHTON, ON P0M 2M0</p>	<p>Chief Edward Steven Miller (705) 692-3651 (Fax) 692-5010 chief@wifn.com execassist@wifn.com</p>	<p>Anishnabek Nation (Lake Huron Region)</p> <p>North Shore</p>
8.	<p>Attawapiskat First Nation P.O. Box 248 ATTAWAPISKAT, Ontario P0L 1A0</p>	<p>Chief Theresa Hall (705) 997-2166/2128-2276/2277 (Fax) 997-2116 Theresa.hall@attawapiskat.org</p>	<p>NAN</p> <p>Mushkegowuk</p>
9.	<p>Aundeck Omni Kaning First Nation (Ojibways of Sucker Creek) R.R. #1, Box 21 LITTLE CURRENT, Ontario P0P 1K0</p>	<p>Chief Craig Abotossaway (705) 368-2228 (Fax) 368-3563 abotossawayc@aokfn.com</p>	<p>Anishnabek Nation (Lake-Huron Region)</p> <p>UCCM</p>
10.	<p>Bearskin Lake First Nation P.O. Box 25 BEARSKIN LAKE, Ontario P0V 1E0</p>	<p>Chief Rodney McKay (807) 363-2518/2598 (Fax) 363-1066 rodneymckay@knet.ca</p>	<p>NAN</p> <p>Windigo</p>

	FIRSI NATION	CHIEF	PTO	TRIBAL COUNCIL
11.	Beausoleil First Nation (Christian Island) 1 O-Gema Street Christian Island, CEDAR POINT, Ontario L0K 1C0	Chief Rodney Monague Jr. (705) 247-2051 (Fax) 247-2239 rodmonaguejr@chiminissing.ca	Anishinabek Nation (Southeast Region)	Ogemawahj
12.	Beaverhouse First Nation P.O. Box 1022 26 Station Road North KIRKLAND LAKE, Ontario P2N 1Z1	Chief Gloria McKenzie (705) 567-2022 (Fax) 567-1143 bhfn@ntl.sympatico.ca	NAN	Wabun
13.	Big Grassy First Nation P.O. Box 414 MORSON, Ontario P0W 1J0	Chief Albert Comegan (807) 488-5614 (Fax) 488-5533 lagavin@tbaytel.net	GCT#3 (Fort Frances Area)	Anishinaabeg of Kabapikotawangag Resource Council
14.	Biinjitiwaabik Zaaging Anishinaabek (Rocky Bay) General Delivery MACDIARMID, Ontario P0T 2B0	Chief Bart Hardy (807) 885-3401 (Fax) 885-1218 chiefandcouncil@rockybayfn.ca	Anishinabek Nation (Northern Superior Region)	N/A
15.	Bingwi Neyaashi Anishinaabek (Sand Point) 146 Court Street South THUNDER BAY, Ontario P7B 2X6	Chief Paul Gladu (807) 623-2724 (Fax) 623-2764 paulgladu@hotmail.com	Anishinabek Nation (Northern Superior Region)	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
16.	Bkejwanong Territory (Walpole Island) R.R. #3 WALLACEBURG, Ontario N8A 4K9	Chief Joseph Gilbert (519) 627-1481 (Fax) 627-0440 Joseph.gilbert@wifn.org Tiffany.smith@wifn.org	INDEP	SFNS
17.	Brunswick House First Nation P. O. Box 1178, Highway 101 East CHAPLEAU, Ontario P0M 1K0	Chief Rene Ojeebah (705) 864-0174 (Fax) 864-1960 Email: N/A	NAN	Wabun
18.	Caldwell First Nation P.O. Box 388 LEAMINGTON, Ontario N8H 3W3	Chief Louise Hillier (519) 678-3831 (Fax) 322-1533 lmh@porchlight.ca	AIAI	SFNS
19.	Cat Lake First Nation P.O. Box 81 CAT LAKE, Ontario P0V 1J0	Chief Ron Wesley (807) 347-2100 (Fax) 347-2116 catlakefirstnation@knet.ca	NAN	Windigo
20.	Chapleau Cree First Nation P. O. Box 400 Fox Lake Reserve CHAPLEAU, Ontario P0M 1K0	Chief Keith Corston (705) 864-0784 (Fax) 864-1760 mukesofn@bellnet.ca	NAN	Mushkegowuk

FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
21. Chapeau Ojibwe First Nation P. O. Box 279 CHAPLEAU, Ontario POM 1K0	Chief Anita Stephens (705) 864-2910 (Fax) 864-2911 chief@chapeauojibwe.ca	NAN	Wabun
22. Chippewas of Georgina Island R.R. #2, P.O. Box 12 SUTTON WEST, Ontario LOE 1R0	Chief Donna Big Canoe (705) 437-1337 (Fax) 437-4597 dbigcanoe@georginaisland.com	Anishinabek Nation (Southeast Region)	Ogemawahj
23. Chippewas of Kettle & Stony Point 53 Indian Lane, R.R. #2 FOREST, Ontario N0N 1J0	Chief Elizabeth J. Cloud (519) 786-2125 (Fax) 786-2108 Toni.george@kettlepoint.org	Anishinabek Nation (Southwest Region)	SFNS
24. Chippewas of Rama First Nation 5884 Rama Road, Suite 200 RAMA, Ontario LOK 1T0	Chief Sharon Stinson Henry (705) 325-3611 (Fax) 325-0879 chief@ramafirstnation.ca	N/A	Ogemawahj
25. Chippewas of Nawash Unceded First Nation (Cape Croker) R.R. #5 WIARTON, Ontario N0H 2T0	Chief Ralph Akiwenzie (519) 534-1689 (Fax) 534-2130 nawash@the-matrix.ca	INDEP	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
26.	Chippewas of Saugeen R.R. #1 SOUTHAMPTON, Ontario N0H 2L0	Chief Randall Kahgee Jr. (519) 797-2781 (Fax) 797-2978 rkahgee@saugeenfirstnation.ca	INDEP	N/A
27.	Chippewas of the Thames 320 Chippewa Road R.R. #1 MUNCEY, Ontario N0L 1Y0	Chief Vaughan Albert Sr. (519) 289-5555 (Fax) 289-2230 chief@cotfn.ca	Anishinabek Nation (Southwest Region)	SFNS
28.	Constance Lake First Nation P.O. Box 4000 CALSTOCK, Ontario P0L 1B0	Chief Arthur Moore (705) 463-4511 (Fax) 463-2222 bluffv@clfn.on.ca	NAN	Matawa
29.	Couchiching First Nation RMB 2027, R.R. #2 FORT FRANCES, Ontario P9A 3M3	Chief Chuck McPherson (807) 274-3228 (Fax) 274-6458 chuckmcp@vianet.ca chief@vianet.ca	GCT#3 (Fort Frances Area)	Fort Frances
30.	Curve Lake First Nation 22 Winookeeda Road CURVE LAKE, Ontario K0L 1R0	Chief Keith Knott (705) 657-8045 (Fax) 657-8708 chief@curvelakefn.com executivesecretary@curvelake.com manager@curvelakefn.com	Anishinabek Nation (Southeast Region)	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
31.	Deer Lake First Nation P.O. Box 39 DEER LAKE, Ontario P0V 1N0	Chief Royal Meekis (807) 775-2141/2103 (Fax) 775-2220 Email: N/A	NAN	KOTC
32.	Delaware Nation (Moravian of the Thames) 14760 School House Line R.R. #3 THAMESVILLE, Ontario N0P 2K0	Chief Gregory Peters (519) 692-3936 (Fax) 692-5522 gcpeters@mnsi.net	AIAI	SFNS
33.	Dokis First Nation 931 Main Street P.O. Box 62, Dokis Reserve MONETVILLE, Ontario P0M 2K0	Chief Denise Restoule (705) 763-2200 (Fax) 763-2087 Jane.d@dokisfirstnation.com	Anishinabek Nation (Lake Huron Region)	Waabnoong Bemjiwang
34.	Eabametoong First Nation P.O. Box 298 EABAMET LAKE, Ontario P0T 1L0	Chief Solomon Atlookan (807) 242-7468 (Fax) 242-1440 Atlookan44@hotmail.com	NAN	Matawa
35.	Eagle Lake First Nation PO Box 1001 MIGISI SAHGAIGAN, Ontario P0V 3H0	Chief Pamela Pitchenese (807) 755-5526 (Fax) 755-5696 eaglereception@migisi.ca	GCT#3 (Dryden Area)	Bimose

CHIL...
PTO
TRIBAL COUNCIL

36.	Flying Post First Nation P.O. Box 1027 NIPIGON, Ontario P0T 2J0	Chief Murray Ray (807) 887-3071 (Fax) 887-1138 flypost@shawbiz.ca	NAN	Wabun
37.	Fort Albany First Nation P.O. Box 1 FORT ALBANY, Ontario P0L 1H0	Chief Andrew Solomon (705) 278-1044 (Fax) 278-1193 Solomon1283@hotmail.com	NAN	Mushkegowuk
38.	Fort Severn First Nation P.O. Box 149 FORT SEVERN, Ontario P0V 1W0	Chief David Matthews (807) 478-2572/2515 (Fax) 478-1103 Davidpaulmatthews@knet.ca	NAN	KOTC
39.	Fort William First Nation 90 Anemki Drive, Suite 200 THUNDER BAY, Ontario P7J 1L3	Chief Peter Collins (807) 623-9543 (Fax) 623-5190 PCollins@fwfn.com	Anishinabek Nation (Northern Superior Region)	N/A
40.	Ginoogaming First Nation (Long Lac #77) P.O. Box 89, 101 Poplar Crescent LONG LAC, Ontario P0T 2A0	Chief Celia Echum (807) 876-2242 (Fax) 876-2495 Celia.echum@ginoogamingfn.ca	NAN	Matawa

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
41.	Grassy Narrows First Nation General Delivery GRASSY NARROWS, Ontario POX 1B0	Chief Simon Fobster (807) 925-2201 (Fax) 925-2649 gnfnband@voyageur.ca	GCT#3 (Kenora Area)	N/A
42.	Hiawatha First Nation 123 Paudash Street R.R. #2 KEENE, Ontario K0L 2G0	Chief Laurie Carr (705) 295-4421 (Fax) 295-4424 lcarr@hiawathafn.ca	AIAI	UIC
43.	Henvey Inlet First Nation 295 Pickerel River Road PICKEREL, Ontario P0G 1J0	Chief Wayne McQuabbie (705) 857-2331 (Fax) 857-3021 Wayne_mcquabbie@hotmail.com	Anishinabek Nation (Lake Huron Region)	Waabnoong Bemjiwang
44.	Hornepayne First Nation 274 Front Street, P.O. Box 1553 HORNEPAYNE, Ontario P0M 1Z0	Chief Laura Medeiros (807) 868-2306 (Fax) 868-2222 hpfn@xplornet.com	NAN	Matawa
45.	Iskatewizaagegan No. 39 Independent First Nation P.O. Box 1 Kejeck Post Office SHOAL LAKE, Ontario POX 1E0	Chief Eli Mandamin (807) 733-2560 (Fax) 733-3106 Iskatewizaagegan@iifn39.ca	INDEP (Kenora Area)	Bimose

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
46.	Kasabonika Lake First Nation P.O. Box 124 KASABONIKA LAKE, Ontario P0V 1Y0	Chief Gordon Anderson (807) 535-2547 (Fax) 535-1152 gordona@kasabonika.ca	NAN	Shibogama
47.	Kashechewan First Nation 13 B Riverside Drive, P.O. Box 240 KASHECHEWAN, Ontario P0L 1S0	Chief Jonathon Solomon (705) 275-4440/4413/1054 (Fax) 275-1023 chiefsolomon@explornet.com	NAN	Mushkegowuk
48.	Keewaywin First Nation P.O. Box 90 202 Band Office Road KEEWAYWIN, Ontario P0V 3G0	Chief Joe Meekis (807) 771-1210 (Fax) 771-1053 Joe.meekis@knet.ca	NAN	KOTC
49.	Kiashe Zaaging Anishinaabek (Gull Bay) General Delivery Gull Bay, ON P0T 1P0	Chief Wilfred King (807) 982-0006 (Fax) 982-0009 Pandora807@hotmail.com	Anishinabek Nation (Northern Superior Region)	N/A
50.	Kingfisher Lake First Nation P.O. Box 57 KINGFISHER LAKE, Ontario P0V 1Z0	Chief James Mamakwa (807) 532-2067/2154 (Fax) 532-2063 jamesm@kingfisherlake.ca	NAN	Shibogama

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
51.	Kitchenuhmaykoosib Inninuwug (Big Trout Lake) P.O. Box 329 Big Trout Lake, Ontario P0V 1G0	Chief Donny Morris (807) 537-2263/1183 (Fax) 537-2574 Smckay2006@hotmail.com	INDEP	IFNA
52.	Koocheching First Nation P.O. Box 32 SANDY LAKE, Ontario P0V 1V0	Chief William Harper (807) 774-1576 (Fax) 737-3133 Email: N/A	NAN	Windigo
53.	Lac Des Mille Lacs First Nation 1100 Memorial Avenue, Suite 328 THUNDER BAY, Ontario P7B 4A3	Chief Judy Maunula (807) 622-9835 (Fax) 622-9866 ldmfn@tbaytel.net quentinlaptop@tbaytel.net	GCT #3 (Dryden Area)	Bimose
54.	Lac La Croix First Nation P. O. Box 640 FORT FRANCES, Ontario P9A 3N9	Chief Leon Jourdain (807) 485-2431/2432 (Fax) 485-2583 administration@lacsacroixfirstnation.com	GCT#3 (Fort Frances Area)	Fort Frances
55.	Lac Seul First Nation P.O. Box 100 HUDSON, Ontario P0V 1X0	Chief Clifford Bull (807) 582-3211 (Fax) 582-3493 cbull@lsfn.ca	GCT #3 (Dryden Area)	IFNA

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
56.	Long Lake #58 First Nation 209 Otter Street P. O. Box 609 LONG LAC, Ontario P0T 2A0	Chief Allen Towegishig (807) 876-2292 (Fax) 876-2757 Redfox001_2@hotmail.com	Anishinabek Nation (Northern Superior Region)	Matawa
57.	Magnetawan First Nation R. R. #1, Box 15 BRITT, Ontario P0G 1A0	Chief William Diabo (705) 383-2477 (Fax) 383-2566 Sose_56@yahoo.com	Anishinabek Nation (Lake Huron Region)	Waabnoong Bemjiwang
58.	Marten Falls First Nation General Delivery OGOKI POST, Ontario P0T 2L0	Chief Harry Baxter (807) 349-2509 (Fax) 349-2511 Harry_baxter@martenfallsfn.ca	NAN	Matawa
59.	Matachewan First Nation P. O. Box 160 MATACHEWAN, Ontario P0K 1M0	Chief Richard Wincikaby (705) 565-2230/2311 (Fax) 565-2585 wincikaby@ntl.sympatico.ca	NAN	Wabun
60.	Mattagami First Nation P. O. Box 99 GOGAMA, Ontario P0M 1W0	Chief Walter Naveau (705) 894-2072 (Fax) 894-2887 walternaveau@knet.ca	NAN	Wabun

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
61.	MacDowell Lake First Nation P. O. Box 321 RED LAKE, Ontario P0V 2M0	Chief Eli James (The Northern Chiefs Council) Tel: (807) 735-1381 Fax: (807) 735-1383 Email: N/A	NAN	KOTC
62.	M'Chigeeng First Nation (West Bay) P. O. Box 333 M'CHIGEENG, Ontario P0P 1G0	Chief Isadora Bebamash (705) 377-5362 (Fax) 377-4980 mfnchief@amtelecom.net	Anishinabek Nation (Lake Huron Region)	UCCM
63.	Michipicoten First Nation Box 1, Site 8, R.R. #1 WAWA, Ontario POS 1K0	Chief Joseph Buckell (705) 856-1993 (Fax) 856-1642 jbuckell@michipicoten.com	Anishinabek Nation (Northern Superior Region)	N/A
64.	Mishkeegogamang First Nation (New Osnaburgh) NEW OSNABURGH, Ontario P0V 2H0	Chief Connie Gray-McKay (807) 928-2148/2414 (Fax) 928-2077 conniegraymckay@msn.com	NAN	N/A
65.	Missanabie Cree First Nation 174B, Hwy. 17E, Bell's Point GARDEN RIVER, Ontario P6A 6Z1	Chief Glenn Nolan (705) 254-2702 (Fax) 254-3292 gnolan@missanabiecree.com ghawkins@missanabiecree.com	NAN	Mushkegowuk

	FIRSI NATION	CHIEF	PTO	TRIBAL COUNCIL
66.	Mississauga #8 First Nation P. O. Box 1299, 66 Park Road BLIND RIVER, Ontario P0R 1B0	Chief Douglas Daybutch (705) 356-1621 Ext. 2238 (Fax) 356-1740 douglasdaybutch@mississauga.com	Anishinabek Nation (Lake Huron Region)	North Shore
67.	Mississaugas of the New Credit First Nation 2789 Mississauga Rd., R.R. #6 HAGERSVILLE, Ontario NOA 1H0	Chief Bryan LaForme (905) 768-1133 (Fax) 768-1225 bryanlaforme@newcreditfirstnation.com	AIAI	UAC
68.	Mississaugas of Scugog Island 22521 Island Road PORT PERRY, Ontario L9L 1B6	Chief Tracy Gauthier (905) 985-3337 (Fax) 985-8828 Tgauthier@scugogfirstnation.com	Anishinabek Nation (Southeast Region)	Ogemawahj
69.	Mocreebec Council of the Cree Nation P. O. Box #4 MOOSE FACTORY, Ontario P0L 1W0	Chief Randy Kapashesit (Small) (705) 658-4769 (Fax) 658-4487 randyk@mocreebec.com	NAN	N/A
70.	Mohawks of Akwesasne P. O. Box 579 CORNWALL, Ontario K6H 5T3	Grand Chief Timothy Thompson (613) 575-2348 (Fax) 575-2884 dothompson@akwesasne.ca kransom@akwesasne.ca	INDEP	N/A

	FIRSI NATION	CHIEF	PTO	TRIBAL COUNCIL
71.	Mohawks of the Bay of Quinte R. R. #1, 13 Old York Road DESERONTO, Ontario KOK 1X0	Chief R. Donald Maracle (613) 396-3424 ext. 121 (Fax) 396-3627 rdonm@mbq-fmt.org	AIAI	N/A
72.	Moose Cree First Nation P. O. Box 190 107 Mookijuneibeg Street MOOSE FACTORY, Ontario P0L 1W0	Chief Norman Hardisty (705) 658-4619 (705) 658-4734 Norm.hardisty@moosecree.com	NAN	Mushkegowuk
73.	Moose Deer Point First Nation P. O. Box 119 3720 Twelve Mile Bay Road MACTIER, Ontario P0C 1H0	Chief Barron King (705) 375-5209 (Fax) 375-0532 chief@moosedeerpoint.com	Anishinabek Nation (Southeast region)	Ogemawahj
74.	Munsee-Delaware Nation R. R. #1 MUNCEY, Ontario N0L 1Y0	Chief Patrick Waddilove (519) 289-5396 (Fax) 289-5156 pwaddilove@munsee.on.ca	Anishinabek Nation (Southwest Region)	SFNS
75.	Muskrat Dam First Nation P.O. Box 140 MUSKRAT DAM, Ontario P0V 3B0	Chief Vernon Morris (807) 471-2573/2574 (Fax) 471-2540 vernonmmorris@knet.ca	NAN	IFNA

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
76.	Naicatchewenin First Nation Box 15, R. R. #1 DEVLIN, Ontario P0W 1C0	Chief Wayne Smith (807) 486-3407 (Fax) 486-3704 Wayne.smith@bellnet.ca	GCT#3 (Fort Frances Area)	Fort Frances
77.	Namaygoosisagun First Nation 684 City Road, Unit 16 THUNDER BAY, Ontario P7J 1K3	Chief Helen Angela Frank (807) 626-1780 (Fax) 626-8126 nfnchief@tbaytel.net	Anishinabek Nation (Northern Superior Region)	N/A
78.	Naotkamegwanning Anishinabe First Nation (Whitefish Bay) Pawitik Post Office PAWITIK, Ontario POX 1LO	Chief Warren White (807) 226-5411 (FAX) 226-5389 naotchief@bellnet.ca naotkam@bellnet.ca	GCT#3 (Kenora)	Anishinaabeg of Kabapikotawangag Resource Council
79.	Neskantaga First Nation (Lansdowne House) Neskantaga Reserve #239 P.O. Box 105 LANSDOWNE HOUSE, Ontario P0T 1Z0	Chief Roy Moonias (807) 479-2570 (Fax) 479-1138 roymoonias@yahoo.com	NAN	Matawa
80.	Nibinamik First Nation General Delivery SUMMER BEAVER, Ontario P0T 3B0	Chief Judas Beaver (807) 593-2131 (FAX) 593-2270 nibinamikfirstnation@live.com	NAN	Matawa

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
81.	Nigigoonsiminikaaning First Nation P. O. Box 68 FORT FRANCES, Ontario P9A 3M5	Chief Gary Allen (807) 481-2536- Band Office (Fax) 481-2511 Council Office: (807) 481-2508 gallen@jam21.net	GCT#3 (Fort-Frances Area)	Fort Frances
82.	Nipissing First Nation 36 Semo Road, R.R. #1 GARDEN VILLAGE, Ontario P2B 3K2	Chief Marianna Couchie (705) 753-2050 (Fax) 753-0207 mariannac@nfn.ca	Anishinabek Nation (Lake Huron Region)	N/A
83.	North Caribou Lake First Nation (Weagamow or Round Lake) General Delivery WEAGAMOW LAKE, Ontario POV 2YO	Chief Jowin Quequish (807) 469-5191/5351 (Fax) 469-1315 Northcariboulakefirstnation@knet.ca	NAN	Windigo
84.	North Spirit Lake First Nation General Delivery NORTH SPIRIT LAKE, Ontario POV 2GO	Chief Rita Thompson (807) 776-0021 (Fax) 776-0026 ritathompson@knet.ca	NAN	KOTC
85.	Northwest Angle No. 33 First Nation P.O. Box 1490 KENORA, Ontario P9N 3X7	Chief Dave Paul Jr. (807) 733-2200 (Fax) 733-3148 Nwa33@gokenora.com	GCT#3 (Kenora Area)	Anishinaabeg of Kabapikotawangag Resource Council

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
86.	Northwest Angle No. 37 First Nation P.O. Box 267 SIOUX NARROWS, Ontario POX 1N0	Chief Lorraine Major (807) 226-5353 (Fax) 226-1164 Nwa37@voyageur.ca	GCT#3 (Kenora Area)	Anishinaabeg of Kabapikotawangag Resource Council
87.	Obashkaandagaang (Washagamis Bay) P. O. Box 625 KEEWATIN, Ontario POX 1C0	Chief Edward Martin (807) 543-2532 (Fax) 543-2964 Chartrand_brenda@hotmail.com	GCT#3 (Kenora Area)	N/A
88.	Ochichagwe' Babigo'ining Nation (Dalles) R.R. #1, Dalles Road KENORA, ON P9N 2E7	Chief Lorraine Cobiness (807) 548-5876 (Fax) 548-2337 Dallesfin1@pmcnet.ca	GCT#3 (Kenora Area)	N/A
89.	Ojibways of Batchewana (Rankin) 236 Frontenac Street Rankin Reserve 15D SAULT STE. MARIE, Ontario P6A 5K9	Chief Dean Sayers (705) 759-0914 (Fax) 759-9171 chiefdeansayers@batchewana.ca councilsecretary@batchewana.ca	AIAI	North Shore
90.	Ojibways of Garden River 7 Shingwauk Street GARDEN RIVER, Ontario P6A 6Z8	Chief Lyle Sayers (705) 946-6300 (Fax) 945-1415 sayers@gardenriver.org	Anishinabek Nation (Lake Huron Region)	North Shore

FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
91. Ojibways of Onigaming (Sabaskong) P. O. Box 160, 68 Ballpark Road NESTOR FALLS, Ontario POX 1K0	Daniel Kelly, Band Councillor (807) 484-2162 ext. 22 (Reception) (Fax) 484-2737 onigaming@hotmail.com	GCT#3 (Fort Frances Area)	Anishinaabeg of Kabapikotawangag esource Council
92. Ojibways of Pic River (Heron Bay) P.O. Box 193, 3 Beaver Crescent HERON BAY, Ontario POT 1R0	Chief Arthur Fisher (807) 229-1749 ext. 26 (Fax) 229-1944 afisher@picriverisp.net	Anishinabek Nation (Northern Superior Region)	N/A
93. Oneida Nation of the Thames 2212 Elm Avenue SOUTHWOLD, Ontario NOL 2G0.	Chief Joel Abram (519) 652-3244 (Fax) 652-9287 Joel.abram@oneida.on.ca Laura.phillips@oneida.on.ca Holly.elijah@oneida.on.ca	AIAI	SFNS
94. Pays Plat First Nation 10 Central Place PAYS PLAT, Ontario POT 3C0	Chief Xavier Thompson (807) 824-2541 (Fax) 824-2206 pplat@tbaytel.net	Anishinabek Nation (Northern Superior Region)	N/A
95. Pic Moberg First Nation P.O. Box 717 MOBERT, Ontario POM 2J0	Chief Jeff Desmoulin (807) 822-2134 (Fax) 822-2850 chief@picmoberg.ca	Anishinabek Nation (Northern Superior Region)	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
96.	Pikangikum First Nation P. O. Box 323 PIKANGIKUM, Ontario POV 1LO	Chief Gordon Peters (807) 773-5578 (Fax) 773-5536 Bvtreowen@yahoo.com	NAN	KOTC
97.	Poplar Hill First Nation P. O. Box 1 Poplar Hill, Ontario POV 3E0	Chief Dennis King (807) 772-8856 (Fax) 772-8876 dennisking@knet.ca	NAN	N/A
	Poplar Point First Nation Fort William First Nation Complex Suite "E", 300 Anemki Drive THUNDER BAY, Ontario P7C 4Z2	Chief Pierre Kowtiash Telephone: No Service Fax: No Service See AOCC 2008	N/A	N/A
98.	Rainy River First Nation P. O. Box 450 EMO, Ontario POW 1E0	Chief Jim Leonard (807) 482-2479 (Fax) 482-2603 j.leonard@bellnet.ca	GCT#3 (Fort Frances Area)	Fort Frances
99.	Red Rock Indian Band Lake Helen Reserve Box #1030 NIPIGON, Ontario POT 2JO	Chief Pierre Pelletier (807) 887-2510 (Fax) 887-3446 rrib@shaw.ca	Anishinabek Nation (Northern Superior Region)	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
100.	Sachigo Lake First Nation P.O. Box 51 SACHIGO LAKE, Ontario POV 2PO	Chief Titus Tait (807) 595-2577/2527 (Fax) 595-1119 Ig_tait@yahoo.ca virginiabeardy@knet.ca	NAN	Windigo
101.	Sagamok Anishnawbek First Nation P. O. Box 610 MASSEY, Ontario POP 1PO	Chief Paul Eshkakogan (705) 865-2421 (Fax) 865-3307 chief@sagamok.ca	Anishnabek Nation (Lake Huron Region)	North Shore
102.	Sandy Lake First Nation P.O. Box 12 SANDY LAKE, Ontario POV 1VO	Chief Adam Fiddler (807) 774-3421/5121 (Fax) 774-1040 adamfiddler@knet.ca	NAN	N/A
103.	Saugeen First Nation (Savant Lake) General Delivery SAVANT LAKE, Ontario POV 2SO	Chief Edward Machimity Tel: No Service (Fax) (807) 737-3133 – Windigo Email: <u>N/A</u>	GCT#3	Windigo
104.	Seine River First Nation P. O. Box 124 MINE CENTRE, Ontario POV 1HO	Chief Earl Klyne (807) 599-2224 (Fax) 599-2865 Earlklyne695@msn.ca	GCT#3 (Fort Frances Area)	Fort Frances

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
105.	Serpent River First Nation 48 Indian Road CUTLER, Ontario POP 1BO	Chief Isadore Day (705) 844-2418 (Fax) 844-2757 lday.srfrn@ontera.net	Anishinabek Nation (Lake Huron Region)	North Shore
106.	Shawanaga First Nation 2 Village Road, R. R. #1 NOBEL, Ontario POG 1GO	Chief Dan Pawis (705) 366-2526 (Fax) 366-2740 sfnchief@hughes.net	INDEP	N/A
107.	Sheguiandah First Nation P. O. Box 101, 142 Ogemah Miikan SHEGUIANDAH, Ontario POP 1WO	Chief Georgina Thompson (705) 368-2781 (Fax) 368-3697 Email: N/A	Anishinabek Nation (Lake Huron Region)	UCCM
108.	Sheshegwaning First Nation P. O. Box 1 SHESHEGWANING, Ontario POP 1X0	Chief Elizabeth Laford (705) 283-3292 (Fax) 283-3481 elizabeth@sheshegwaning.org	Anishinabek Nation (Lake Huron Region)	UCCM
109.	Shoal Lake No. 40 First Nation Kejick Post Office SHOAL LAKE, Ontario POX 1EO	Chief Kelvin Redsky (807) 733-2315 (Fax) 733-3115 shoallake@shoallake40.ca	GCT#3 (Kenora Area)	Bimose

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
110.	Six Nations of the Grand River Territory P.O. Box 5000 OHSWEKEN, Ontario N0A 1M0	Chief William K. Montour (519) 445-2201 (Fax) 445-4208 wkm@sixnations.ca arleenmaracle@sixnations.ca	INDEP	N/A
111.	Slate Falls First Nation 48 Lakeview Drive SLATE FALLS, Ontario P0V 3C0	Chief Glen Whiskeyjack (807) 737-5700 (Fax) 888-431-5617 Brenda_bunting@hotmail.com	NAN	Windigo
112.	Stanjikoming First Nation P. O. Box 609 FORT FRANCES, Ontario P9A 3M9	Chief Janice Henderson (807) 274-2188 (Fax) 274-4774 Janice_Henderson@hotmail.com	GCT#3 (Fort Frances Area)	Fort Frances
113.	Taykwa Tagamou (New Post) R.R. #2, P.O. Box 3310 COCHRANE, Ontario P0L 1C0	Chief Dwight Sutherland (706) 272-5766 (Fax) 272-5785 Dwight_sutherland@hotmail.com	NAN	Mushkegowuk
114.	Temagami First Nation Bear Island Lake Temagami, Ontario POH 1C0	Chief Gary Potts (705) 237-8943 (Fax) 237-8959 tfn@ontera.net	INDEP	N/A

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
115.	Thessalon First Nation P. O. Box 9, R. R. #2 THESSALON, Ontario POB 1LO	Chief Alfred Bisaillon (705) 842-2323 (Fax) 842-2332 mjward@soonet.ca	Anishinbek Nation (Lake Huron Region)	North Shore
116.	Wabaseemoong First Nation Whitedog Post Office WHITEDOG, Ontario POB 1PO	Chief Eric Fisher (807) 927-2000 Ext. 221 Reception (Fax) 927-2071 chieffisher@wabaseemoong.ca	INDEP (Kenora Area)	N/A
117.	Wabauskang First Nation P. O. Box 339 EAR FALLS, Ontario POB 1TO	Chief Leslie Cameron (807) 529-3174 (Fax) 529-3007 wabauskangfn@hotmail.com	GCT#3 (Dryden Area)	Bimose
118.	Wabigoon First Nation Site 115, R.R. #1, Box 300 DRYDEN, Ontario P8N 2Y4	Chief Esther Pitchenese (807) 938-6684 (Fax) 938-1166 health@drytel.net	GCT#3 (Dryden Area)	Bimose
119.	Wahgoshig First Nation (Abitibi #70) R.R. #3 MATHESON, Ontario POB 1NO	Chief David Babin (705) 273-2055 (Fax) 273-2900 wahgoshi@ntl.sympatico.ca	NAN	Wabun

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
120.	Wahnapiatae First Nation P. O. Box 1119 CAPREOL, Ontario POM 1H0	Chief Ted Roque (705) 858-0610 (Fax) 858-5570 Ted_roque@wahnapiataefn.com	Anishinabek Nation (Lake Huron Region)	Waabnoong Bemjiwang
121.	Wahta Mohawks (Mohawks of Gibson) 2664 Muskoka Road P. O. Box 260 BALA, Ontario POC 1A0	Chief Blaine Commandant (705) 762-2354 (Fax) 762-2376 chief@wanta.ca	AIAI	N/A
122.	Wapekeka First Nation P.O. Box 2 ANGLING LAKE, Ontario POV 1B0	Chief Norman Brown (807) 537-2315 (Fax) 537-2336 normanb@wapekeka.ca	NAN	Shibogama
123.	Wasauksing First Nation, (Parry Island) P. O. Box 250, 1508 Lane "G" Geewadin Road PARRY SOUND, Ontario P2A 2X4	Chief Shane Tabobondung (705) 746-2531 (Fax) 746-5984 candcwf@xplornt.com shanetab@xplornt.com	Anishinabek Nation (Lake Huron Region)	Waabnoong Bemjiwang
124.	Wauzhushk Onigum First Nation (Rat Portage) P. O. Box 1850 KENORA, Ontario P9N 3X8	Chief Ken Skead (807) 548-5663 (Fax) 548-4877 ken@wonation.ca	GCT#3 (Kenora Area)	Anishinaabeg of Kabapikotawangag Resource Council

	FIRST NATION	CHIEF	PTO	TRIBAL COUNCIL
125.	Wawakapewin First Nation C/o Shibogama First Nation Council P.O. Box 477 SIOUX LOOKOUT, Ontario P8T 1A8	Chief Joshua Frogg Sr. (807) 737-2662 (Fax) 737-4226 joshuaf@wawakapewin.ca	NAN	Shibogama
126.	Webequie First Nation P. O. Box 268 WEBEQUIE, Ontario POT 3AO	Chief Cornelius Wabasse (807) 353-6531/5251/1263 (Fax) 353-1218 corneliusw@webequie.ca	NAN	Matawa
127.	Weenusk First Nation (Peawanuk) P. O. Box 1 PEAWANUK, Ontario POL 2H0	Chief George Hunter (705) 473-2554 (Fax) 473-2503 georgehunter@knet.ca	NAN	N/A
128.	Whitefish River First Nation P.O. Box A, 46 Bay of Islands Rd., BIRCH ISLAND, Ontario POP 1AO	Chief Franklin Paibomsai (705) 285-4335 (Fax) 285-4532 chief@whitefishriver.ca	Anishinabek Nation (Lake Huron Region)	UCCM
129.	Whitesand First Nation P.O. Box 68 ARMSTRONG, Ontario POT 1AO	Chief Allan Gustafson (807) 583-2177 (Fax) 583-2170 Allan_gus2006@yahoo.com	INDEP	IFNA

	FIRSI NATION	CHIEF	PTO	TRIBAL COUNCIL
130.	Whitewater Lake First Nation 307 Euclid Avenue, Suite 414 THUNDER BAY, Ontario P7E 6G6	Chief Arlene Slipperjack (807) 622-8713 (Fax) 577-5438 Arlene.wwater@tbaytel.net	NAN	Windigo
131.	Wikwemikong Unceded Indian Reserve Box 112 19A Complex Drive WIKWEMIKONG, Ontario POP 2JO	Chief Hazel Fox-Recollet (705) 859-3122 Toll free 1-800-880-1406 (Fax) 859-3851 chiefrecollet@wiky.net	Anishinabek Nation (Lake Huron Region)	N/A
132.	Wunnumin Lake First Nation P. O. Box 105 WUNNUMIN LAKE, Ontario POV 2ZO	Chief Rod Winnipetonga (807) 442-2559 (Fax) 442-2627 rodw@wunnumin.ca	NAN	Shibogama
133.	Zhibaaahaasing First Nation (Cockburn) General Delivery SILVERWATER, Ontario POP 1YO	Chief Irene Sagon-Kells (705) 283-3963 (Fax) 283-3964 zhiband@manitoulin.net	Anishinabek Nation (Lake Huron Region)	UCCM

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF MARCIA BROWN
SWORN BEFORE ME, THIS 15 DAY
OF MAY 2009



A COMMISSIONER FOR TAKING AFFIDAVITS

POLITICAL OFFICE:
 Port William First Nation
 #4
 c 101, 90 Anemki Drive
 Port William First Nation Office Complex
 Thunder Bay, Ontario P7J 1A5
 Tel) 626-9339
 Fax) 626-9404



ADMINISTRATION OFFICE:
 111 Peter Street, Suite 804
 Toronto, Ontario
 M5V 2H1
 Tel (416) 597-1266
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 1-877-517-6527
 Website: www.chiefs-of-ontario.org

CHIEFS OF ONTARIO

**Special Chiefs Assembly
 November 18-19-20, 2008
 Toronto, Ontario**

SUPPORT FOR SIXTIES SCOOP LITIGATION

**RESOLUTION 08/92
 Page 1 of 2**

WHEREAS the Nishnawbe Aski Nation (NAN) Chiefs Assembly agreed to assist and support First Nations people and communities of NAN, including Marcia Brown, aka Sally Mathias in their efforts to proceed with litigation regarding the horrendous events connected with the Sixties Scoop era;

WHEREAS the "adopting out" of First Nations children is a continuation of assimilation policies handed down by the provincial and federal governments of Canada;

WHEREAS these government policies have devastated First Nations families, children and culture;

WHEREAS First Nations continue to be tragically affected by the "adopting out" of their children, as is evidenced by INAC statistics from 1996, whereby 16,810 Treaty status children were adopted out to predominantly non native families across Canada, the United States, and Europe;

WHEREAS the long term effects of the Sixties Scoop continue to be felt in every First Nation community across Canada as parents and children continue to deal with the devastating effects of lost relatives;

MOVED BY:

Chief Arthur Moore
 Constance Lake First Nation

SECONDED BY:

Chief David Babin
 Wahgoshig First Nation

CONSENSUS

**Certified Copy of a Resolution adopted
 on November 20, 2008.**

Angus Toulouse,
 Ontario Regional Chief

WHEREAS the federal and provincial governments are responsible for the intentional and systematic destruction of First Nations families and communities through assimilation policies and actions, such as the 60's scoop";

THEREFORE BE IT RESOLVED that we, the Chiefs in Assembly, support those First Nations people and communities, including Marcia Brown, in their efforts to proceed with litigation regarding the horrendous events connected with the Sixties Scoop.

RESOLUTION 08/92
Page 2 of 2

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN ~~and~~ ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF GEORGE BOTT
(sworn January 14 2016)

**I, George Bott, of Marathon, in the Province of Ontario, MAKE OATH AND DO SAY
AS FOLLOWS:**

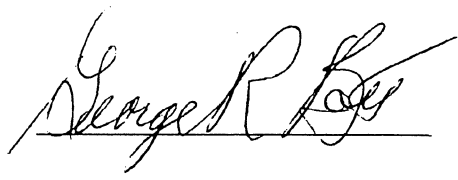
1. I am 72 years of age.
2. I am married to Joy Bott. She is 70 years of age.
3. We currently reside in Marathon, Ontario. We have been living at our current address in Marathon for 37 years.
4. Joy and I have been married for 48 years. We have three children, namely, Richard, David and Karen.
5. In 1975 we adopted Karen through the Children's Aid Society ("CAS") in Thunder Bay. Karen was from a reserve in Ontario. At the time of Karen's adoption, she was 5 years old. Prior to the adoption we were Karen's foster parents for approximately 1 month.
6. The CAS were responsible for completing Karen's adoption process.


7. During the adoption process neither Joy nor I were given any information or records from the CAS, or the Canadian federal government, regarding Karen's background, culture or family. The only information we ever received regarding Karen's background was that her biological mother was First Nations.
8. In fact, prior to the completion of the adoption, CAS attended our home several times to investigate us and ensure that we were suitable adoptive parents. Despite the ongoing communication we were never informed about Karen's first nation's community or any of her traditions and practices.
9. Karen spent many years searching and trying to obtain more information about her family and background. We experienced her call many government agencies and advertise her search in the local newspaper. Karen even took the initiative to go through the Ottawa archives. None of these efforts were successful.
10. We wanted to help Karen learn and appreciate her Indianness through connections with her First Nations friends. It was challenging for us to teach her about her identity because we knew little about her culture and practices. The Canadian government offered us no assistance.
11. As Karen entered her adolescent years she began to struggle more with her identity. Although we offered Karen unconditional love and support, she still felt lost and frustrated. This caused her to run away from home at age the age of 15. She was unable to cope and she turned to drugs and alcohol for relief. This was devastating to both Joy and I. We spent the next 5 years trying to find Karen and get her back on track.
12. I believe many of Karen's identity challenges could have been avoided if we knew more about her Indian background so that she had a way to connect with her roots.
13. When Karen was 21 years of age, out of the blue, she was informed by the CAS that her birth mother had passed away. She flew to Thunder Bay to attend the funeral. There she met her biological siblings and extended family. It was only at that time that Karen discovered that her brother was a status Indian and she, as well, could apply for her status card.

- 14. Obtaining Karen's status card was another challenging endeavour. It took Karen two years, and many inquiries to the government. Even once she obtained her status, we were not informed that she had financial entitlements such as health care, housing, educational funding etc. She was an adult by this time so she should have been the one to be informed.
- 15. Karen was in her late twenties when she discovered that she was entitled to such benefits. It then became an obstacle for her to claim her benefits. For example, it took months for Karen to receive any funding from the Seine River Band Education Fund and in the interim period she incurred significant debt.
- 16. It is tragic that we were never once informed that Karen had these entitlements. The additional resources would have been tremendous help, especially during her years of strife.
- 17. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 21st day of January 2016.

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 A Commissioner for Taking Affidavits
 Jessica Brande

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF JASON SMITH
(sworn December 21, 2015)**

**I, Jason Smith of Sarnia, in the Province of Ontario, MAKE OATH AND DO SAY AS
FOLLOWS:**

1. I am 50 years of age.
2. I currently reside in Sarnia, Ontario.
3. I was born on March 28, 1965.
1. I was apprehended by the Children’s Aid Society (“CAS”) from my reserve, Oneida, when I was 26 days old.
2. I spent the first 4 years of my life in foster care.
3. When I was 7 years old I was adopted by John and Marguerite Smith.

4. I lived with my adopted parents and my 5 adopted siblings in London, Ontario until I was 12 years of age.
5. While I was living with my adopted parents I was never informed about my Indian background, family, culture, or identity.
6. I always wondered about my biological siblings and parents. Whenever I inquired about my background my adopted parents had no information to give me other than that I came from the "Mauncy" First Nations reserve. I discovered, many years later, that even this information was inaccurate. I was actually from the Oneida reserve.
7. As an adolescent I became more desperate to understand who I was. I wanted to affirm myself and discover my roots. I knew I was living in a home where I did not belong. My skin colour was different and they called me "dirty Indian shit". It was made clear, by the members of the Smith family, that I did not belong.
8. When I asked my adopted mother why I looked different from the other kids she didn't give me any information about my native background, instead, simply she stated that I was darker because "my mother was a hooker".
9. I felt lost and in despair. My despair took the form of self mutilation, suicidal addiction, and excessive drinking.
10. The violence and sexual abuse that I was experiencing in my adopted home coupled with my feelings of loneliness and isolation caused me to run away. I had no information about my biological family or my First Nations community so I had nowhere to run to. I ended up on the street.
11. After several months of living on the street, CAS found me and placed me in a group home. I spent the next few months moving from group home to group home. I was unable

to cope with these transitions and as a result I ended up on youth detention centers. By the time I was 16 years of age I was back on the street.

12. During this period I was in constant contact with the CAS. They were responsible for placing me in the group homes and youth facilities. Not once during these years did a CAS worker ever inform me about my Indian culture, identity or background. Nor was I ever informed by the CAS, or previously by my adopted parents, that I had financial entitlements as a result of my treaty rights.
13. When I turned 18, the government took no steps to provide me with any information or documentation that would enable me to have access to my adoption records or the adoption order, or any documentation that would enable me to exercise my benefits. I also had no legal papers that recognized me as Jason Smith. In fact, I only received my adoption records in 2014 when I returned to my reserve and made many inquiries. It took almost two years to get the only two documents I have, namely, my adoption order and statement of birth.
14. I only discovered that I was entitled to benefits such as health care, housing and education when I was in my late forty's, after I had spent half my lifetime on the street without food or shelter. If I had known that I was entitled to housing, or that I had a community that I could turn to, I would not have turned to drugs and alcohol for solace.
15. Most importantly, if I had known that my medical prescriptions were covered by entitlements, I would not have faced over three decades of mental digression which landed me in many detention centers.
16. I am most disappointed that I was not informed about my entitlements because from a young age I had dreamt of a becoming a fire fighter. When I was approximately 12 years old it became clear to me that I would never be able to afford to go to school and become a fire fighter. At that point I stopped wasting time dreaming. I wish I would have known back then that I had a right to educational funding. It would have given me hope and a reason to stay focused on my dream. I could have something of myself.

17. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
at the City of Toronto,
the Province of Ontario,
this 21st day of December 2015.

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Jason B. Smith

A Commissioner for Taking Affidavits

Jessica Bravda

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF JAMES MOSS
(sworn December 15, 2015)**

I, James Moss, of the Huntsville, in the Province of Ontario, MAKE OATH AND DO SAY AS FOLLOWS:

1. I am 71 years old.
2. I currently reside in Huntsville Ontario. I have been living here since 1984.
3. Prior to moving to Huntsville, I resided in Kenora, Ontario for approximately 20 years.
4. Over the years, when I lived in Kenora, my wife and I cared for 13 foster children. We also adopted one child. All of these children were of Indian decent. They were all similarly removed from First Nations reserves in Ontario. We knew little else about the foster children's backgrounds because the Children's Aid Society ("CAS") provided us with no further information about their families or communities.
5. When we received a foster child we would usually get little advance notice. Often the CAS would arrive at our home late in the evening. They would drop the foster child off

with not much more than the clothes on their backs. You never knew what situation the children came from. We would take the foster child in, feed them, house them, and care for them until the CAS informed us that they would be taking the children back.

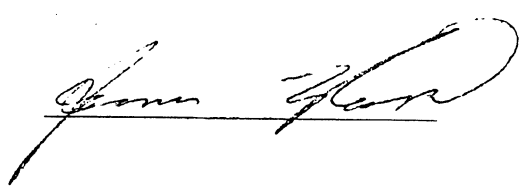
6. Neither the CAS, nor the Canadian federal government, ever provided us with any of the foster children's background information. I had no contact with the foster children's family and I had no awareness of how to obtain this information. I knew nothing about their communities, cultures, or traditions.
7. I had no intention to deprive any of my foster children of their Indianess but there was no expectation of a foster parent to enable, facilitate or encourage, the foster child to retain their Indian culture or identity. In fact, because of the lack of information that the CAS provided us with, I believed that we were to assist the First Nations child to assimilate. I did the best I could to treat them like white children.
8. I also never received information about any financial benefits that the foster children were entitled to. The only financial support that I received from the government was the *per diem* rate.
9. I find it confusing that the CAS never informed us about these financial entitlements, especially in light of the fact that we were in constant communication with them.
10. We were not wealthy people and we could have used the financial assistance especially when it came to things like eye glasses or cavity fillings we covered this ourselves.
11. In addition to the health care, housing, education etc. entitlements my adopted son was also entitled to a settlement payout. We were not informed about any of these entitlements. It was only when my son Steven was in his early thirties that he discovered that the government paid all the First Nations people from his reserve, namely, the Ratportdige Reserve, \$30,000.00 as part of a land claim settlement.

12. It is a real shame Steven never received these funds, that he was entitled to, because he had special learning needs and required extra support which was unaffordable for us. Perhaps, if Steven had received these funds, and the other financial entitlements, he could have received the extra support he required and completed his schooling.

13. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 15th day of Dec 2015.

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 A Commissioner for Taking Affidavits

Jessica Brawley

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF MARK SEABROOK
(sworn December 10, 2015)**

I, Mark Seabrook, of Manitoulin Island, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS:**

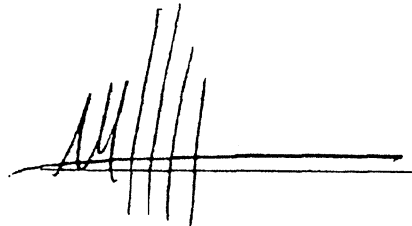
1. I am 50 years of age.
2. I currently reside on Manitoulin Island.
3. I am employed by the Ojibwe Cultural Foundation. I have dedicated my life, and career, to teaching First Nations people about our sacred practices, art and culture. I want to ensure that other First Nations people do not suffer from the same loss of identity as I did growing up.
4. I was born in 1965 on the First Nations reserve of Sagamok Anishnabek located in Espanola, Ontario.

5. I was apprehended when I was only a few years old. I was taken from my biological parents and placed into foster care. I resided in several different foster homes until I was adopted at the age of 7.
6. The first foster home that I resided in, and that I can remember, was located in Capreol, Ontario. I lived there for approximately two years. I began living there when I was 5 years old.
7. I was verbally and physically abused by my foster parents in Capreol. I was constantly made to feel embarrassed of my Indianess. This was extremely traumatic for me.
8. I was told nothing by my foster parents, or any other governmental agency, about my Indian background, family culture, or identity. The only reference that my foster parents made about my background was that "I came from savages."
9. When I entered into my adolescent years, I became even more curious about my Indian background. I often dreamt of meeting my biological siblings and parents. I felt frustrated and angry because I did not know how to contact them. No one could provide me with this information. I knew I was an Indian but I had no capacity to exercise my identity, let alone exercise membership of an Indian family and community.
10. On the rare occasion, I recall the Children's Aid Society ("CAS") visiting my foster home. When the CAS agent attended my foster home they never spoke to me about my Indian culture, Indian status, Indian home, Indian parents, or Indian community. Nor did they, or any other governmental agency, inform me about any benefits or treaty rights that I was entitled to, such as health care, housing, education etc.
11. Even after I was adopted, my adopted parents had no knowledge of my financial entitlements. This is unfortunate as resources were scarce, in my foster homes and my adopted homes, and any extra financial assistance would have been invaluable.

- 12. The most unfortunate fact is that I only learnt that I was entitled to education funding once I had already completed the first part of my University degree and I had already incurred a great deal of student debts. These debts could have been avoided.
- 13. After many years of searching, I was only able to connect with my biological family as an adult. I located 3 of my 5 biological siblings.
- 14. I learnt that my biological siblings had it far worse than me in their foster homes. They experienced years of abuse and a complete loss of identity. To this day they still suffer severely from the traumas they experienced as a result of their removals. For example two of my siblings still suffer from addictions and one of my brothers committed suicide.
- 15. It is tragic that as a result of the removal from our Indian homes, still today, so many of us are lost and wondering souls.
- 16. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 16 day of Dec 2015.

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 A Commissioner for Taking Affidavits

Jessica Buehler

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF LUKE HUNTER
(sworn February 3, 2016)

**I, Luke Hunter, of the city of Timmins, in the Province of Ontario, MAKE OATH
AND DO SAY AS FOLLOWS:**

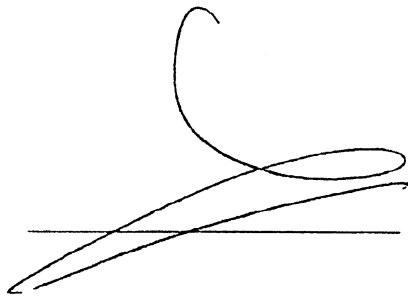
1. I was born in 1963.
2. I am a status Indian.
3. I am from the Weenusk First Nation reserve. My reserve is located in the NAN territory on the coast of the Hudson Bay. I lived on this reserve throughout my childhood and adolescence.
4. I have been a band member of the Weenusk First Nation reserve my entire life.
5. As a status Indian I am aware that I am entitled to certain benefits such as health care, housing, education etc. This information is common knowledge to First Nations people living on reserves.

6. From the time I was a little boy I remember my parents and community elders would talk about the treaties. They would explain to me, and the other First Nations Children in our community, how to interpret the treaties.
7. My community and elders also taught me about my First Nations culture, traditions, and how to speak the Cree language.
8. From my community elders I learnt that First Nations treaty rights include, but are not limited to, entitlements such as: education (inclusive of grants for post secondary programs), health care (including prescription and non-prescription drugs, medical transportation, dental care etc.), treaty annuities, and reserve sites (formula being 1 sq mile for family of five or in like proportion for larger or smaller families). The treaties also gave us trapping rights (fishing and hunting anywhere in the treaty 9 territory) and harvesting rights.
9. I have benefited from many of these entitlements. For example I have collected my treaty annuities annually. It was a tradition for my family to attend the treaty days that took place on my reserve each summer. I remember a federal government agent would visit our reserve to distribute annuities, and provide other services to the band members such as assistance in building homes. Each family on my reserve, including my family, received a home to live in. The federal government was also responsible for the maintenance of this property. Many of my family members still live in this house today.
10. Other entitlements I have benefited from include schooling. I attended elementary, secondary and post-secondary schooling. I attended the Confederation College for Law and Security and Lakehead University for political science and law. All of my schooling was funded by the federal government. As a result I have been able to pursue a career in academics and I hold a prestigious research position whereby I earn over \$70,000 annually (this amount is not taxed) plus pension and other benefits.
11. I have also benefited from health and medical entitlement including vision, dental, prescription drugs, medical transportation, hospital care etc.

- 12. Throughout the years I have also exercised my right to hunt, fish, trap and harvest without a license or restrictions from enforcement authorities. As a result of these rights I have always been able to provide food for myself and my family.
- 13. I have also benefited from the tax exemptions on income earnings, point sale tax exemption, gas tax exemption when purchased on reserved. This right comes from the *Indian Act*.
- 14. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Toronto,
 the Province of Ontario,
 this 3rd day of February 2016.

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 A Commissioner for Taking Affidavits
 Jessica Bravde

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF WILMER NADJIWON
(sworn December 14, 2015)

I, Wilmer Nadjiwon, of Wairton, in the Province of Ontario, **MAKE OATH AND DO SAY AS FOLLOWS:**

1. I was a Chief of Chippewas Nawash in 1964 and for 14 years after.
2. While I was Chief I was aware of the fact that there was an Agreement between the federal government of Canada and the province of Ontario. I was also aware that as a result of this agreement the government was responsible for child protection of Indian children on and off reserves.
3. Specifically, I recall that an agent from Children's Aid Society ("CAS"), namely, Mrs. James, who was the one responsible for removing and placing the Indian children from our reserve into homes off the reserve. Mrs. James never once consulted me about the removal of children on our reserve. In fact, during my time as Chief there was never any consultation with me, or any other Chief that I knew, from any level of government, concerning this Agreement, or how it was carried out.

4. What I observed back then, and for approximately the next 14 years or so, was the loss of too many of our Indian children from our band and community.
5. The Indian children that were removed from our reserves were placed in the homes of non-First Nations people.
6. These children, once removed, lost contact with their families and communities. As a result they were never taught Indian traditions customs beliefs or language. It was a travesty. They just disappeared. It seems as though the Canadian government did this intentionally to assimilate and take "the savage out" of these Indian children.
7. As a result of this removal, the children not only lost their culture and Indian identity but many of them lost financial their entitlements because they were not informed about their rights. For example, during my time as Chief, I worked hard to secure housing benefits for my band members. As a result of an agreement we made with the government, each band member could apply to receive \$40,000.00 in order to secure housing. The children who were removed would have had no way of knowing about this entitlement and would never have applied or benefited.
8. During my time as Chief I was never contacted by any government agent (federal or provincial) who wanted to assist an Indian child re-connect with their family or learn about their First Nations identity. If I had been contacted about this I would have done whatever I could to assist that child.
9. I know firsthand how traumatic the removal was for Indian children because both my nephews were removed from our reserve when they were only 5 and 6 years. As a result I had no contact with them.
10. It pains me to say, that my own family, are strangers to me because of this wrongful removal


11. My nephews, like many of the other thousands of Indian children, suffered from identity theft.

12. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
at the City of Toronto,
the Province of Ontario,
this 14 day of December 2015.

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Madame Justice


A Commissioner for Taking Affidavits

Jessica Branch

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF DR. CHRISTOPHER BRUCE
(sworn April 26, 2017)

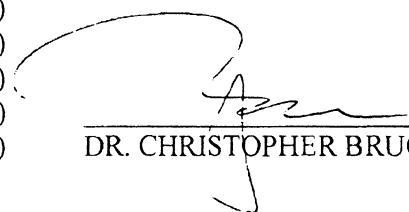
I, DR. CHRISTOPHER BRUCE, of the City of Calgary, in the Province of Alberta,
MAKE OATH AND DO SAY AS FOLLOWS:

1. I am the founder and president of Economica Ltd. Attached as Exhibit "A" are the Curriculum Vitae's of myself and Kelly Rathje of Economica.
2. Ms. Rathje and I were requested to prepare reports with respect to the following issues:
 - (a) An estimate of the loss of income experienced by First Nations children whose educational attainment may have been impaired because they did not learn of educational subsidies that were available to them;
 - (b) An estimate of the loss of housing allowance experienced by First Nations children, because they did not learn of the housing allowances that were available to them while obtaining their post-secondary education;
 - (c) An estimate of the loss of health benefits experienced by First Nations children since they were not informed of these benefits; and
 - (d) An estimate of the potential losses from not being taught how to hunt, fish, and gather.

- 3. Copies of the above noted reports are attached as Exhibits "B", "C", "D" and "E" respectively.
- 4. Attached as Exhibit "F" are copies of Acknowledgements of Expert's Duty of as executed by myself and Kelly Rathje dated April 6, 2017.
- 5. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME
 at the City of Calgary,
 the Province of Alberta,
 this 26 day of April 2017.

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DR. CHRISTOPHER BRUCE

Kelly P. Wright
 A Commissioner for Taking Affidavits

KELLY P WRIGHT
 BARRISTER & SOLICITOR
 A NOTARY PUBLIC FOR
 THE PROVINCE OF ALBERTA
 My Commission expires at the
 pleasure of Her Majesty the Queen

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
BARRISTER & SOLICITOR
A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
pleasure of Her Majesty the Queen

PROFESSIONAL QUALIFICATIONS

CHRISTOPHER J. BRUCE, PH.D.

EDUCATION:

- | | |
|---------------------------|--|
| B.A. (Honours, Economics) | University of Victoria, 1969 |
| M.A. (Economics) | Carleton University, Ottawa, 1970 |
| Ph.D. (Labour Economics) | Cambridge University, Cambridge, England, 1976 |

EXPERIENCE:

- [1] Professor, Department of Economics, University of Calgary, 1991-2015. (Previously Associate Professor 1976-1990 and Assistant Professor 1973-1976). Teaching responsibilities include microeconomic theory, labour economics, and economic analysis of law.
- [2] Department Head, Department of Economics, University of Calgary, 2010-2011.
- [3] President, Economica Ltd.: Economica Ltd. is an economic consulting firm specializing in the provision of litigation support in personal injury and fatal accident cases. In his capacity as president of Economica, Dr. Bruce has prepared, or supervised the preparation of, over 5,000 economic reports concerning loss of earnings capacity, costs of care, and loss of dependency. He has also been accepted as an expert witness in over 80 actions before the courts of British Columbia, Saskatchewan, and Alberta.

HONOURS:

- [1] Vice-President, National Association of Forensic Economics, 2006-2009.
- [2] Member: Board of Editors, *Journal of Forensic Economics*, 2001-present.
- [3] Member: Board of Editors, *Journal of Legal Economics*, 2008-present.
- [4] Visiting Erskine Fellow, University of Canterbury, Christchurch, New Zealand, February-April, 2009.

BOOKS AND MONOGRAPHS:

- [1] Bruce, C.J., 1985, *The Assessment of Personal Injury Damages*, Butterworths.
- [2] Pask, E. Diane, M. L. McCall, C.L. Brown, C.J. Bruce, C.A. Hass, D.P. Vallance, and J.P. Senecal, 1989, *How Much and Why?* (Calgary: Canadian Research Unit for Law and the Family).
- [3] Bruce, C.J., May 1990, *The Economics of Employment and Earnings*, Nelson Canada.
- [4] Bruce, C.J. and J.R. Carby-Hall, August 1991, *Rethinking Labour-Management Relations: The Case for Arbitration*, Routledge.
- [5] Bruce, C. J., 1992, *The Assessment of Personal Injury Damages*, second edition, Butterworths.
- [6] Frideres, J.S., and C.J. Bruce, eds., 1994, *The Impact of An Aging Population On Society*, University of Calgary Press.
- [7] Bruce, C.J., 1995, *The Economics of Employment and Earnings*, second edition, Nelson Canada.

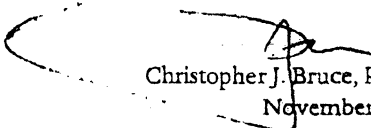
- [8] Bruce, C.J., R.D. Kneebone, and K.J. McKenzie, 1997, *A Government Reinvented: The Restructuring of the Alberta Government*, Oxford University Press.
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- [2] Bruce, C.J., 1978, "The Effect of Young Children on Female Labour Force Participation Rates", *Canadian Journal of Sociology*.
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Christopher J. Bruce, Ph.D.
November 2014

KELLY A. RATHJE, MA
PROFESSIONAL QUALIFICATIONS

EDUCATION

BA (Honours, Economics)	University of Calgary	1998
MA (Economics)	University of Calgary	2000

WORK EXPERIENCE


CONSULTANT, *Economica Ltd.* Economica is an economic consulting firm specializing in the provision of litigation support in personal injury and fatal accident cases. Ms. Rathje joined the firm in September 1999, and has prepared assessments for over 1,400 personal injury, fatal accident, and cost-of-care cases. She has been accepted as an expert witness before the Alberta Court of Queen's Bench, and has assisted in providing evidence in utility rate hearings.

GRADUATE TEACHING ASSISTANT, *University of Calgary* 1998 – 1999. Instructed tutorials for first year undergraduate microeconomics courses. Marked assignments supervised and marked exams.

SALES REPRESENTATIVE, OFFICE ASSISTANT 1993-1998, *Astral Home Entertainment*. Sustained highest grossing client base of \$175,000+ per month; acted as a liaison with studio representatives for sales incentives; created displays for products; and constructed monthly release schedule; trained new employees; posted customer payments to accounts.

PUBLICATIONS

1. "Rates of Return to Advanced Education in Alberta and Canada", *Master's Thesis, University of Calgary*, 2000.
2. "Rates of Return to Advanced Education in Alberta", *The Expert Witness*, Winter 1999/2000 Vol. 4 No. 4..
3. "Evaluation of Harm to a Class of Individuals", *The Expert Witness*, Winter 2000 Vol. 5 No. 4.
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 Kelly A. Rathje, MA
 February 2016

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
BARRISTER & SOLICITOR
A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
pleasure of Her Majesty the Queen

economica

April 5, 2017

Our file: 2015-158

WILSON CHRISTEN LLP
Barristers
137 Church Street
Toronto, Ontario M5B 1Y5

Attention: Mr. Jeffery Wilson

Dear Sir:

RE: BROWN v CANADA

You have asked us to provide a method of determining the losses of income experienced by First Nations children whose educational attainment may have been impaired because they did not learn of educational subsidies that were available to them.

Our understanding of the issues in this case are as follows:

- Between 1965 and 1984, large number of First Nations children were removed from their homes on various Reserves in Ontario and placed with families off-Reserve.
- Because these children retained their First Nations status, they were eligible to receive government-funded educational subsidies.
- However, the children were not informed that these subsidies were available to them.
- It is your position that, had these children been aware of the educational subsidies, many of them would have taken advantage of those subsidies and would, therefore, have achieved a higher level of education than they received in the absence of that information.

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Christopher J. Bruce, PhD | Derek W. Aldridge, MA
Kelly A. Rathje, MA | Laura J. Weir, MA

- Because individuals' earnings generally increase with educational attainment, the effect of withholding information about the available subsidies may have reduced the lifetime earnings of the affected children.

Accordingly, you have asked us to estimate the effect on individuals' earnings of receiving a lower level of education than might otherwise have been available to them. As there were large numbers of individuals involved, of various ages, removed from their families at various times, we have responded to your request by calculating the average lifetime incomes available to Canadians (male and female) at seven educational levels. For any individual, you may use these data to calculate the difference between the lifetime income of any two educational levels. For example, if it is determined that an individual would have completed a trade certificate if he or she had taken advantage of the educational subsidies available to First Nations children, but instead only completed high school, that individual's loss can be calculated by taking the difference between the lifetime earnings of a trade school graduate and a high school graduate.

In Section 1, below, we report the lifetime earnings of males and females (separately) at each of seven educational levels. In Section 2, we calculate the loss of lifetime earnings between each possible pair of educational attainments.

1 Average Income Paths

For the purposes of our calculations, we present income paths for average males and females, with: non-high school; high school; college; trade; bachelor's, master's, and PhD. While the individual is completing their education, we assume minimal earnings.

To estimate the income streams, we rely on a special tabulation that was prepared for us by Statistics Canada and derived from the 2011 National Household Survey (a component of the 2011 Census). For the purposes of our calculations, we assume that any positive (fringe benefits) and negative (disability, mortality, and non-participation) contingencies are roughly offsetting. We assume retirement at age 62 for all of our calculations.

Normally, when calculating the commuted value of a stream of earnings, we would add judgement interest to past values and would discount future values by the real rate of interest. However, as we do not know the dates at which the individuals in this group would have completed their educations (i.e. the dates at which their income streams would have begun), it is not possible to make precise calculations of the effect of judgment interest and real discount rates, respectively. Rather, for the

purpose of this report, we calculate the undiscounted values of lifetime incomes. It is our view that the figures we obtain in this way will not vary to a significant extent from those that would have been obtained from a more precise calculation. Indeed, given the uncertainties arising in this litigation, any more precise estimates would be subject to the criticism of spurious accuracy.

Our income, growth, and contingency assumptions for each of seven educational levels are outlined below.

1.1 AVERAGE NON-HIGH SCHOOL GRADUATE

We assume that the income path for a non-high school graduate starts at age 18. The data we use to calculate the income stream are outlined in the table below.

Table 1: Average incomes for non-high school graduates: Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	711,360	\$ 20,098	\$ 22,552	1,122,165	\$ 32,788	\$ 36,791
15 - 19	140,355	4,937	5,540	151,920	6,193	6,949
20 - 24	44,230	14,738	16,538	89,750	21,105	23,682
25 - 29	36,455	19,638	22,036	85,535	30,539	34,268
30 - 34	34,920	21,574	24,208	75,620	36,978	41,493
35 - 44	101,155	24,265	27,228	168,155	40,520	45,467
45 - 54	183,405	27,067	30,372	276,620	42,882	48,118
55 - 64	136,460	25,218	28,297	201,850	39,256	44,049

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was no diploma or degree.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a non-high school graduate, at age 18, is reasonably reflected by the 15-19 year age category or \$5,540 using earnings data for females, \$6,949 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for females, we assume that at her age 27, she would have earned the income of a 27-year-old (shown by the 25-29 year age category), or \$22,036 (in 2017 dollars); at her age 40 she would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$27,2289 (in 2017 dollars); and so forth.

Our estimates of the income streams for average non-high school graduates are presented in the table below.

Table 2: Estimated income streams: *Non-high school graduate*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ 5,540	40	\$ 27,228	18	\$ 6,949	40	\$ 45,467
19	7,282	41	27,527	19	9,442	41	45,726
20	9,572	42	27,829	20	12,828	42	45,986
21	12,581	43	28,135	21	17,430	43	46,247
22	16,538	44	28,444	22	23,682	44	46,510
23	17,515	45	28,757	23	25,498	45	46,774
24	18,550	46	29,073	24	27,454	46	47,040
25	19,646	47	29,392	25	29,560	47	47,307
26	20,806	48	29,715	26	31,827	48	47,576
27	22,036	49	30,042	27	34,268	49	47,846
28	22,454	50	30,372	28	35,604	50	48,118
29	22,880	51	30,158	29	36,993	51	47,695
30	23,315	52	29,945	30	38,436	52	47,275
31	23,757	53	29,734	31	39,935	53	46,859
32	24,208	54	29,524	32	41,493	54	46,447
33	24,567	55	29,316	33	41,970	55	46,039
34	24,930	56	29,109	34	42,453	56	45,634
35	25,299	57	28,904	35	42,941	57	45,232
36	25,674	58	28,700	36	43,435	58	44,834
37	26,054	59	28,498	37	43,934	59	44,440
38	26,439	60	28,297	38	44,440	60	44,049
39	26,831	61	28,297	39	44,951	61	44,049
Total earnings (females): \$1,083,470				Total earnings (males): \$1,732,672			

1.2 AVERAGE HIGH SCHOOL GRADUATE

We assume that the income path for a high school graduate starts at age 18. The data we use to calculate the income streams are outlined in the table below.

Table 3: Average incomes for high school graduates: Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	1,964,230	\$ 27,208	\$ 30,530	2,187,135	\$ 39,493	\$ 44,315
15 - 19	206,475	7,083	7,948	191,375	8,645	9,701
20 - 24	283,580	14,022	15,734	345,205	19,262	21,614
25 - 29	138,245	24,016	26,948	221,720	34,556	38,775
30 - 34	128,505	27,280	30,611	196,875	42,652	47,860
35 - 44	309,365	32,151	36,077	388,500	49,092	55,086
45 - 54	527,115	36,559	41,023	477,480	54,088	60,692
55 - 64	323,590	33,461	37,547	304,420	48,645	54,585

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was no a high school diploma or equivalent.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a high school graduate, at age 18, is reasonably reflected by the 15-19 year age category or \$7,948 using earnings data for females, \$9,701 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for males, we assume that at his age 27, he would have earned the income of a 27-year-old (shown by the 25-29 year age category), or \$38,775 (in 2017 dollars); at his age 40 he would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$55,086 (in 2017 dollars); and so forth.

Our estimate of the income streams for average high school graduates are presented in the table below.

Table 4: Estimated income stream: *High school graduate*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ 7,948	40	\$ 36,077	18	\$ 9,701	40	\$ 55,086
19	9,428	41	36,543	19	11,852	41	55,623
20	11,183	42	37,016	20	14,480	42	56,164
21	13,265	43	37,494	21	17,691	43	56,711
22	15,734	44	37,979	22	21,614	44	57,264
23	17,522	45	38,470	23	24,294	45	57,821
24	19,513	46	38,968	24	27,306	46	58,384
25	21,730	47	39,472	25	30,692	47	58,953
26	24,199	48	39,982	26	34,498	48	59,527
27	26,948	49	40,499	27	38,775	49	60,107
28	27,644	50	41,023	28	40,443	50	60,692
29	28,358	51	40,661	29	42,181	51	60,052
30	29,090	52	40,303	30	43,995	52	59,418
31	29,841	53	39,947	31	45,887	53	58,791
32	30,611	54	39,595	32	47,860	54	58,171
33	31,246	55	39,246	33	48,709	55	57,557
34	31,894	56	38,900	34	49,572	56	56,950
35	32,556	57	38,557	35	50,451	57	56,349
36	33,232	58	38,217	36	51,346	58	55,755
37	33,921	59	37,881	37	52,257	59	55,167
38	34,625	60	37,547	38	53,183	60	54,585
39	35,343	61	37,547	39	54,126	61	54,585
Total earnings (females): \$1,397,753				Total earnings (males): \$2,074,624			

1.3 AVERAGE TRADESPERSON

We assume that the income path for a tradesperson starts at age 18. The data we use to calculate the income streams are outlined in the table below.

Table 5: Average incomes for tradespeople: Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	624,495	\$ 27,719	\$ 31,103	1,324,395	\$ 49,161	\$ 55,164
15 - 19	8,095	9,091	10,201	14,170	12,696	14,246
20 - 24	45,070	18,152	20,368	93,050	29,434	33,028
25 - 29	57,470	23,505	26,375	128,080	42,796	48,021
30 - 34	62,405	24,746	27,767	136,440	48,727	54,677
35 - 44	143,240	28,999	32,540	277,735	52,981	59,450
45 - 54	187,955	31,627	35,489	381,030	56,231	63,097
55 - 64	102,985	29,675	33,298	239,865	50,840	57,048

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was a trade certificate or diploma.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a tradesperson, at age 18, is reasonably reflected by the 15-19 year age category or \$10,201 using earnings data for females, \$14,246 using earnings data for males (both in 2017 dollars).

Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for males, we assume that at his age 27, he would have earned the income of a 27-year-old (shown by the 25-29 year age category), or \$48,021 (in 2017 dollars); at his age 40 he would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$59,450 (in 2017 dollars); and so forth.

It is our understanding that most apprenticeship programs require on-the-job training, combined with in-class technical training, for three to four years. Furthermore, apprentices usually earn approximately 60, 70, 80, and 90 percent of journeyman wages during their apprenticeship years. These factors would result in

apprenticeship incomes being less than an average journeyman just starting his/her career. We assume that these factors are already incorporated in the 15-19 year age category figures, and we do not make an additional adjustment to the census data.

Our estimate of the income stream for an average tradesman is presented in the table below.

Table 6: Estimated income stream: *Tradesperson*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ 10,201	40	\$ 32,540	18	\$ 14,246	40	\$ 59,450
19	12,126	41	32,823	19	17,579	41	59,805
20	14,415	42	33,109	20	21,692	42	60,162
21	17,135	43	33,398	21	26,766	43	60,521
22	20,368	44	33,689	22	33,028	44	60,883
23	21,449	45	33,982	23	35,595	45	61,246
24	22,587	46	34,278	24	38,362	46	61,612
25	23,785	47	34,577	25	41,344	47	61,980
26	25,046	48	34,878	26	44,558	48	62,350
27	26,375	49	35,182	27	48,021	49	62,722
28	26,648	50	35,489	28	49,284	50	63,097
29	26,923	51	35,263	29	50,580	51	62,464
30	27,202	52	35,039	30	51,910	52	61,838
31	27,483	53	34,817	31	53,276	53	61,218
32	27,767	54	34,596	32	54,677	54	60,604
33	28,323	55	34,376	33	55,252	55	59,996
34	28,891	56	34,158	34	55,833	56	59,394
35	29,469	57	33,941	35	56,420	57	58,799
36	30,059	58	33,725	36	57,013	58	58,209
37	30,661	59	33,511	37	57,613	59	57,625
38	31,275	60	33,298	38	58,219	60	57,048
39	31,901	61	33,298	39	58,831	61	57,048
Total earnings (females): \$1,290,057				Total earnings (males): \$2,308,169			

1.4 AVERAGE COLLEGE GRADUATE

We assume that the income path for a college graduate starts at age 21. The data we use to calculate the income streams are outlined in the table below.

Table 7: Average incomes for college graduates: Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	954,770	\$ 34,819	\$ 39,070	743,360	\$ 52,389	\$ 58,786
15 - 19	14,595	8,185	9,184	9,585	9,064	10,171
20 - 24	93,735	17,592	19,740	74,195	21,842	24,509
25 - 29	100,690	28,619	32,113	85,990	40,710	45,681
30 - 34	105,045	31,643	35,507	90,205	50,715	56,907
35 - 44	226,145	36,927	41,436	178,640	58,945	66,142
45 - 54	264,970	42,558	47,754	189,035	65,609	73,620
55 - 64	131,245	39,494	44,316	99,140	56,775	63,707

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was a college level diploma or certificate with a program duration of one to two years.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a college graduate, at age 21, is reasonably reflected by the 20-24 year age category or \$19,740 using earnings data for females, \$24,509 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for females, we assume that at her age 27, she would have earned the income of a 27-year-old (shown by the 25-29 year age category), or \$32,113 (in 2017 dollars); at her age 40 she

would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$41,436 (in 2017 dollars); and so forth.

Our estimate of the income streams for average college graduates are presented in the table below.

Table 8: Estimated income stream: *College graduate*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ -	40	\$ 41,436	18	\$ -	40	\$ 66,142
19	-	41	42,028	19	-	41	66,854
20	-	42	42,629	20	-	42	67,574
21	19,740	43	43,238	21	24,509	43	68,302
22	21,408	44	43,856	22	27,189	44	69,038
23	23,216	45	44,483	23	30,162	45	69,781
24	25,178	46	45,119	24	33,460	46	70,532
25	27,305	47	45,764	25	37,119	47	71,292
26	29,612	48	46,418	26	41,178	48	72,060
27	32,113	49	47,081	27	45,681	49	72,836
28	32,765	50	47,754	28	47,733	50	73,620
29	33,430	51	47,399	29	49,878	51	72,563
30	34,108	52	47,046	30	52,119	52	71,521
31	34,800	53	46,696	31	54,460	53	70,494
32	35,507	54	46,348	32	56,907	54	69,482
33	36,199	55	46,003	33	57,987	55	68,484
34	36,904	56	45,661	34	59,088	56	67,501
35	37,623	57	45,321	35	60,209	57	66,532
36	38,357	58	44,983	36	61,351	58	65,577
37	39,104	59	44,649	37	62,515	59	64,635
38	39,867	60	44,316	38	63,702	60	63,707
39	40,644	61	44,316	39	64,910	61	63,707
Total earnings (females): \$1,610,424				Total earnings (males): \$2,442,392			

1.5 AVERAGE UNIVERSITY GRADUATE

We assume that the income path for a university graduate with a bachelor's degree starts at age 23. The data we use to calculate the income streams are outlined in the table below.

Table 9: Average incomes for university graduates (bachelor's degree): Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	1,466,780	\$ 49,087	\$ 55,081	1,266,755	\$ 74,722	\$ 83,846
15 - 19	690	10,508	11,791	465	11,285	12,663
20 - 24	127,925	18,751	21,040	76,410	20,970	23,530
25 - 29	239,375	37,677	42,277	168,780	44,526	49,963
30 - 34	219,840	45,631	51,203	167,015	62,802	70,470
35 - 44	399,130	54,971	61,683	342,100	81,794	91,781
45 - 54	312,010	62,934	70,618	296,940	97,002	108,846
55 - 64	149,555	55,951	62,783	178,555	88,300	99,081

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was a bachelor's degree.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a university graduate with a bachelor's degree, at age 23, is reasonably reflected by the 20-24 year age category or \$21,040 using earnings data for females, \$23,530 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for females, we assume that at her age 27, she would have earned the income of a 27-year-old (shown by the 25-29 year age category), or \$42,277 (in 2017 dollars); at her

age 40 she would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$61,683 (in 2017 dollars); and so forth.

Our estimates of the income streams for average university graduates with a bachelor's degree are presented in the table below.

Table 10: Estimated income stream: *University graduate (bachelor's degree)*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ -	40	\$ 61,683	18	\$ -	40	\$ 91,781
19	-	41	62,523	19	-	41	93,360
20	-	42	63,375	20	-	42	94,965
21	-	43	64,238	21	-	43	96,599
22	-	44	65,113	22	-	44	98,260
23	21,040	45	66,000	23	23,530	45	99,950
24	25,051	46	66,898	24	28,404	46	101,669
25	29,825	47	67,810	25	34,288	47	103,418
26	35,510	48	68,733	26	41,390	48	105,196
27	42,277	49	69,669	27	49,963	49	107,006
28	43,928	50	70,618	28	53,520	50	108,846
29	45,644	51	69,793	29	57,331	51	107,828
30	47,426	52	68,977	30	61,413	52	106,819
31	49,278	53	68,170	31	65,786	53	105,820
32	51,203	54	67,373	32	70,470	54	104,830
33	52,408	55	66,585	33	72,836	55	103,849
34	53,643	56	65,807	34	75,282	56	102,877
35	54,906	57	65,037	35	77,810	57	101,915
36	56,199	58	64,277	36	80,423	58	100,962
37	57,522	59	63,525	37	83,123	59	100,017
38	58,877	60	62,783	38	85,914	60	99,081
39	60,264	61	62,783	39	88,799	61	99,081
Total earnings (females): \$2,236,770				Total earnings (males): \$3,284,411			

1.6 AVERAGE UNIVERSITY GRADUATE (MASTER'S DEGREE)

We assume that the income path for a university graduate with a master's degree starts at age 26. The data we use to calculate the income streams are outlined in the table below.

Table 11: Average incomes for university graduates (master's degree): Canada

Age category	Earnings data for females			Earnings data for males		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	390,380	\$ 59,914	\$ 67,229	408,040	\$ 89,508	\$ 100,437
15 - 19	-	-	-	-	-	-
20 - 24	5,865	17,485	19,620	3,285	19,302	21,659
25 - 29	47,390	36,280	40,710	31,970	39,138	43,917
30 - 34	60,675	48,648	54,588	49,130	61,579	69,098
35 - 44	112,975	62,560	70,199	118,085	91,363	102,518
45 - 54	97,420	75,026	84,187	112,485	107,477	120,600
55 - 64	56,460	68,132	76,451	73,280	106,772	119,809

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was a master's degree.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a university graduate with a master's degree, at age 26, is reasonably reflected by the 25-29 year age category or \$40,710 using earnings data for females, \$43,917 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for males, we assume that at his age 32, he would have earned the income of a 32-year-old (shown by the 30-34 year age category), or \$69,098 (in 2017 dollars); at his

age 40 he would have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$102,518 (in 2017 dollars); and so forth.

Our estimate of the income streams for average university graduates with a master's degree are presented in the table below.

Table 12: Estimated income stream: *University graduate (master's degree)*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ -	40	\$ 70,199	18	\$ -	40	\$ 102,518
19	-	41	71,486	19	-	41	104,197
20	-	42	72,797	20	-	42	105,904
21	-	43	74,132	21	-	43	107,638
22	-	44	75,491	22	-	44	109,401
23	-	45	76,875	23	-	45	111,192
24	-	46	78,285	24	-	46	113,013
25	-	47	79,720	25	-	47	114,864
26	40,710	48	81,182	26	43,917	48	116,745
27	42,750	49	82,671	27	47,363	49	118,657
28	44,892	50	84,187	28	51,079	50	120,600
29	47,141	51	83,379	29	55,087	51	120,521
30	49,503	52	82,579	30	59,409	52	120,441
31	51,983	53	81,787	31	64,071	53	120,362
32	54,588	54	81,003	32	69,098	54	120,283
33	56,331	55	80,226	33	72,591	55	120,204
34	58,131	56	79,456	34	76,260	56	120,125
35	59,987	57	78,694	35	80,115	57	120,046
36	61,903	58	77,939	36	84,165	58	119,967
37	63,880	59	77,191	37	88,420	59	119,888
38	65,920	60	76,451	38	92,890	60	119,809
39	68,026	61	76,451	39	97,585	61	119,809
Total earnings (females): \$2,487,924				Total earnings (males): \$3,528,231			

1.7 AVERAGE UNIVERSITY GRADUATE (PHD)

We assume that the income path for a university graduate with a PhD starts at age 29. The data we use to calculate our income streams are outlined in the table below.

Table 13: Average incomes for university graduates (PhD): Canada

Age category	<i>Earnings data for females</i>			<i>Earnings data for males</i>		
	Number of workers	Average income (2010 \$)	Average income (2017 \$)	Number of workers	Average income (2010 \$)	Average income (2017 \$)
15+	53,535	\$ 74,382	\$ 83,464	93,600	\$ 97,450	\$ 109,349
15 - 19	-	-	-	-	-	-
20 - 24	215	20,061	22,510	175	22,976	25,781
25 - 29	2,375	35,961	40,352	2,205	35,976	40,369
30 - 34	6,980	55,943	62,774	8,465	57,982	65,062
35 - 44	16,485	70,472	79,077	23,155	91,196	102,331
45 - 54	15,030	86,928	97,542	27,810	111,473	125,084
55 - 64	9,750	90,321	101,349	21,485	114,413	128,383

Source: Special tabulation prepared by Statistics Canada and derived from the 2011 National Household Survey.

Notes:

- The above table is derived from Canadian data for females and males employed in all occupations who reported that their highest level of education obtained was a PhD.
- The above figures reflect income data for "all workers", which reflect an average income for individuals who worked full-time, individuals who worked part-time, and individuals who were unemployed during the census year.
- The reported income figures are in 2010 dollars. We have adjusted them to 2017 dollars by applying 2010-2016 Canadian wage inflation (for the industrial aggregate group), and we assume no inflationary increase for 2016-2017. The overall adjustment from 2010 dollars to 2017 dollars is 12.21 percent.

We assume that the starting income for a university graduate with a PhD, at age 29, is reasonably reflected by the 25-29 year age category or \$40,352 using earnings data for females, \$40,369 using earnings data for males (both in 2017 dollars). Thereafter, to estimate what the annual income would have been over his/her work-life, we calculate wage growth rates (as a percentage) from the above data, assuming that the average income figures shown represent the average for the midpoint of the corresponding age group. For example, considering earnings data for males, we assume that at his age 32, he would have earned the income of a 32-year-old (shown by the 30-34 year age category), or \$65,062 (in 2017 dollars); at his age 40 he would

have earned the income of a 40-year-old (shown by the 35-44 year age category), or \$102,331 (in 2017 dollars); and so forth.

Our estimates of the income streams for average university graduates with a PhD are presented in the table below.

Table 14: Estimated income stream: *University graduate (PhD)*

<i>Earnings data for females</i>				<i>Earnings data for males</i>			
Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)	Age	Annual income (2017 \$)
18	\$ -	40	\$ 79,077	18	\$ -	40	\$ 102,331
19	-	41	80,754	19	-	41	104,406
20	-	42	82,466	20	-	42	106,524
21	-	43	84,215	21	-	43	108,684
22	-	44	86,001	22	-	44	110,888
23	-	45	87,825	23	-	45	113,137
24	-	46	89,688	24	-	46	115,431
25	-	47	91,590	25	-	47	117,772
26	-	48	93,533	26	-	48	120,161
27	-	49	95,516	27	-	49	122,598
28	-	50	97,542	28	-	50	125,084
29	40,352	51	97,916	29	40,369	51	125,410
30	46,756	52	98,292	30	47,330	52	125,737
31	54,176	53	98,669	31	55,492	53	126,065
32	62,774	54	99,047	32	65,062	54	126,393
33	64,612	55	99,427	33	68,851	55	126,723
34	66,504	56	99,809	34	72,861	56	127,053
35	68,451	57	100,192	35	77,105	57	127,384
36	70,455	58	100,576	36	81,595	58	127,716
37	72,518	59	100,962	37	86,348	59	128,049
38	74,642	60	101,349	38	91,377	60	128,383
39	76,827	61	101,349	39	96,699	61	128,383
Total earnings (females): \$2,763,860				Total earnings (males): \$3,427,399			

2 Summary – Effect of Altering Educational Level

In the table below, we present the “total earnings” figures, for each education level, as estimated above.

Table 15: Estimated total value of income streams, 2017 dollars

Assumed level of education achieved	Using earnings data for females	Using earnings data for males
Non-high school	\$ 1,083,470	\$ 1,732,672
High school	1,397,753	2,074,624
Tradesman	1,290,057	2,308,169
College	1,610,424	2,442,392
Bachelor's degree	2,236,770	3,284,411
Master's degree	2,487,924	3,528,231
PhD	2,763,860	3,427,399

The income figures shown above may be used to approximate the economic loss to First Nations children who were not informed about the entitlement to post-secondary education. For example, suppose it is found that a female would have obtained a college level diploma, had she known about the entitlement, but instead entered the work force with a high school diploma. The value of the income stream of a female college graduate is \$1,610,424, and the value of the income stream of a female high school graduate is \$1,397,753. Thus, the economic loss may be valued at \$212,671 (= \$1,610,424 – \$1,397,753).

In the table below, we present potential economic losses for each education level. As indicated before, there have been no adjustments made for discounting or probability of survival (mortality).

Table 16: Estimated economic losses due to lesser level of education

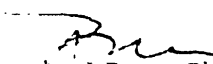
Level of education	Non-high school	High school	Tradesman	College	Bachelor's degree	Master's degree	PhD
<i>Using earnings data for females</i>							
Non-high school	n/a	\$ 314,283	\$ 206,587	\$ 526,954	\$1,153,300	\$1,404,454	\$1,680,390
High school	n/a	n/a	n/a	212,671	839,017	1,090,171	1,366,107
Tradesman	n/a	n/a	n/a	320,367	946,713	1,197,867	1,473,803
College	n/a	n/a	n/a	n/a	626,346	877,500	1,153,436
Bachelor's degree	n/a	n/a	n/a	n/a	n/a	251,154	527,090
Master's degree	n/a	n/a	n/a	n/a	n/a	n/a	275,936
PhD	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<i>Using earnings data for males</i>							
Non-high school	n/a	\$ 341,952	\$ 575,497	\$ 709,720	\$1,551,739	\$1,795,559	\$1,694,727
High school	n/a	n/a	233,545	367,768	1,209,787	1,453,607	1,352,775
Tradesman	n/a	n/a	n/a	134,223	976,242	1,220,062	1,119,230
College	n/a	n/a	n/a	n/a	842,019	1,085,839	985,007
Bachelor's degree	n/a	n/a	n/a	n/a	n/a	243,820	142,988
Master's degree	n/a	n/a	n/a	n/a	n/a	n/a	n/a
PhD	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Note: We do not provide an estimate of the loss for the "PhD versus masters" degree, using earnings data for males. This is because males with a master's degree have a higher lifetime earnings stream than males with a PhD.

* * *

We trust that this is satisfactory and look forward to working with you again.

Yours truly,


Christopher J. Bruce, PhD


Kelly A. Rathje, MA

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
BARRISTER & SOLICITOR
A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
pleasure of Her Majesty the Queen

economica

April 5, 2017

Our file: 2015-158

WILSON CHRISTEN LLP
Barristers
137 Church Street
Toronto, Ontario M5B 1Y5

Attention: Mr. Jeffery Wilson

Dear Sir:

RE: BROWN V CANADA

You have asked us to provide an estimate of the potential loss of housing allowance experienced by First Nations children because they did not learn of the housing allowances that were available to them while obtaining their post-secondary education.

Our understanding of the issues in this case, and our assumptions, are as follows:

- Between 1965 and 1984, large number of First Nations children were removed from their homes on various Reserves in Ontario and placed with families off-Reserve.
- Because these children retained their First Nations status, they were eligible to receive government-funded housing allowances while obtaining post-secondary education.
- However, the children were not informed that these housing allowances were available to them.
- It is your position that, had these children been aware of the housing allowances, they would have taken advantage of them.
- You have informed us that the housing allowance was approximately \$400 per month, or \$4,800 per year.

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Christopher J. Bruce, PhD | Derek W. Aldridge, MA
Kelly A. Rathje, MA | Laura J. Weir, MA

- We assume that the housing allowance would have been paid yearly for each year the First Nations children would have been obtaining their post-secondary educations. Specifically, we provide estimates assuming one through twelve years of post-secondary education (and therefore housing allowances).

Based on the above, our estimate of the potential loss of housing allowance, while obtaining a post-secondary education, is outlined in the table below.

Table 1: Loss of housing allowance while attending post-secondary school

Number of years First Nations children would have been attending post- secondary school	Total number of months in each period	Monthly housing allowance	Loss of housing allowance
1 year	12	\$ 400.00	\$ 4,800
2 years	24	400.00	9,600
3 years	36	400.00	14,400
4 years	48	400.00	19,200
5 years	60	400.00	24,000
6 years	72	400.00	28,800
7 years	84	400.00	33,600
8 years	96	400.00	38,400
9 years	108	400.00	43,200
10 years	120	400.00	48,000
11 years	132	400.00	52,800
12 years	144	400.00	57,600

If it is found that the housing allowance would have been something different than we have assumed, the loss of this allowance can be recalculated for any potential annual amount, and for any assumed time period, as outlined in the sections below.

Different monthly housing allowance

If it is found that the monthly housing allowance would have been something different than we have assumed (\$400 per month), the loss of housing allowance can

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Re: Brown v Canada

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be recalculated by multiplying the assumed monthly housing allowance by the number of months the individual would have been attending post-secondary school.

For example, suppose it is found that the housing allowance would have been approximately \$275 per month, \$3,300 per year. The loss of housing allowance would then range from \$3,330 (= $\$275 \times 12$ months of schooling) to \$39,600 (= $\$275 \times 144$ months of schooling).

Attends post-secondary school for a different period of time

If it is found that the First Nations individual would have attended post-secondary school for a different period of time than we have presented, the loss of housing allowance can be recalculated by multiplying the assumed monthly housing allowance by the number of months the individual would have been attending post-secondary school.

For example, suppose it is found that the individual would have attended post-secondary school for 2.5 years (30 months). Using the monthly housing allowance of \$400, the loss would be \$12,000 (= $\$400 \times 30$ months of schooling).

Both a different monthly housing allowance and different period of time

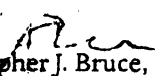
If it is found that both the monthly housing allowance and the time period attending post-secondary school would have been something different than what we have assumed, the loss of housing allowance can be recalculated by multiplying the assumed monthly housing allowance by the number of months the individual would have been attending post-secondary school.

For example, suppose it is found that the housing allowance would have been approximately \$525 per month, and the individual would have been attending for approximately three years and eight months (44 months total). The loss of housing allowance for this example would be \$23,100 (= $\$525 \times 44$ months of schooling).

* * *

We trust that this is satisfactory and look forward to working with you again.

Yours truly,


Christopher J. Bruce, PhD


Kelly A. Rathje, MA

THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
BARRISTER & SOLICITOR
A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
pleasure of Her Majesty the Queen

economica

April 5, 2017

Our file: 2015-158

WILSON CHRISTEN LLP
 Barristers
 137 Church Street
 Toronto, Ontario M5B 1Y5

Attention: Mr. Jeffery Wilson

Dear Sir:

RE: BROWN V CANADA

You have asked us to provide an estimate of the potential loss of health benefits experienced by First Nations children because they did not learn of the non-insured health benefits that were available to them as adults.

Our understanding of the issues in this case, and our assumptions, are as follows:

- Between 1965 and 1984, large numbers of First Nations children were removed from their homes on various Reserves in Ontario and placed with families off-Reserve.
- Because these children retained their First Nations status, they were eligible to receive government-funded health benefits.
- However, the children were not informed that these health benefits were available to them.
- It is your position that, had these children been aware of the health benefits, they would have taken advantage of them.
- We have reviewed a document entitled *Non-Insured Health Benefits Program First Nations and Inuit Health Branch Annual Report 2013/2014*, prepared by Health Canada. This document indicates that the average per capita

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Christopher J. Bruce, PhD | Derek W. Aldridge, MA
 Kelly A. Rathje, MA | Laura J. Weir, MA

expenditure in Ontario, for all health benefits was \$984 per year.¹ We assume this reasonably reflects the annual dollar amount each First Nations child would have benefited from, had they been told of their First Nations status.

Based on the above, our estimate of the potential loss of health benefits is outlined in the table below. Since the earliest year that the First Nations children were taken was 1965 (approximately 52 years ago), and the latest year was 1984 (approximately 33 years ago), we provide an estimate assuming the loss of the benefit was incurred for a minimum of 33 years, and a maximum of 52 years.

Table 1: Loss of health benefits

Number of years First Nations children have lost the health benefit	Annual average per capita health benefit expenditure	Loss of health benefits
33 years	\$ 984.00	\$ 32,472
34 years	984.00	33,456
35 years	984.00	34,440
36 years	984.00	35,424
37 years	984.00	36,408
38 years	984.00	37,392
39 years	984.00	38,376
40 years	984.00	39,360
41 years	984.00	40,344
42 years	984.00	41,328
43 years	984.00	42,312
44 years	984.00	43,296
45 years	984.00	44,280
46 years	984.00	45,264
47 years	984.00	46,248
48 years	984.00	47,232
49 years	984.00	48,216
50 years	984.00	49,200
51 years	984.00	50,184
52 years	984.00	51,168

1. Source: Page 23, Figure 3.8.

If it is found that the health benefit would have been something other than what we have assumed, the loss of this allowance can be recalculated for any potential annual amount, and for any assumed time period, as outlined in the sections below.

Different health benefits amount

If it is found that the annual health benefit would have been something different than we have assumed (\$984 per year), the loss of health benefits can be recalculated by multiplying the assumed annual health benefit amount by the number of years the individual has lost the benefit.

For example, suppose it is found that the health benefit would have been approximately \$1,200 per year. The loss of health benefits would then range from \$39,600 (= \$1,200 × 33 years) to \$62,400 (= \$1,200 × 52 years).

Loss of health benefits for a different time period

If it is found that the First Nations individual would have lost health benefits for a different period of time than we have presented, the loss can be recalculated by multiplying the assumed annual health benefit by the number of years the individual would have received the benefit, had they been informed of their First Nations status.

For example, suppose it is found that the individual would have received health benefits for approximately 35.5 years. Using the annual health benefit of \$984, the loss would be \$34,932 (= \$984 × 35.5).

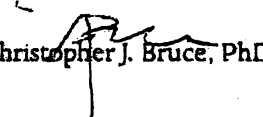
Both a different annual health benefit and different period of time

If it is found that both the annual health benefit and the length of the loss period would have been something different than what we have assumed, the loss of health benefits can be recalculated by multiplying the assumed annual health benefit amount by the number of years the individual would have received the benefit, had they been informed of their First Nations status.

For example, suppose it is found that the annual health benefit would have been approximately \$1,000 per year, and the individual would have received this benefit for 40 years. The loss of health benefits for this example would be \$40,000 (= \$1,000 × 40).

* * *

Yours truly,


Christopher J. Bruce, PhD


Kelly A. Rathje, MA

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
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A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
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April 5, 2017

Our file: 2015-158

WILSON CHRISTEN LLP
Barristers
137 Church Street
Toronto, Ontario M5B 1Y5

Attention: Mr. Jeffery Wilson

Dear Sir:

RE: BROWN V CANADA

You have asked us to provide an estimate of the potential loss experienced by First Nations children because they were not taught how to hunt, fish, and gather (crops and vegetables).

Our understanding of the issues in this case, and our assumptions, are as follows:

- Between 1965 and 1984, large numbers of First Nations children were removed from their homes on various Reserves in Ontario and placed with families off-Reserve.
- Since they were removed from their homes, they did not receive the cultural knowledge regarding hunting, fishing, and gathering, that is commonly undertaken by the First Nations people for food and medicinal purposes.
- It is your position that, had these children been taught to hunt, fish, and gather, they would have taken advantage of this knowledge and would have been able to reduce their annual food expenditures by obtaining food through hunting, fishing, and gathering.

Based on the above, we present an estimate of the potential loss due to additional food expenditures experienced by the First Nations children.

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Christopher J. Bruce, PhD | Derek W. Aldridge, MA
Kelly A. Rathje, MA | Laura J. Weir, MA

1 Food Expenditures in Ontario

In the table below, we present a summary of the average household food expenditures in Ontario.

Table 1: Average household food expenditure: Ontario

Food expenditures	Annual expenditure (2014 \$)
Bakery products	\$ 562.00
Cereal grains and products	332.00
Fruit, fruit preparations, nuts	738.00
Vegetables and vegetable preparations	718.00
Dairy products and eggs	776.00
Meat	1,200.00
Fish and seafood	215.00
Non-alcoholic beverages, other food products	1,237.00
Food from restaurants	2324
TOTAL FOOD EXPENDITURES:	\$ 8,102.00
TOTAL (MEAT, FISH/SEAFOOD, VEGETABLES):	\$ 2,133.00

Source: Statistics Canada CANSIM Table 203-0028 and catalogue no. 62F0026M.

To quantify the children's losses, as a result of not being taught to hunt, fish, and gather, we rely on the annual food expenditures for "meat", "fish and seafood", and "vegetables and vegetable preparations", which as shown above is approximately \$2,133 per year. We assume that had the children been taught how to hunt, fish, and gather, they would have been able to perform these tasks and supply at least some portion of their own food and vegetables, and not have needed to incur costs by buying these items at a store. In section 2, we provide estimates of the losses assuming that hunting, fishing, and gathering would have supplemented approximately 25, 50, 75, or 100 percent of these costs.

2 Loss Due to Lack of Knowledge of Hunting, Fishing, and Gathering

It is our understanding that the earliest year that the First Nations children were taken was 1965 (approximately 52 years ago), and the latest year was 1984 (approximately 33 years ago). For the purposes of our calculations, we assume that the loss to the children did not begin until they were approximately sixteen years old. Thus, the earliest year that we assume the earliest the loss would have started is 1981 (approximately 36 years ago), and the latest the loss would have started is 2000 (approximately 17 years ago). We further assume that the expenditure (loss) was \$2,133 (= \$1,200 + \$215 + \$718) per year.

For the purposes of our assessment, we estimate the loss assuming that the benefit of hunting, fishing, and gathering would have completely supplemented the expenditures on "meat, fish and seafood, and vegetables". This estimate may then be adjusted to reflect any assumption regarding the extent (as a percentage) the hunting, fishing, and gathering would have offset food expenditures on these items. If, for example, it is found that hunting, fishing, and gathering would have supplemented the expenditures by 75 percent, the loss due to the lack of knowledge can be valued at 75 percent of the estimate we provide.

Based on the above, our estimate of the potential loss of hunting, fishing, and gathering is outlined in Table 2 below. We also provide examples of the potential losses, for various percentages of supplementing the food expenditures.

Table 2: Loss of hunting, fishing, gathering

Number of years First Nations children have lost the hunting, fishing, gathering	Annual average expenditure	Loss of hunting, fishing, gathering assuming a:					
		100 percent loss	75 percent loss	60 percent loss	50 percent loss	40 percent loss	25 percent loss
17 years	\$ 2,133	\$ 36,261	\$ 27,196	\$ 21,757	\$ 18,131	\$ 14,504	\$ 9,065
18 years	2,133	38,394	28,796	23,036	19,197	15,358	9,599
19 years	2,133	40,527	30,395	24,316	20,264	16,211	10,132
20 years	2,133	42,660	31,995	25,596	21,330	17,064	10,665
21 years	2,133	44,793	33,595	26,876	22,397	17,917	11,198
22 years	2,133	46,926	35,195	28,156	23,463	18,770	11,732
23 years	2,133	49,059	36,794	29,435	24,530	19,624	12,265
24 years	2,133	51,192	38,394	30,715	25,596	20,477	12,798
25 years	2,133	53,325	39,994	31,995	26,663	21,330	13,331
26 years	2,133	55,458	41,594	33,275	27,729	22,183	13,865
27 years	2,133	57,591	43,193	34,555	28,796	23,036	14,398
28 years	2,133	59,724	44,793	35,834	29,862	23,890	14,931
29 years	2,133	61,857	46,393	37,114	30,929	24,743	15,464
30 years	2,133	63,990	47,993	38,394	31,995	25,596	15,998
31 years	2,133	66,123	49,592	39,674	33,062	26,449	16,531
32 years	2,133	68,256	51,192	40,954	34,128	27,302	17,064
33 years	2,133	70,389	52,792	42,233	35,195	28,156	17,597
34 years	2,133	72,522	54,392	43,513	36,261	29,009	18,131
35 years	2,133	74,655	55,991	44,793	37,328	29,862	18,664
36 years	2,133	76,788	57,591	46,073	38,394	30,715	19,197

If it is found that the hunting, fishing, and gathering would have supplemented a different percentage than what we have assumed, the "100 percent loss" figure may be used to recalculate the loss. For example, suppose it is found that approximately 80 percent of the expenditure would have been supplemented, had the children learned how to hunt, fish, and gather. The loss would then range from \$29,009 ($= \$36,261 \times 0.80$) to \$61,430 ($= \$76,788 \times 0.80$).

If it is found that the value of the hunting, fishing, and gathering would have been something other than what we have assumed, the loss can be recalculated for any potential annual amount, for any assumed time period, as outlined in the sections below.

Economica Ltd.
Re: Brown v Canada

Page 5 of 5

April 5, 2017

Different value of the hunting, fishing, and gathering amount

If it is found that the annual benefit from hunting, fishing, and gathering would have been something different than we have assumed (\$2,133 per year), the loss can be recalculated by multiplying the assumed annual amount by the number of years the individual has lost the benefit.

For example, suppose it is found that the individual would have saved approximately \$1,750 per year, by hunting, fishing, and gathering to supplement their food expenditures. The loss would then range from \$29,750 ($= \$1,750 \times 17$ years) to \$63,000 ($= \$1,750 \times 36$ years).

Loss of for a different time period

If it is found that the First Nations individual would have incurred this loss for a different period of time than we have presented, the loss can be recalculated by multiplying the assumed annual expenditure (loss) by the number of years the individual would have received the benefit, had they been taught how to hunt, fish, and gather.

For example, suppose it is found that the individual would have been able to supplement their food expenditures for 45 years. Using the annual expenditure amount of \$2,133, the loss would be \$95,985 ($= \$2,133 \times 45$).

Both a different annual value and different period of time

If it is found that both the annual benefit from hunting, fishing, and gathering, and the length of the loss period would have been something different than what we have assumed, the loss can be recalculated by multiplying the assumed annual value by the number of years the individual would have benefited from the reduced food expenditures, had they been taught how to hunt, fish, and gather.

For example, suppose it is found that the annual value would have been approximately \$1,500 per year, and the individual would have received this benefit for 50 years. The loss of for this example would be \$75,000 ($= \$1,500 \times 50$).

* * *

We trust that this is satisfactory and look forward to working with you again.

Yours truly,


Christopher J. Bruce, PhD


Kelly A. Ratlje, MA

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF DR. CHRISTOPHER BRUCE
SWORN BEFORE ME THIS 26 DAY
OF APRIL 2017

Kelly P. Wright

A COMMISSIONER FOR TAKING AFFIDAVITS

KELLY P. WRIGHT
BARRISTER & SOLICITOR
A NOTARY PUBLIC FOR
THE PROVINCE OF ALBERTA
My Commission expires at the
pleasure of Her Majesty the Queen

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN ~~and ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Dr. Christopher Bruce. I live in the City of Calgary, Province of Alberta.
2. I have been engaged by or on behalf of the Plaintiff, Marcia Brown, to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: Apr. 6, 2017


Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN ~~and~~ ROBERT COMMANDA

Plaintiffs

- and -

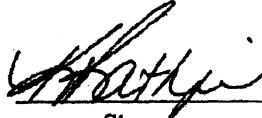
THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

- 1. My name is Kelly Rathje. I live in the City of Calgary, Province of Alberta.
- 2. I have been engaged by or on behalf of the Plaintiff, Marcia Brown, to provide evidence in relation to the above-noted court proceeding.
- 3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
- 4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: *April 6*, 2017



Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**AFFIDAVIT OF VERNON HARPER
(sworn May 15, 2009)**

I, VERNON HARPER, of the City of Toronto, Province of Ontario, Urban Elder, MAKE OATH AND DO SAY AS FOLLOWS:

1. I am shown on my birth records as born on June 17, 1936. My own inquiry suggests I was born in 1934.

2. I was born in Regent Park in Toronto. I am a member of the Cree First Nation of Saskatchewan.

3. I am employed at CAMH (Center for Addiction and Mental Health) "Aboriginal Services Program" in Toronto as an "Urban Elder". By that label, I understand my expertise to be that of my knowledge and experience of First Nation customs, traditions, and spirituality, which is relied upon and applied by therapists or counsellors in providing individual recovery healing circles and rehabilitative assistance to aboriginal patients in crisis.

4. I have worked at CAMH in this capacity since 2003. Before that I worked for 11 years for Aboriginal Legal Services, and 10 years for Corrections Canada, doing much the same work as I do now, recognized as an elder.
5. I am proud to say that I also am a decorated war veteran having served in the United States Army 82nd Airborne Military Police beginning at the age of 17 years.
6. I have received various awards recognizing my work as an elder.
7. An elder in our First Nations community is one who is to be respected for knowledge of the oral traditions that make up the core of being an Indian. Our unique way of life, as it was when the European first arrived, and as largely continued since then, is passed on orally from one generation to the next.
8. This is true of all Canadian First Nations of which I have knowledge.
9. Thus, an elder is someone, like myself, who has made a life-long commitment to the pursuit of the knowledge of this oral tradition.
10. I am very pleased and very proud of the fact that this knowledge is now recognized, respected and applied in recovery programs for urban Indians at CAMH in Toronto.
11. Common to all Canadian First Nation tribes with, of course, some variations, is our unique ways and traditions of family life and the rearing of our children. Amongst other things, and as an example, we, traditionally, have no concept of adoption or wardship, as all children are everyone's responsibility.
12. Thus, the practice of removing a child from his place of birth and of his traditions, culture and spirituality for the purpose of helping the child is one entirely foreign to us and one brought into our communities by mainstream non-Indian society and laws. The notion that a child

belongs to one family, the exclusive property or domain of that family is foreign to our people where the oral tradition is a communal expression of collective responsibility for children.

13. Much of my therapeutic work that I do in working with Indians or working with therapists who are treating Indians is where there has been a breakdown in their connection with the non-Indian authorities or guardians that have raised them.

14. The breakdown is more than just with the persons who directly raised them; it emerges as a trauma of sorts of trying to re-claim one's identity and the culture, traditions and spirituality that makes up that identity.

15. Mr. Jeffery Wilson, with whom I have met, when first interviewing me, asked me about treaties and wondered why he had not been able, in his work, to find a treaty that secured for aboriginals this way of family and child-rearing, like those that attempt to preserve the Indian's hunting, or fishing or land rights.

16. This is a good question. I do not know the answer. It was a very long time ago when my great-great-ancestors entered into treaties with the Europeans who had arrived. Perhaps, everyone assumed our way of family life and child rearing would continue and would be respected provided we had our land, and our ways to thrive through our relationship with the winged ones, the fish and the animals. But, I do not know the answer, and I don't know anyone who does.

17. I do know that, without helping the Indian person who has experienced the trauma of a lost identity to recover the culture, traditions and spirituality of his origins, that person remains lost and ill-equipped to make a go of it in contemporary society. I do know there are many, many Indian people right here in Ontario who are adults and suffered through what we know as the "Sixties Scoop" where a mass and government organized program of identity genocide of our people took place. I know this because I witnessed it, and I have spent almost 50 years working with my people in their recovery from what took place.

18. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the)
City of Toronto, in the Province)
of Ontario this 15 day)
of May 2009.)

Elder Vernon Harper

VERNON HARPER

Teresa Butler Lind

A COMMISSIONER, ETC.)

TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.
Expires December 12, 2009.

Court File No. CV-09-00372025-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF KENNETH DENIS RICHARD
(sworn March 23, 2009)

I, KENNETH DENIS RICHARD, of the City of Toronto, Province of Ontario, social worker and Adjunct Professor, **MAKE OATH AND SAY:**

1. I am the Executive Director of the Native Child and Family Service of Toronto¹. I have worked in the field of child welfare or child protection services for Indian or native children for 36 years. I am also the author of the article entitled "On the Matter of Cross-Cultural Adoptions" published as Chapter 9 to: I. Brown, D. Fuchs, L. Lafrance, S. McKay & S. Thomas Prokop (Eds.) "*Putting a human face on child welfare: Voices from the Prairies*" (Prairie Child Welfare Consortium www.uregina.ca/spr/prairiechild/index.html/ Centre of Excellence for Child Welfare www.cccw-cepb.ca). As a result, I have knowledge of the matters to which I depose. My statement of qualifications is copied at Exhibit "A".

¹ Native Child and Family Services of Toronto is a mandated Part X *Child and Family Services Act*, R.S.O. 1990, c. C-11 child and family service authority with full child welfare/protection services to native and Indian children in Toronto.

2. Known to child welfare practitioners and to the Indian or native communities throughout Ontario is the term "Sixties' Scoop". This is a term that refers to the remarkably large number of Indian or native children that local child welfare authorities removed from their families, extended families and communities in the period of time referred to herein, and then placed them in an environment where they lost contact with their identity as Indian or native persons.

3. In our work at Native Child and Family Service of Toronto, I know first hand the experiences of the surviving children of the "Sixties Scoop". Typically, we met them (and we are still meeting them) anywhere from their adolescent years to adulthood and we work with them in counselling or therapy. We are providing necessary counselling or therapy because, when they found themselves confronting the fact of their Indian or native culture, they then experienced quite an alarming degree of frustration and anger with feelings of distance or non-belonging from both their indigenous family and their adoptive or permanent placement non-Indian or non-native family, and entered into a crisis over their identity.

4. In my experience, it does not matter how "attached" or "bonded" were the children to their non-native and non-Indian homes, or even how benign an environment it may have been provided that wherever they were placed, they lost touch or connection with their particular indigenous Indian or native culture, customs, traditions, language and spirituality. This is a common effect of the "Sixties Scoop". It presents problems independent of whatever particular level of care and comfort, or lack of care and comfort the Indian or native person experienced as a child.

5. The re-claiming of their identity as an Indian or native person becomes fundamental to our therapeutic work with these survivors and their capacity to achieve a sufficient sense of self-esteem in order to cope within society and make a constructive contribution to the community and live a good and non-combative life, in the sense of coming to terms with themselves and others whom they trusted.

6. The process of re-claiming of identity takes much therapeutic or counselling work with the help of a trained and culturally sensitive therapist and over a period of time.

7. The Indian and native communities are well aware of the fact and nature of the "Sixties Scoop". Bands, Chiefs and agencies similar to Native Child and Family Services of Toronto throughout Ontario have identified the problem. With the help of the Chiefs, we have also begun the process of identifying the number involved. In this respect, I am not referring to children who were placed in residential schools where different forms of abuse may have occurred. I am referring to Indian or native children in Ontario who ended up in permanent non-native or non-Indian foster homes or adoptive homes by reason of events in the late 50's culminating with the Canada-Ontario Welfare Services Agreement of 1965, and continuing until 1985. The calculation of the number involved is not especially complicated because there ought to be data available through DIAND, and can probably also be provided through the work of the Band social services throughout Ontario.

8. Furthermore, by disseminating the fact of the *Brown and Commanda v. Canada* case to Indian or native child and family services resources throughout Ontario, a listing of which is attached as Exhibit "B", and with the additional help of the administrative assistance of the Chiefs of the Indian Bands in Ontario, I am confident that those persons affected as children will know of the law suit and come forward to be identified as members of the Class of persons.

9. The "Sixties Scoop" refers to a time in our history where the effect of child welfare programs, practices or policies was the loss of our children through what appeared to be an attempt to assimilate our children into mainstream culture, and for many of us constituted a betrayal of the uniqueness of aboriginals in Canadian society and Canada's recognition of that status. What I witnessed in my work was done without consultation with the Bands. Thus, I endorse the claims of Marcia Brown and Robert Commanda and observe that they are quite representative of the experience of thousands of Indian or native children in Ontario.

10. The *Child and Family Services Act, 1984* was amending legislation that provided for a massive overhaul of child welfare law in Ontario as it related to the status of the Indian or native family, extended family and community. As I experienced and as I witnessed, it was primarily the work of those in the child welfare and children's rights fields that helped to stem the

problems created by Canada and the Agreement. Those working in the fields saw the recurrent problems of working with children said to be "clinically attached" or "bonded" (the often cited rationale for permanent placement and severance from the child's indigenous family), but who, nonetheless, were experiencing severe dysfunction. The dysfunction emerged when their indigenous identity became clear to them, as it must, and they were wholly ill-equipped to understand, appreciate, connect, or identify with their Indian or native selves, and thus the identity crisis.

11. I make this affidavit in good faith and for no improper purpose.

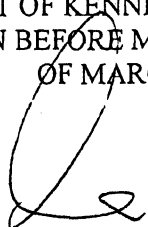
SWORN BEFORE ME at the)
City of Toronto, in the Province)
of Ontario this 23rd day)
of March 2009.)
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A COMMISSIONER, ETC.)

Jeffery Wilson

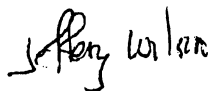


KENNETH DENIS RICHARD

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF KENNETH DENIS RICHARD
SWORN BEFORE ME, THIS 23RD DAY
OF MARCH 2009



A COMMISSIONER FOR TAKING AFFIDAVITS



KENNETH DENIS RICHARD

EDUCATION

- Master of Social Work, University of Manitoba, 1978
- Bachelor of Social Work (Honours), University of Manitoba, 1973

PROFESSIONAL EMPLOYMENT

Native Child and Family
Services of Toronto
30 College Street
Toronto, Ontario M5G 1K2

Executive Director
April 1988 - Present
Chief Executive Officer of Canada's First off
Reserve Native Child Welfare Authority.

The Municipality of Metro Toronto
Community Services Department
Policy and Planning Division
55 John Street, 9th Floor
Toronto, Ontario

Community Development Officer
April 1987 - April 1988
Social Planning, locality development, issue organizing
Liaison to community on policy, management,
funding, and service development.

Children's Aid Society of
Metropolitan Toronto
33 Charles Street East
Toronto, Ontario

Community Development Staff
September 1981 - September 1987
Duties similar to above with focus on child welfare
related community based service development.

Family Service Worker
1979 - 1981
Child protection/Abuse investigations.

Children's Aid Society of Winnipeg
114 Garry Street
Winnipeg, Manitoba

Intake Worker/Emergency After Hours
1977 - 1978 (Part-time)
Child protection/Abuse investigations.

The Knowles Centre
2005 Henderson Highway
Winnipeg, Manitoba

Team Leader/Social Worker
1975 - 1976
Residential treatment, staff supervision, case management
focused on behavioural/developmental issues with
Aboriginal youth.

Probation Services
"Compass Program"
172 Doncaster Street
Winnipeg, Manitoba

Life Skills Instructor
1972 (Summer)
Life skill training to Aboriginal young offenders.

ACADEMIC APPOINTMENTS

University of Toronto
Faculty of Social Work
246 Bloor Street West
Toronto, Ontario M5S 1A1

Lecturer, MSW/PhD. Program
"Cross Cultural Social Work Practice"
January 1992 - Present

Seneca College
Social Service Worker Program
1750 Finch Avenue East
North York, Ontario

Instructor, Diploma Program
"Community Studies"
April 1987 - April 1989
"Selected Social Issues"
January 1990 - April 1990

York University
School of Social Work
Fort Garry Campus
Winnipeg, Manitoba

Tutorial Leader, BSW Program
"Human Behaviour and the Social Environment"
September 1976 - May 1977

RELATED ACADEMIC

- Developed and marketed a training program on cross cultural literacy and competence for human service professionals. Clients have included the Hincks, the Catholic Children's Aid Society of Toronto, J.D. Griffin Centre, York Family Services, Dellcrest Children's Centre, Children's Aid Society of Hamilton-Wentworth and others.
- Trainer, "Inter-cultural Competence" Child Abuse Studies, Atkinson College, Continuing Education Division, York University.
- Have provided numerous workshops and panel presentations on Native Child Welfare and community development at professional forums across Canada, the USA and internationally.
- Have appeared as an "expert" witness to Parliamentary committees, inquests, and have acted in the same capacity for various initiatives of both the Federal and Provincial governments.

MEMBERSHIPS

- Anti-Racism, Multi-Culturalism, and Native Issues Committee, Faculty of Social Work, University of Toronto;
- Director, Institute for the Prevention of Child Abuse (1995);
- Aboriginal Child and Family Services Association of Ontario (Founding President);
- Toronto Aboriginal Social Services Association (Past Chairperson);
- International Society for the Prevention of Child Abuse and Neglect (Chicago)
- Director, Defence of Children International (Geneva);
- Community Reference Group on Ethno-racial Access to Metropolitan Toronto Services (1996);
- Toronto Task Force on Access and Equity;
- National Advisory Group, Canadian Institute of Child Health;
- Opportunity Planning Provincial Task Group (Chair, 1993);
- Director, Toronto Child Abuse Centre (2001)

- Director, First Nations Child Caring Society (Ottawa)

PUBLICATIONS

- "Holism in Social Work: The Differential Impact of Professional Orientation on Practice Methodologies", **M.S.W. Thesis**, 1978.
- "Native Culture and the Child and Family Services Act", **O.A.P.S.W. Journal**, 1989.
- "Native Family Well-Being in Urban Settings: A Culture Based Service Model", **Native Child and Family Services of Toronto**, 1990 (collective authorship).
- "Sexual Abuse on Toronto's Native Community" **O.A.C.A.S. Journal**, Summer, 1991.
- Book Review; "Without Reserve: Stories from Urban Natives", Lydia Shorten, NuWest Press, Edmonton, 1992 in **O.A.P.S.W. Journal**, 1993.
- "The Urbanization of Native Canada", **Perception**, Canadian Council on Social Development, Vol. 17, No.4,1994. Also in "**Images: Canada Through Literature**", John Borovilos, Ginn Canada, 1996.
- "A Case Against Intercultural Adoption" **First Nations Child and Family Review**, Vol.1, No. 1, 2004
- "Toronto Native Agency Makes Child Welfare History" **Journal of the Ontario Association of Social Workers**, Vol.31, No. 3

AWARDS

- Chief of Police Community Service Award, 1995
Presented in recognition of work done to further police/community relations.
- Nominee, The Heart of Social Work Award, National Council on Social Work Education (USA/Canada), 1996 and 1997
Nominated for work in furthering the education of Native students in the field of Social Work
- Salute to the City Award, Toronto Eaton Centre, 1997
Presented in recognition of contribution in making Toronto the best large North American city (Fortune Magazine) in which to live.
- Civic Award of Merit, 1997
This is the highest award bestowed by the City of Toronto and recognizes contributions to improving the quality of life in Toronto.
- Ruth Hindmarsh Atkinson Award, 1998
The largest of its kind in Canada, this award of \$50,000 was granted to Native Child and Family Services of Toronto in recognition of the "best practice" nature of the prevention programs developed during my tenure as Executive Director.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF KENNETH DENIS RICHARD
SWORN BEFORE ME, THIS 23RD DAY
OF MARCH 2009



A COMMISSIONER FOR TAKING AFFIDAVITS

Jeffrey Wilson

Mandated Native Societies

- Dilico Ojibwe Child and Family Services (Thunder Bay)
- Native Child and Family Services of Toronto
- Payukotayno James and Hudson Bay Family Services (Moosonee)
- Weechi-Te-Win Family Services (Fort Frances)
- Anishinaabe Abinooji Family Services (Kenora)

Agencies Developing toward Society Status

- Kina Gbezhgomi Child and Family Services (Wiwemikong)
- Kunuwamimano Child and Family Services (Timmins)
- Nag-Da-Win-Da-Min Family and Community Services (Sault Saint Marie)
- Six Nations of the Grand River (Brantford)
- London District Chiefs.
- Akwesasne Child and Family Services

Acknowledgement of Expert's Duty
Form 53 – Courts of Justice Act

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

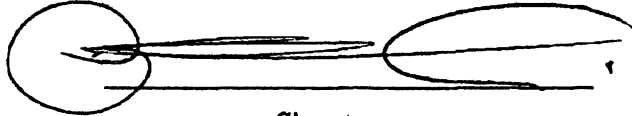
Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is **KENN DENIS RICHARD**. I live in the City of Toronto, in the Province of Ontario.
2. I have been engaged by or on behalf of the Plaintiffs, Marcia Brown and Robert Commanda, to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

DATED: January 27, 2010.

A handwritten signature in black ink, consisting of a circular initial followed by a long, horizontal, slightly wavy line that ends in a small hook.

Signature

Note: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AFFIDAVIT OF DR. HARVEY ARMSTRONG
(sworn May 28, 2009)

I, HARVEY ARMSTRONG, M.D. F.R.C.P., psychiatrist, of the City of Toronto, Province of Ontario, MAKE OATH AND DO SAY AS FOLLOWS:

1. I have practised for more than 40 years. My abbreviated and outdated curriculum vitae is attached as Exhibit "A".
2. For twenty years, I directed a University of Toronto program that provided mental health services to about 15,000 Cree and Ojibway people on thirty reserves in northern Ontario, and with the late Drs. Care Brant and Jack Ward, founded the Native Mental Health Association of Canada, a vibrant organization that is now entirely native-run. I was also the chairperson of the Canadian Psychiatric Association Section on Native Mental Health for many years.
3. In Ontario, our First Nations people experienced intentional and inadvertent cultural/identity genocide. I can elaborate on this based upon my years of experience and the opportunity to develop an appreciation of the extent to which the exercise or non-exercise of aboriginal traditions, culture and customs is related to many psychiatric, social disorders and

personality disorders or dysfunctions, in comparison to other peoples I have treated. Widely accepted studies support my personal and professional observations.

4. It is fairly widely accepted that disease claimed about 90% of the aboriginal population in the first hundred years after contact. This was a factor in the destruction of aboriginal skills including parenting skills. In the early part of the 20th century, Canada applied a policy of cultural extermination when officials seized thousands of native children from their homes on the reserve and committed them to residential schools that not only deprived them of the experience of living in an aboriginal family, but punished them for expressing their Indian customs, traditions and languages.

5. As services to native communities expanded, and travel became easier, child welfare services to native communities also began and increased. Many child welfare workers were astonished to discover how physically impoverished children and families were on native reserves. Houses were half the size of southern homes but families were twice the size. They lacked running water, sewage, and heating other than with a wood stove. Native parents were not used to giving their children structure as the environment had provided enough. Often there was scant furniture in the home and family members sat on a bed or on the floor. The children seemed to be running wild. It is therefore not surprising that the child welfare workers who visited reserves felt many children were deprived and neglected. Nor did the workers know enough about the community, the extended family and their resources to understand the positive qualities and parenting skills that might be supplied to the children via the community and extended families which were very large. Child welfare workers could not supervise from afar. So, not surprisingly, child welfare workers removed many children from these homes, which southern workers saw as inadequate. In Ontario this policy was effectively repeated in the 1960s, 70's and 80's when, within governmental child welfare practices, the emphasis was on the adoption of Indian children into non-Indian homes or the placement of Indian children as crown wards with non-Indian caregivers, and with much the similar intention, so it seemed, as that of the residential school experience, albeit in the context of a replacement family rather than a residential school setting.

6. I cannot say that most of these off-reserve cross-cultural placements were necessary. I believe it was misguided policy because it was premised upon the same belief as that of the residential schools; namely, the answer to the Indian problem was to provide for these apparently deprived children by assimilating the Indian children into our mainstream culture.

7. The effects were as follows:

- (i) Aboriginal children who grew up in residential schools, non-native foster homes, or adoptive homes lost their culture, their languages and their ability to be parents as aboriginal persons;
- (ii) Loss of culture, language, aboriginal social skills and parenting skills in any generation which was subject to the above losses, resulted in loss of identity and provided for an excess of adverse childhood experiences, which contributed to a very much increased rate of psychopathology of many types. These continued to be passed down the generations. When encountered by child welfare workers, in parents and children these became a rationale for removal from native homes and communities;
- (iii) Many of the children had suffered from dysfunctional parenting in their biological families, and their communities, and this made them much more vulnerable to psychopathology, as each trauma is additive. As adolescence is a time of accelerated identity formation, Native children who already had been subject to previous traumas, had more difficulty with identity formation which was often confused, as many felt they did not belong to their original or their substituted culture;
- (iv) After discovering their biological identity, many had to deal with the negative and destructive stereotypes of aboriginals that appeared in the media. They had learned to root for the cowboys winning against the cruel bad Indians (as barn burners etc.) They did not understand the many strengths of native culture, just

the problems, which were more the result of *Anomie* and colonization than defects in native culture;

- (v) Many Native youth lost their connection with their foster and adoptive families, and when they tried to connect with their original families and communities, the task proved Herculean and nearly impossible;
- (vi) The unfairness, and injustice of their plight, as they became aware of it stirred up pain, rage, mourning, and its sequelae. These took the form of psychiatric and social disorders, substance abuse, emotional isolation, violence, unemployment and extreme lack of emotional attachment to anyone and the many problems documented by the Center for Disease Control in the Adverse Childhood Experiences studies. Fetal Alcohol Syndrome and Fetal Alcohol Effect added neurological complications;
- (vii) Individuals who have followed this trajectory need intense counselling, best given by aboriginal healers, who can also help them find the resources needed to help them learn to be an Aboriginal Canadian. Unfortunately many are rightly so prejudiced against helping systems of both cultures and so mistrustful of them, that they face many obstacles in finding effective help; and
- (viii) It is generational because the loss of identity in one generation carries on into dysfunctional parenting in the next generation.

8. Mr. Jeffery Wilson, who interviewed me, has asked me to consider the element of commonality of that described above, and whether it varies according to each person's upbringing.

9. I have treated Aboriginals who were the product of benign non-Indian rearing and I have treated those who were the product of quite destructive abusive non-Indian parenting.

10. Treating the act of abuse is separate and apart from the special and unique treatment of loss of identity/culture. The treatment of an abusive childhood is one that crosses cultures. The treatment of the person who has lost his culture and his indigenous identity is one quite unique to the Aboriginal person because Canada or our mainstream community has a particularly destructive relationship with its First Nations.

11. Applying analytic writings, it is true that adolescence is a period of identity growth and confusion and thus arguably common to all persons. But, nothing in my work with all persons compares with the experience of the Indian child who confronts the period of identity growth with the discovery of a breach of trust and betrayal for himself and his people, as he experiences it.

12. I make this affidavit in good faith and no improper purpose.

SWORN BEFORE ME at the)
City of Toronto, in the Province)
of Ontario this 28th day)
of May 2009.)

Teresa B Lind)
A COMMISSIONER, ETC.)

H. Armstrong
DR. HARVEY ARMSTRONG

TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.
Expires December 12, 2009.

**THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DR. HARVEY ARMSTRONG
SWORN BEFORE ME, THIS 28th DAY
OF MAY 2009**

Teresa B Lind

A COMMISSIONER FOR TAKING AFFIDAVITS

TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.
Expires December 12, 2009.

ABREVIATED AND OUT DATED CV OF

DR. HARVEY ARMSTRONG

I am a physician licensed to practice in the province of Ontario since 1965.

I have been a member and a fellow of the Royal College of Physicians and Surgeons since 1971 and 1973.

I am an Associate Professor of Psychiatry in the University of Toronto, and an Honorary Staff Psychiatrist at the Toronto Hospital for Sick Children.

Two of the programmes I have headed, The University of Toronto –Sioux Lookout Mental Health Program, and Youthdale Psychiatric Service have received American Psychiatric Association Gold Achievement Awards for innovative service delivery.

I am a founding Director of The Canadian Native Mental Health Association.

I was awarded an Eagle Feather for my work with Aboriginals.

I was a board member of Pedhabun Lodge a Native run treatment centre for aboriginal people addicted to drugs and alcohol for about six years.

I have supervised some of the workers dealing with Indian residential school abuse. I recently spent a day at the AFN consulting on The Truth and Reconciliation Commission.

I was a member of the Ontario College of Physicians and Surgeons Task Force on Sexual Abuse of Patients by Doctors in 1991, and Elizabeth Whitmer's Task Force on Sexual Abuse of Patients by any Registered Health Professional in 2001.

I am the founder of Parents for Youth, which helped about 3000 parents deal with their antisocial teens who refused intervention. I have assessed and treated thousands of aboriginals of all ages.

I have been involved in many criminal cases involving sexual abuse of children. I was an expert witness in the civil suit successfully prosecuted against St. George's Cathedral in Kingston. I was an expert witness in the civil suit prosecuted by the DeLuca victims in Saulte Ste. Marie, and in the settlement of some of the cases of sexual abuse of boys at Upper Canada College. I am a life member of many professional organizations.

Acknowledgement of Expert's Duty
Form 53 - Courts of Justice Act

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is **DR. HARVEY ARMSTRONG**. I live in the City of Toronto, in the Province of Ontario.
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 - (a) to provide opinion evidence that is fair, objective and non-partisan;
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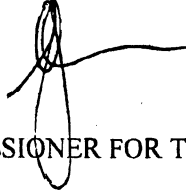
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

DATED: January 27th, 2010.


Signature

Note: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF HARVEY ARMSTRONG
SWORN BEFORE ME THIS 25TH DAY
OF FEBRUARY 2016

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

ABBREVIATED AND OUT DATED CV OF

DR. HARVEY ARMSTRONG

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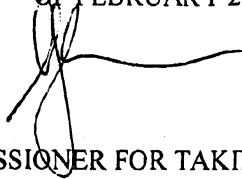
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THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF HARVEY ARMSTRONG
SWORN BEFORE ME THIS 25TH DAY
OF FEBRUARY 2016



A COMMISSIONER FOR TAKING AFFIDAVITS

**JEFFERY WILSON**

Certified by the Law Society of Upper Canada
as a specialist in family law

jeffery@wilsonchristen.com
direct 416.958.5822

December 7, 2015

PERSONAL AND CONFIDENTIAL

Dr. Harvey Armstrong
29 Dickens Drive
Kingston, Ontario
K7M 2M5

Dear Dr. Armstrong:

**RE: Brown and Canada (Attorney General of Canada)
Our Matter No. 3127**

You prepared signed a May 28, 2009 affidavit. You were subject to questioning by counsel to the Attorney-General of Canada on February 2, 2010.

We have provided you with a copy of the affidavit and the transcript of your questioning.

We have also provided you with the Remarks of the Honourable Chief Justice of the Supreme Court of Canada and with the chapter entitled "Summary of the Final Report of the Truth and Reconciliation Commission of Canada".

6 years have elapsed since you provided your report during which this action was finally certified as a class action pursuant to Ontario's *Class Proceedings Act, 1992*, S.O. 1992, c. 6. That occurred on March 27, 2015, when the Court of Appeal for Ontario denied the Attorney-General of Canada leave to appeal the December 2, 2014 decision of the Ontario Divisional Court dismissing the appeal by the Attorney-General of Canada from the September 27, 2013 decision of the Honourable Justice Belobaba of the Ontario Superior Court granting certification to the action.

We have provided you with the pleadings, referring to the Plaintiff's July 29, 2015 "Fresh As Amended Amended Statement of Claim" and the Defendant's September 25, 2015 "Amended Statement of Defence".

- 2 -

The case is now subject to case management with a trial date scheduled to commence in October 2016.

I would ask you, please, to review your report and to provide us with whatever further observations or opinion you wish to give, having regard to the passage of time, and the events during that time including, but not limited to, the observations of the Chief Justice of Canada and those from the Truth and Reconciliation Commission. You may decide that the observations in your original report are sufficient. Or, you may choose to offer further observations. Without, in any way, directing or restricting that which you may or may not comment upon, questions of interest to our client and to the Class for whom she acts as the representative Plaintiff, may include:

- i) Do children who have suffered the experiences of those in the 60's Scoop have difficulty with recognizing and, or coming to terms with the experience of a loss of a cultural identity?
- ii) If surviving children of the 60's Scoop do experience such difficulty, why is that?
- iii) How, then, if at all, do the comments of a non-First Nations' Chief Judge of Canada - those which we have sent to you - have upon them to reconcile their experience with their present functioning? Does this question suffer from an assumption that the survivors of the 60's Scoop would even know of the comments of a non-First Nations' Chief Judge?
- iv) What impact, if any, does a chapter from the Truth and Reconciliation Commission have upon survivors in terms of their capacity to recognize and come to terms with the experience of a loss of cultural identity?
- v) Can you contrast that said by the Chief Justice or a Commission with the impact of participation in a class proceeding where each survivor becomes a member of a class of persons seeking justice, and which group of people have endured close to 6 years of aggressive litigation carried out by Canada who has vigorously denied the fact of their experience and vigorously resisted their desire to form a class proceeding?

I emphasize no further comment need be added to your first affidavit, and that you may choose to comment as you choose with or without regard to these questions. My purpose in inviting you to consider writing a supplementary affidavit/report is only to ensure that, if you have further comment to make, by reason of the remarkable passage of time since your original affidavit, you may provide it.

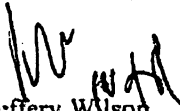
We will require any further affidavit/report no later than January 31, 2016.

You may look to my office for the satisfaction of your reasonable fees for services rendered.

- 3 -

Please always keep in mind that, as an expert, your duty is to the Court, to assist the Court in its consideration of the issues by receiving the input of individuals who are able to draw upon their experience and knowledge to provide independent and impartial evidence.

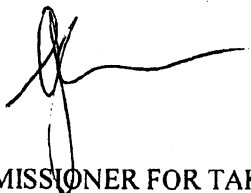
Yours sincerely,
WILSON CHRISTEN LLP



Jeffery Wilson,
JW/jld

c.c. Marcia Martel

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF HARVEY ARMSTRONG
SWORN BEFORE ME THIS 25TH DAY
OF FEBRUARY 2016

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a horizontal line extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS

Harvey Armstrong, B.P. & H.E., M.D., DIP. CHILD PSYCHIATRY, F.R.C.P.(C) PSYCHIATRY, F.R.C.P. ©
 Telephone: 1 (613) 548-46-4644 - Cell: (416) 414-4147 – I can be reached by Fax on my land line, but call first, so I
 can connect the Fax machine
 E-mail: Harvey.Armstrong@sympatico.ca

Sunday, January 31, 2016

Jeffrey Wilson, Barrister and Solicitor
 Wilson Christen LLP
 137 Church St.
 Toronto, Ontario M5B 1Y8
 Canada
 FAX: 416-360-1350

Dear Jeffrey,

Re: Sixties Scoop Class Action led by Brown vs Canada.

I have read and reviewed all of the material that you have sent to me. These include:

- My signed affidavit of May 28, 2009
- The Transcript of the cross-examination by Mr. Young
- Carol Goar's January 11, 2016 Toronto Star Article
- The Executive Summary of the final report of the Truth and Reconciliation Commission of Canada
- The Amended Defense of the Attorney General of Canada
- The Remarks of the Rt. Hon. Beverley McLachlin, P.C., Chief Justice of Canada, dated May 28, 2015.
- Recent Globe and Mail Articles on the struggle and success of Cindy Blackhawk to have some of the financial inequities of government services to Aboriginal peoples vs. non-aboriginal peoples corrected by the Human Rights Tribunal of Canada

The result of your questions to me are as follows.

I am very pleased that with the more limited resources and earlier that I had compared to the Truth and Reconciliation Commission of Canada, I came to the same conclusions as the Commission on May 28, 2009. In reading the reports I learned more about residential schools for aboriginals that I understood before.

I was struck by the number of schools, their amenities, their administration, and the intentional cultural genocide documented in the Commission's report. Royal Proclamations and treaties that mandated that there be respectful support for Aboriginal culture, language and life, as a part of the relationship with Canada. These mandated expectations were neither respected nor

implemented. The intentional delivery of services that were impoverished, disrespectful, and suppressive of Aboriginal culture and characteristics by the Residential Schools, and by the Department on Indian affairs was a travesty of deceit. The Administrative Split, where Canada took no responsibility for abuse in the classrooms, though they funded the both sides of the split was egregious.

I was also struck by the many generations of inadequate funding for educational and social services, welfare services, health services, and development services for aboriginal communities. From what I read, the services were inadequate. The inadequacy of these services, the impact of residential schools, and the cultural incompetence of child welfare workers who visited reserves resulted in perceptions, and conditions that supported the removal of native children from their families. These factors increased the number of Aboriginal Children who were removed from their homes. Another factor was that there was more funding for removing and fostering native children than there was for providing services to their families and communities. Better funding would have allowed Aboriginal children to remain with their primary or extended families. Such failures supported the destructive decisions, which took children out of their own homes and communities, and caused them to be fostered and adopted by non-Aboriginal families. These, the child welfare agencies and fostering or adoptive families were often rescuing children, who did not need rescuing.

So, I would continue to support my affidavit and my statements during the cross examination of May 28th, 2009.

Sincerely,



Harvey Armstrong M.D.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN ~~and~~ ROBERT COMMANDA

Plaintiff

- and -

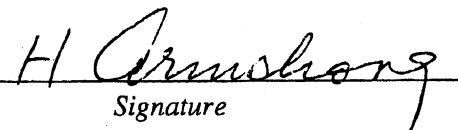
THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Dr. Harvey Armstrong. I live in the City of Kingston, Province of Ontario.
2. I have been engaged by or on behalf of the Plaintiff, Marcia Brown, to provide evidence in relation to the above-noted court proceeding.
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4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: February 24 2016



 Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

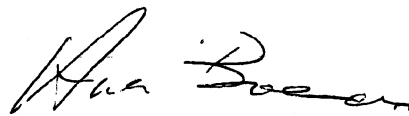
Defendant

**Affidavit of Dr. Ana Bodnar
(sworn May 25, 2009)**

**I, Dr. Ana Bodnar, Registered Psychologist, of the City of Toronto, Province of Ontario,
MAKE OATH AND DO SAY AS FOLLOWS:**

1. I have practised for more than 15 years with much experience in working with native/First Nation individuals and families. My statement of qualifications is attached as Exhibit "A".
2. On April 7, 2009, Mr. Wilson asked me to consider some questions. I met briefly with him on April 2, 2009 prior to receipt of his letter. His letter is attached as Exhibit "B".
3. I gave these matters considerable thought and my response to his questions is found at Exhibit "C", my letter of May 25, 2009.
4. I make this affidavit in good faith and for no improper purpose.

SWORN BEFORE ME at the)
 City of Toronto, in the Province)
 of Ontario this 25th day)
 of May 2009.)



Dr. Ana Bodnar



A COMMISSIONER, ETC.

TERESA BUTLER LIND, a Commissioner, etc.
 City of Toronto, for Wilson Christen LLP.
 Barristers and Solicitors.
 Expires December 12, 2009.

This is Exhibit "A" referred to in the

affidavit of Dr. Ana Bodnar

sworn before 29th

day of May 2009

Teresa B. Lind

A COMMISSIONER FOR TAKING AFFIDAVITS

Dr. Ana Bodnar

290 St. Clair Ave. West,
Toronto, Ontario M4V 1S3
(416) 765-2141

abodnarpsych@rogers.com

TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.
Expires December 12, 2009.

LANGUAGES: English, Spanish, French, and Hungarian

EDUCATION:

Doctorate, Psychology, Ontario Institute for Studies in Education, University of Toronto. 1992. Registration with College of Psychologists of Ontario.

Masters, Counselling Psychology, Ontario Institute for Studies in Education. University of Toronto. 1981

Honours B.A. York University. Anthropology and Dance. 1974.

FIRST NATIONS EXPERIENCE:

Consulting Psychologist, Centre for Addiction and Mental Health, Aboriginal Services Program, 2001-present. Research, Program Development, Presentations, Clinical Consultation, Training, Clinical Assessment.

Research and Consultation: "Twenty Best Practices in Native Mental" for Sliammon First Nations, Powell River, B.C., 2008

Presentation for Sarnia Victim Services: "First Nations Mental Health and Suicide Prevention", 2007 (with Elder Vern Harper)

First Nations Health and Inuit Health Branch, Health Canada. Research Document on Current Suicide Prevention Strategies for First Nations Youth, 2007.

Indigenous Women's Health Research: Health Inequities, Canada/New Zealand. 2005. Program on Development of Connections between New Zealand and Canadian Indigenous Women's Mental Health Programs.

National Aboriginal Health Organization, Development and Piloting of Suicide Prevention Tool Kit, 2003 to 2005. Distributed to First Nations Communities throughout Canada.

Trauma Training for Counsellors: Moose Factory, Ontario 2004

Centre for Addiction and Mental Health: International Health Centre, Mexico Project. 2004. Research and Training of Mexican Faculty.

Indigenous Women's Health Research Project, Collaboration with Canadian Institute for Health Research Project. 2003-2004.

North Shore Tribal Council, Comprehensive Healing Arts Program. 2004-present. (Program Consultation, Report Development)

Consulting psychologist, Aboriginal Services, Centre for Addiction and Mental Health, 2001-present (Consultation, Assessments, Training)

Staff training & development, Native Women's Resource Centre, 200.

Training Workshops for Native Men's Residence, Toronto 2001

Training workshops for Anishnabe Health Centre, (Aboriginal Health Centre) 2001

Ontario Federation of Indian Friendship Centres, Develop Curriculum in Mental Health, Addictions, Bereavement and Stress Management. Training of Trainers. 1998-1999.

"Addictions in the Aboriginal Context", Training Series for Gabriel Dumont, 1998

Enahtig Healing Lodge, (Aboriginal Healing Lodge) Training the Trainers: "Caring for the Caregiver", "mental health issues", "Expressive Arts and Child Therapy," 1998-99

Nishnabe-Aski Nation, (Aboriginal Tribal Council) Sexual Abuse Program. Development of Community Based Sexual Abuse Programming & research. 1997

Kettle Point and Stoney Point First Nations, Ontario. Participation in Emergency support team & ongoing clinical consultation to Kettle Point school. (1 visit /month) 1995-96.

Native Mental Health Services, Suicide Bereavement Program. Nodin Counselling Services, Sioux Lookout, Ontario. Trainer, researcher, Program Development, Psychological Assessment, Treatment. 1993-1995. Travel to Sioux Lookout for 1 week a month for 2 years.

CLINICAL EXPERIENCE:

Individual, Couple and Family Therapy

Private Psychology Practice, 1992-present.

Supervision of Therapists in Clinical Practice. 2004-present.

Child and Family Therapist. West End Crèche, 1995-96.

Integra (A children's mental health centre addressing the social and emotional needs of children and adolescents with learning disabilities). 1992-95.

University of Toronto Counselling and Learning Skills Centre. 1989-90.

Group Therapy

Sheena's Place (Eating Disorders Clinic): Expressive Arts Therapy Group on Seasons of Joy and Sorrow. 1998-present.

Integra (Children's mental health centre addressing the social and emotional needs of children and adolescents with learning disabilities). 1992-95.

Grant House, (Residential program for women with addictive disorders).
1991–92.

Dufferin–Queen Methadone Treatment Centre, Queen Street, Health Centre,
1992.

Donwood Institute (Treatment centre for substance abuse). 1989,1991.

TEACHING AND TRAINING EXPERIENCE:

Faculty, Ontario Institute for Studies in Education, Teaching in Diversity in
Counselling for Graduate Students, including Aboriginal issues. 2007-
present.

Faculty, Centre for Bereavement Education (in Conjunction with University
of Toronto, Faculty of Social Work), 2007-present.

Trainer in Mindfulness for Professional Therapists, 2005-present.

Lecturer, University of Toronto, 2001-present.

Faculty, Toronto Advanced Professional Training, 2002

Faculty at Canadian College for Naturopathic Medicine. 1999–2002

Faculty, Adler Institute for Professional Psychology, 2001

Expressive Arts Therapy Trainer, Leading Edge Seminars, 2000,2001

Yoga and Meditation Teacher, Yoga Studio, Yoga Space, 1998–2001

Training of Trainers, Life Long Care Program, Ontario Federation of Indian
Friendship Centres, (Addictions, Mental Health, Bereavement, Stress
Management) 1997

Training of counsellors in cross-cultural psychology, grief, group work,
Nodin Counselling Services, Sioux Lookout, Ontario 1993–94

Consultation and workshops in cross-cultural communication, cross-cultural perspectives in mental health and health, immigrant women, workplace discrimination, 1982–1986.

APPENDIX

RESEARCH, PUBLICATIONS, PRESENTATIONS

“The Role of the Elder in Aboriginal Services”, Native Social Work Journal, To be published summer 2009.

"Learning with first Nations Women" in Surviving the Hour of Darkness, University of Calgary Press, 2005.

“Integrating Traditional and Western Perspectives in Aboriginal Healing: Traditional Medicine Conference”, Ryerson University 2004

"Canadian Aboriginal Perspectives", Mexican Institute of Psychiatry, Mexico City, 2003 (in Spanish)

"Aboriginal perspectives in Addictions", Panamerican Conference on Child and Adolescent health, Havana, 2002 (In Spanish)

"Expressive Arts in Therapy", Workshop for Professionals, Havana, 2002 (In Spanish).

“Special Focus on Clinical Issues: Children and Trauma”, Canadian Suicide Prevention Conference, October 1997

“Adolescence and Suicide: Theoretical and Aboriginal Perspectives”, Canadian Psychological Association, June 1997

“Mental Health Plan for Kettle and Stoney Point First Nations”, July 1996

“Clinical Dimensions of Treating Children Experiencing Loss and Trauma in First Nations Communities.” Presentation for Canadian Suicide Prevention Conference, October 1995

"The Suicide Crisis among First Nations in North-Western Ontario",
Presentation at the Annual General Meeting, Ontario Psychiatric
Association, 1995.

"Bereavement and Healing: The Importance of Memory", Presentation at
Second International Conference on Healing, Montreal, September, 1994

"Suicide and Bereavement: Directions Towards Healing." Presentation at
National Native Mental Health Conference, Ottawa, Ontario, September,
1994

"Grieving and Healing in a First Nations Context" Presentation at Fourth
International Conference on Grieving and Bereavement. Stockholm, 1994.

JEFFERY WILSON

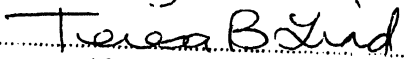
Certified by the Law Society of Upper Canada
as a specialist in family law.

jeffery@wilsonchristen.com
direct 416.956.5622

April 7, 2009

PERSONAL AND CONFIDENTIAL

Dr. Ana Bodnar
290 St. Clair Avenue West
2nd floor
Toronto, Ontario
M4V 1S3

This is Exhibit "B" referred to in the
affidavit of DR. ANA BODNAR
sworn before me, this 25th
day of MAY 2009.

A COMMISSIONER FOR TAKING AFFIDAVITS

Dear Dr. Bodnar:

Thank you for meeting with me on Thursday last.

TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.
Expires December 12, 2009.

I am interested in any observations or comments that you might have responsive to the following questions:

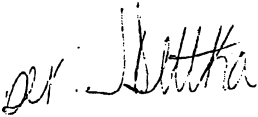
1. Within the First Nations people, is loss of culture a matter of concern?
2. If so, how is it identified as a matter of concern?
3. If so, are there common attributes or issues that make up the identification?
4. If it is a matter of concern and there are common attributes or issues that can be identified, and you accept that Brown and Commanda (whose Claim I have given you) wish to advance the concern and the issues as one collective of all such persons who have experienced the loss, is doing so as class proceeding of benefit, more so than any one person doing it on her own? (I am interested here on your observations within a therapeutic perspective, certainly not legal)

Having regard to your work and experience, I am looking for you to respond drawing upon your therapeutic assistance/interventions. Thus, it would be of help for you to describe the nature of your work that leads to your responses.

You certainly need not restrict yourself to the structure of question-and-answers or to these specific questions. I have noted them as a means of framing that which we discussed in our meeting.

As I indicated, once your letter is done addressed to me, we would then attend at your office and you would depose an affidavit attaching the letter and your curriculum vitae as exhibits. You could be cross-examined on the content of the affidavit. And, for all of your work, you may look to my office for satisfaction of your account for services rendered. We did not specify a targeted date for your response. I am suggesting the receipt of a draft by April 23rd, 2009 unless that is inconvenient to you.

Yours sincerely,
WILSON CHRISTEN LLP



Jeffery Wilson
JW/jld

c.c. Morris Cooper, Class Action Counsel

This is Exhibit "C" referred to in the
affidavit of Dr. Anna Budniar
sworn before me, this 25th
day of May 2009.

1

686

May 25, 2009

Teresa B. Lind

Dear Mr. Wilson,

A COMMISSIONER FOR TAKING AFFIDAVITS
TERESA BUTLER LIND, a Commissioner, etc.,
City of Toronto, for Wilson Christen LLP,
Barristers and Solicitors.

You asked me in your April 7, 2009 letter to apply my clinical experience to the task of answering a number of questions. My response is set out below. I use the term "First Nations" and "Native" synonymously. As well, please note that there are many different Nations and particular cultural groups within the First Nations. But, in my experiences and studies, they all share fundamentally common cultural attributes and practices, and thus I answer your inquiries using the general constituency of "First Nations".

Within the First Nations community, is loss of culture a matter of concern? If so, how is it identified? If so, are there common attributes or issues that make up the identification.

Loss of culture as a concern and the meaning of culture

The loss of culture is a subject of great concern among First Nations individuals and communities. Culture is understood by both First Nations individuals as well as academics from various fields, as an intrinsic part of identity, well-being, history, and a sense of place in the world.

The recovery of culture is often discussed as a central aspect of the movement into healing and recovery from intergenerational trauma, resulting from the colonial practices of residential schools and from the adoption/placement of Native children into non-Native homes, where Native culture was generally not available, denied or derided.

Based on numerous reports given to me in therapeutic settings, as well in my consulting and teaching work, First Nations people who have reclaimed and come to know their own history and culture have stated a greater sense of well-being, a sense of belonging, and greater stability.

It is important to outline some of the fundamental aspects of culture, since our focus is on the importance of maintaining culture for well-being. Culture is that complex whole which includes knowledge, belief, art, law, morals, custom and any other habits and abilities acquired by humans as members of society. Culture is a gestalt of these interconnected elements, where if one aspect is missing, the system is significantly affected.

For First Nations communities, there are a number of aspects of culture that are particularly salient. They include:

- A common worldview and meaning-making systems through a holistic interplay of physical, mental, emotional and spiritual elements of life;

- The central role of the natural world, with land, animals, and plants being a significant part of an interconnected whole. A way of living in direct relationship with the land and animals;
- A common way of addressing rituals and life cycle stages such as birth, coming of age, marriage, childbirth, aging and death;
- A common way of engaging in spiritual practices, where spirituality is as a fundamental aspect of being;
- A common way of engaging in child-rearing practices, where the extended family and community can be responsible for the well-being of a child;
- A common way of expressing art and creativity, where art is part of the community life; and
- A language that is seen as an expression of culture.

With the loss of any one of these cultural elements, the sense of identity is compromised, if not lost, since one's identity is a function of one's culture.

Identification of loss of culture

First Nations individuals, and the academic literature on the matter of culture and its connection to mental health and identity, speak of a series of losses that have been experienced in the last 500 years. Well-documented "residential school" policies carried out by church and government are seen as responsible for the losses of multiples aspects of culture. In First Nations circles, another glaring governmental practice responsible for such losses involves the removal of children and their placement in non-Native homes void of any continuity in cultural identity. The issue is not simply the removal of children from their Native families and community; it is their placement in an environment where the children are reared with the experience of the loss of connection to their parents, grandparents, extended family, community, language, spiritual practices and those attributes noted above. These children are, thus, denied knowledge of their culture. They are denied the health of a secure identity. They are denied the very health-affirming process (in First Nations the essence of an oral tradition) of transmitting their unique identity from one generation to the next. Thus, not only are the lives of the children so placed compromised; the life of the First Nation as a living and thriving community is compromised.

Loss of culture among Native people has various manifestations, some of which include: loss of traditional economic viability, loss of self-government, loss of language, loss of land base and land based teachings, loss of traditional spiritual and religious practices, loss of life cycle teachings and rituals, and loss of integrity or self-esteem. In clinical

psychological terms, the loss of cultural identity can result in the following sequelae:

- Historic trauma or intergenerational trauma is the term given to a cluster of symptoms, a way to describe the expression of the loss of culture, whereby subsequent generations continue to have low self-esteem, depression, anxiety, suicidal ideation, substance abuse, physical illnesses without clear causes, difficulties in parenting and in maintaining positive relationships as a result of the trauma;
- Loss of meaning in one's life and a sense of anomie;
- An interruption of how cultural teachings are transmitted from one generation to the next due to the experiences of displacement from culture, be it through the residential schools or assimilationist child welfare practices (i.e. placement in non-native homes and operational exclusion from Native culture)
- An increase in levels of substance abuse, and violence;
- Loss of how to parent according to traditional Native values and teachings;
- Increased use of alcohol and drugs as way to cope with the trauma of so many losses;
- A sense of internalized oppression and low self-esteem due to Native culture being seen in a negative light by the dominant culture; and
- Significantly higher rates of suicide among youth (at least 2x the national average than for non-Natives in Canada)

If it is a matter of concern and there are common attributes or issues that can be identified, and you accept that Brown and Commanda (whose Claim I have given you) wish to advance the concern and the issues as one collective of all such persons who have identified the loss, is doing so as a class proceeding of benefit more so than one person doing it on her own? (I am interested here on your observations within a therapeutic perspective, certainly not legal).

The clinical benefits, if any, of a group-identification process for recovery

I use this marginal heading as it represents how I think I can best answer your last question.

In my own consulting, teaching and clinical experience I have seen the positive influences and benefits for individuals who have experienced a recovery, a re-claiming of, or a reconnection to their Native culture. These benefits are remarkably tangible and

are expressed in observable increased self-esteem, the overcoming of substance abuse, diminished depression, reduced anxiety, a developing sense of pride and a positive sense of belonging in the world. Native clients in my own clinical psychology practice have wrestled profoundly with their sense of loss of identity. The clinical work that is a process of reclaiming their Native identity and culture has, without fail, brought them a diminishment of pathological symptoms and increased well-being.

A whole group or a nation has experienced the harm caused, as outlined above. Thus, the suffering need be placed in a collective framework. This is how the First Nations communities experienced the harm and the recovery from the harm. The collective aspect of the experience is consistent with Native culture and, thus, absent the collective experience the healing would not be nearly as effective. This is not the case of one individual's experiences as an orphan or abused child. This is the case of a Nation of individual's experiences, common to which is the loss of their identity¹. Thus, placing the experiences of Brown or Commanda as representative of the 60's scoop of a "Nation" of children is a process of the identification of what we know to be a common collective experience. It is larger than the life of any one individual and any one individual, to emerge with a more healthy recognition of self, needs to recognize this fact, and needs a response to this fact. His or her difficulties were not "their fault": they are not to blame for feeling lost and disconnected from a personal sense of history and place. By seeing and understanding fully that the loss of culture as something that was *common* to a nation of persons just like them, there can be a sense of a wrong starting to be made right, and a movement out of the isolation of healing on a one-by-one-one basis. With a public statement of a wrong inflicted on a whole community, there is a greater sense of reparation, rebalancing and recovery.

Clinical experience and Academic Studies and Reports

Finally, I add that the observations, noted above, arising from my clinical experience are consistent with academic studies and reports. I set out a brief listing of a sampling of these references:

- "Culturally appropriate means and ends of counselling as described by the First Nations people of British Columbia": Rod McKormick, in the *International Journal for the Advancement of Counseling*. 18(3): 163-172.
- "Historic Trauma and Aboriginal Healing" : Cynthia C. Wesley-Esquimaux and Magdalena Somolweski (Ottawa: Aboriginal Healing Foundation, 2004)

¹ The apology by Prime Minister Harper to First Nations communities in 2008 regarding the negative experiences of Native people in residential schools is an example of a response to a collective harm. That statement from the Prime Minister has been reported to be beneficial to many Native people, and becomes a helpful catalyst within therapy. The country's leader has voiced an understanding and apology for something much larger than any one individual's experiences.

- “The mental health of Aboriginal peoples: Transformations of identity and community”: Lawrence Kirmayer, Gregory Brass, & Caroline Tait, in the (2000) *Canadian Journal of Psychiatry*, 45, 607-616.
- “Aboriginal People, Resilience and the Residential School Legacy”: Madeleine Dion Stout and Gregory Kipling (Ottawa: Aboriginal Healing Foundation, 2003)
- “From Truth to Reconciliation [:]Transforming the Legacy of Residential Schools”: Marlene Brant Castellano, Linda Archibald, Michael De Gagne. (Ottawa: Aboriginal Healing Foundation. 2008).
- “The return to the Sacred Path: Healing the historical trauma response among the Lakota”: Maria Yellow Horse Brave Heart in *Smith College Studies in Social Work*. 68(3) 287-305
- “The Way of the Pipe: Aboriginal Spirituality and Symbolic Healing in Canadian Prisons: James Waldram (Peterborough, Ontario: Broadview Press. 1997).
- “Shingwauk's Vision: A History of Native Residential Schools”: J. R. Miller. J. Donald Wilson (*Canadian Journal of Education / Revue Canadienne de l'éducation*, Vol. 22, No. 3, Summer, 1997) pp. 352-355
- “Western Colonization as Disease: Native Adoption and Cultural Genocide”: Wesley Crichlow in *Critical Social Work*, Volume 2, Number 2, Fall 2002.

I hope that my responses to your questions are of assistance.

Yours sincerely,

Ana Bodnar

Acknowledgement of Expert's Duty
Form 53 – Courts of Justice Act

Court File No. CV-09-00372025-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

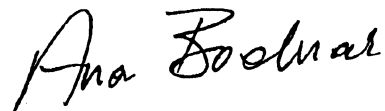
Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is DR. ANA BODNAR. I live in the City of Toronto, in the Province of Ontario.
2. I have been engaged by or on behalf of the Plaintiffs, Marcia Brown and Robert Commanda, to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.

4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

DATED: January 27, 2010.

A handwritten signature in cursive script that reads "Ana Bosman".

Signature

Note: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF DR. ANA BODNAR
SWORN BEFORE ME THIS 1ST DAY
OF MARCH 2016



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE

DR. ANA BODNAR

CLINICAL PSYCHOLOGIST

124 Merton St.
Suite 202A
Toronto, Ontario M4S 2Z2
416-765-2141
abodnarpsych@rogers.com
www.anabodnar.com/assessments

LANGUAGES: English, Spanish, French.

EDUCATION

Doctorate in Psychology, Ontario Institute for Studies in Education, University of Toronto. 1992. Registration with College of Psychologists of Ontario.

Master of Counselling Psychology, Ontario Institute for Studies in Education. University of Toronto. 1981.

Honours B.A. York University. 1974.

Numerous courses and workshops in Cognitive Therapy, Narrative Therapy, Expressive Arts Therapy, EMDR Training (Trauma Recovery). 1982-present.

CLINICAL EXPERIENCE: First Nations Health

Expert Roster: Indian Residential School Assessors, Secretariat for Indian Residential School Claims, Government of Canada. 2012-present

Clinical Assessment and counselling with First Nations individuals: 1992-present.

Clinical Consultant, Aboriginal Services, Centre for Addiction and Mental Health, 2001-2009. (Clinical Supervision, Assessments Research, Program & Curriculum Development, Training)

Clinical Consultant, Supervisor, and Trainer in Aboriginal Mental Health Services, Suicide Bereavement Program. Nodin Counselling Services, Sioux Lookout, Ontario

1993–1995. (Research, Program Development, Training, Clinical consultation and treatment)

Other Clinical Experience:

Private Psychology Practice, 1996–present. (Trauma, Grief and loss, Addictions, Anxiety, Depression).

Psychological and Medical Legal Assessment and treatment for Personal Injury Claims

Clinical Practice for adults, adolescents, and children in a wide variety of clinical issues. Counselling offered in Spanish and French.

Supervised Psychology Practice, Dr. Judith Silver and Associates, 1992-1996.

.Integra (a children's mental health centre addressing the social and emotional needs of children and adolescents with learning disabilities). 1993–95. (Family, individual, play therapy)

Individual, family and group psychotherapy, Integra, 1992–1993.

Individual counselling at University of Toronto Counselling and Learning Skills Centre. 1989–90.

Group and Individual Counselling at Donwood Institute (Addiction treatment centre) 1989, 1991.

RESEARCH, PUBLICATIONS, PRESENTATIONS

“Aboriginal Suicide in Canada: A movement Toward Healing” : In Journey to Healing, Centre for Addiction and Mental Health publication, 2014

“The Role of the Elder in Mental Health Treatment”, Native Social Work Journal, 2010.

Tool Kit Handbook for Suicide Prevention, National Aboriginal Health Centre, 2005

Suicide Prevention Among Aboriginal Youth, Sarnia Trauma Education Conference. 2006

Historical Trauma and Mental Health, Native Canadian Centre, 2005

Addictions and Mental Health in Aboriginal Canada, Making Gains Conference, Centre for Addiction and Mental Health, Niagara Falls, 2004

Aboriginal Perspectives on Addictions and Healing, Ramon de La Fuente Psychiatric Institute, Mexico City, 2003.

Aboriginal Perspectives in Addictions, International Conference on Child and Adolescent Psychiatry, Havana, 2002

TEACHING AND TRAINING EXPERIENCE

Adjunct Faculty, University of Toronto, New College, Psychology and Mental Health, 2011-2015

Adjunct Faculty, Ontario Institute for Studies in Education, University of Toronto, Mindfulness and Clinical Practice, 2011.

Adjunct Faculty, Ontario Institute for Studies in Education, University of Toronto, "Critical Multicultural Practice, Diversity Issues in Counselling," 2007-2010

Professional Development Series: Clinical Applications of Mindfulness and Psychology, 2006-present

Extensive teaching in Anxiety and Stress Management, 1990–present.

Extensive professional training delivery with mental health counselors in Mental Health, Abnormal Behaviour, Addictions, Case Consultation, Transference and Countertransference, Grief and Bereavement. 1998-present.

TAPE: Toronto Institute for the Integration of Mindfulness Meditation and Psychotherapy, Co-Director and Instructor. January 2010-2012.

Lecturer, Dept. of Psychiatry, University of Toronto, 2001-2009.

Centre for Addiction and Mental Health, Consultant Aboriginal Services Program, 2001-2009.

Faculty, University of Toronto School of Social Work, Continuing Education, Courses in Grief and Bereavement, 2007-2009

Faculty, Centre for Grief and Bereavement Education, 2000-2009

Faculty, Adler Institute for Professional Psychology, 2001-2003

Lecturer at University of Toronto 2001-2002

Lecturer at Canadian College of Naturopathic Medicine, 2000-2002

Training of Mental Health Professionals, Pedhabun Lodge (Aboriginal Treatment Centre), 1998-2000.

Training of Mental Health and Social Service Providers in cross-cultural communication, cross-cultural perspectives in mental health and health, immigrant women, workplace discrimination, community development. 1982-1986.

TRANSLATION EXPERIENCE

Worked as a professional translator in Spanish and French for Immigration Canada, Federal Refugee Board, Labour Relations Board. 1972-1985.

PROFESSIONAL ORGANIZATIONS AND AFFILIATIONS

Ontario Psychological Association 2005-present.

College of Psychologists of Ontario, 1998-present

Ontario Society of Psychotherapists, 2000-2008.

CREATE (Creative and Expressive Arts Therapies Exchange), Toronto. Board of Directors and Newsletter Co-ordinator, 1989-1995. Member at large, 1995-98.

Indigenous Education Network, Ontario Institute for Studies in Education, 1996-97

Multicultural Health Workers' Network, (Inter-agency network) Toronto. 1982-85.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF DR. ANA BODNAR
SWORN BEFORE ME THIS 1ST DAY
OF MARCH 2016



A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE

**JEFFERY WILSON**

Certified by the Law Society of Upper Canada
as a specialist in family law

jeffery@wilsonchristen.com

direct 416.956.5622

December 7, 2015

PERSONAL AND CONFIDENTIAL

Dr. Anna Bodnar
124 Merton Street, Ste. 202A
Toronto, Ontario
M4S 2Z2

Dear Dr. Bodnar:

**RE: Brown and Canada (Attorney General of Canada)
Our Matter No. 3127**

You prepared a report dated May 25, 2009 in this matter. You signed a May 25, 2009 affidavit incorporating your report into evidence in the proceeding. You were subject to questioning by counsel to the Attorney-General of Canada on January 28, 2010.

We have provided you with a copy of the report, the affidavit and the transcript of your questioning.

We have also provided you with the Remarks of the Honourable Chief Justice of the Supreme Court of Canada and with the chapter entitled "Summary of the Final Report of the Truth and Reconciliation Commission of Canada".

6 years have elapsed since you provided your report during which this action was finally certified as a class action pursuant to Ontario's *Class Proceedings Act, 1992*, S.O. 1992, c. 6. That occurred on March 27, 2015, when the Court of Appeal for Ontario denied the Attorney-General of Canada leave to appeal the December 2, 2014 decision of the Ontario Divisional Court dismissing the appeal by the Attorney-General of Canada from the September 27, 2013 decision of the Honourable Justice Belobaba of the Ontario Superior Court granting certification to the action.

- 2 -

We have provided you with the pleadings, referring to the Plaintiff's July 29, 2015 "Fresh As Amended Amended Statement of Claim" and the Defendant's September 25, 2015 "Amended Statement of Defence".

The case is now subject to case management with a trial date scheduled to commence in October 2016.

I would ask you, please, to review your report and to provide us with whatever further observations or opinion you wish to give, having regard to the passage of time, and the events during that time including, but not limited to, the observations of the Chief Justice of Canada and those from the Truth and Reconciliation Commission. You may decide that the observations in your original report are sufficient. Or, you may choose to offer further observations. Without, in any way, directing or restricting that which you may or may not comment upon, questions of interest to our client and to the Class for whom she acts as the representative Plaintiff, may include:

- i) Do children who have suffered the experiences of those in the 60's Scoop have difficulty with recognizing and, or coming to terms with the experience of a loss of a cultural identity?
- ii) If surviving children of the 60's Scoop do experience such difficulty, why is that?
- iii) How, then, if at all, do the comments of a non-First Nations' Chief Judge of Canada - those which we have sent to you - have upon them to reconcile their experience with their present functioning? Does this question suffer from an assumption that the survivors of the 60's Scoop would even know of the comments of a non-First Nations' Chief Judge?
- iv) What impact, if any, does a chapter from the Truth and Reconciliation Commission have upon survivors in terms of their capacity to recognize and come to terms with the experience of a loss of cultural identity?
- v) Can you contrast that said by the Chief Justice or a Commission with the impact of participation in a class proceeding where each survivor becomes a member of a class of persons seeking justice, and which group of people have endured close to 6 years of aggressive litigation carried out by Canada who has vigorously denied the fact of their experience and vigorously resisted their desire to form a class proceeding?

I emphasize no further comment need be added to your first report, and that you may choose to comment as you choose with or without regard to these questions. My purpose in inviting you to consider writing a supplementary report is only to ensure that, if you have further comment to make, by reason of the remarkable passage of time since your original report, you may provide it.

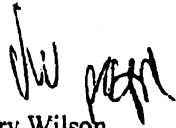
We will require any further report no later than January 31, 2016.

- 3 -

You may look to my office for the satisfaction of your reasonable fees for services rendered.

Please always keep in mind that, as an expert, your duty is to the Court, to assist the Court in its consideration of the issues by receiving the input of individuals who are able to draw upon their experience and knowledge to provide independent and impartial evidence.

Yours sincerely,
WILSON CHRISTEN LLP



Jeffery Wilson
JW/jld

c.c. Marcia Martel

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF DR. ANA BODNAR
SWORN BEFORE ME THIS 1ST DAY
OF MARCH 2016

A handwritten signature in black ink, appearing to be 'J. Braude', written over a faint, illegible stamp or watermark.

A COMMISSIONER FOR TAKING AFFIDAVITS
JESSICA BRAUDE

DR. ANA BODNAR
CLINICAL PSYCHOLOGIST _____

124 Merton Street
Suite 202A
Toronto, Ontario
M4S2Z2
416-765-2141

March 1, 2016

Dear Mr. Wilson,

In response to your query regarding the updating of my report to you in 2009, please find my responses below:

Since my 2009 report on the 60s Scoop almost seven years have passed. In that report I outlined the importance of having strong connection to Aboriginal culture and language as being central to identity and mental health. The intervening years have only highlighted and brought to the public eye the recognition of the central role of culture in well-being.

The period since 2009 has seen the landmark events of the Truth and Reconciliation Commission as well the acknowledgement and public apology in Manitoba for the damage done as a result of the 60s scoop. Currently, there is much more public discussion about Aboriginal issues in Canada, including the upcoming inquiry into the missing and murdered Aboriginal women. Sadly, there continues to be a multitude of serious problems for Aboriginal people of Canada, including social, economic, educational and mental health difficulties. The rates of Aboriginal suicide continue to be much higher than for the Canadian population as a whole. On January 22, 2016 we witnessed the tragic loss of four lives, as well with seven injured, in the shootings in La Loche First Nations, Saskatchewan, a community that riddled with high suicide rates and many other social and mental health problems.

Through the many stories of residential school survivors collected during the Truth and Reconciliation Commission hearings, as well as public statements made by survivors of the 60s Scoop, we can understand even more clearly the devastating role that the loss of connection with one's culture and language has on both individuals and communities. The term "cultural genocide" is being used in Aboriginal and scholarly circles in Canada and has been recognized by Canada's Chief Justice McLachin. We can see the same assimilationist policies underlying both the residential schools and the 60s Scoop, in that the aim was to take the Indian out of the child.

This policy was formally set out in 1883 by Canada's first Prime Minister, John A. Macdonald:

"When the school is on the reserve the child lives with its parents, who are savages; he is surrounded by savages...Indian children should be withdrawn as much as possible from the parental influence, and the only way to do that would be to put them in central training industrial schools where they will acquire the habits and modes of thought of white men." 1

We now have a Liberal federal Canadian Government that has promised to implement all of the recommendations of the Final Report of the Commission. Many are now watching and waiting to see how the promises will turn into reality as the new government moves forward.

The 94 recommendations that emerged from the Truth and Reconciliation Commission set out a fundamental restructuring of the relationship between the government of Canada and First Nations peoples with an equal and respectful relationship. There are detailed recommendations in many areas, including child welfare, education, health, justice, and a call to implement the United Nations Declaration on the Rights of Indigenous Peoples. It is of note that the recommendations begin with the issue of Child Welfare that clearly delineate the central role of cultural knowledge and culturally appropriate placements:

"We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies. ii. Require all child-welfare agencies and courts to take the residential school legacy into account in their decision-making. iii. Establish, as an important priority, a requirement that placements of Aboriginal children into temporary and permanent care be culturally appropriate.... We call upon the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate parenting programs for Aboriginal families." 2

These recommendations can be seen as a public formalizing of the same issues that been under discussion for many years by Aboriginal and non-Aboriginal individuals, communities and service providers, as well as in the professional and academic literature in these areas.

As part of my over 20 years of experience in working with First Nations communities, I had the opportunity to act as a mental health support staff at the Truth and Reconciliation Commission Closing Ceremonies in Ottawa in June 2015 and heard many stories of Aboriginal peoples and all that they suffered through the loss of their culture and families. Some individuals shared their stories for the first time in 40 years and wept as they recalled the deprivations and abuse they suffered, including the punishments they received when they expressed their Aboriginal culture and identity in any way. We know that not all of the children who were taken in the 60s Scoop were abused or mistreated, but we do know that they were forcibly taken from their families and lost their connection to their fundamental identities and histories. In this way they share the legacy of those who were forcibly taken to residential schools.

The process of the Truth and Reconciliation Commission dramatically brought to light the breadth and depth of the cultural losses through residential schools and the further “historic trauma” “intergenerational trauma”, and “transgenerational trauma”, which are well-recognized syndromes discussed by scholars and mental health Professionals. 3

We can legitimately conclude that children lost to the 60s Scoop suffered the same trauma and mental health problems as those who were deprived of their culture in residential schools.

Residential schools and the 60s Scoop

Residential schools were active during the time period of the 60s Scoop, with the last school closing in the late 1990s. As such, the Aboriginal community suffered the combined impact and losses of these two events. We have also seen that some of the parents of the children taken in the 60s Scoop were themselves residential school survivors. Children who grew up in residential schools did not have the experience of positive parenting and therefore did not have a model on how to parent their own children, thereby passing along intergenerational trauma.

From the perspective of commonly shared cultural identity, the Indian Residential Schools and the 60s Scoop reinforced one and other and can be seen as expressions of the same official government attitude and practice of “taking the Indian out of the child”. These practices resulted in a further denigration and destruction of Aboriginal culture and values.

The impact at the community level arising from the policies of the residential schools and the 60s scoop had the same outcome: children being forcibly removed from their families and their communities. Lack of understanding of cultural practices of child-rearing was a contributing element that led to the removal of children in the 60s Scoop. For example, in Anishnabe culture, the extended family is often actively involved in the day-to-day child-rearing practices of a particular child. If this style of parenting is not understood on the part of a child welfare worker, the child’s parents could be judged as being negligent, which could then to the removal of the child. The child is being taken out of a web of familial relationships, including exposure to crucial traditional teachings of the elders in the home.

Regarding historic trauma:

“The trauma experienced as a result of the residential school experience has built upon trauma from earlier forms of injustice and oppression, and continues to be built upon by contemporary forms such that the trauma is cumulative, with oppression and abuse becoming internalized, leading to a sense of shame and hopelessness that is transmitted and built upon through the generations. Over an extended period of time, the effects of this trauma can reverberate throughout an entire population, resulting in a legacy of physical, psychological, and economic disparities that persist across

*generations. Not only are individuals and families affected, but their communities are affected as well, resulting in responses such as social malaise, weakened social structures and high rates of suicide that become second-order effects. This chronic exposure to trauma has manifested in individual symptoms such as anxiety, depression, grief, addictions, and self-destructive behaviours within generations of Aboriginal people."*⁴

Manitoba Apology for 60s Scoop: June 18, 2015

It was not until June 18, 2015 that there was public government recognition of the tragedy of the 60s Scoop, when Manitoba premier Greg Selinger made a formal apology to those taken in the Scoop, and to their families and communities:

*"I would like to apologize on behalf of the Province of Manitoba for the '60s Scoop -- the practice of removing First Nation, Metis and Inuit children from their families and placing them for adoption in non-Indigenous homes, sometimes far from their home community, and for the losses of culture and identity to the children and their families and communities," ... "With these words of apology and regret, I hope that all Canadians will join me in recognizing this historical injustice."*⁵

At the gathering for the Manitoba apology and in other settings, some survivors of the 60s Scoop shared their stories and reported:

*"Being raped by an adoptive father and becoming pregnant at age; being sent to a farm in Minnesota and being consistently beaten by an adoptive parent; being taken as a newborn from a mother who was a residential school survivor, where the foster care was to be for 6 months, but turned into a permanent adoption in the USA; not having knowledge of their Aboriginal identity for over 20 years and losing connections with parents, extended families and communities; thinking they were of a French cultural background but being taunted in school because of their Aboriginal coloring and features; being separated from one's siblings through the 60s scoop and losing all connection with them."*⁶

Although the Manitoba apology is seen as significant, there is still doubt as to what the real positive impact will be. One survivor stated:

*"How can you apologize when you don't know what you are apologizing for?" she said. "So how can that be an apology when you don't know my story [or] the thousands of other stories and the horrible things?"*⁶

Though Manitoba apology is seen as a first step in the recognition of the wrongs carried out by the Canadian government, First Nations leaders and community members have stated that the apology is not enough, and that there must be a plan for a commission, for compensation and for the reunification of families.

If there is no meaningful follow up from the Manitoba apology, it is likely that Aboriginal individuals, those directly affected by the 60s Scoop as well as the community at large, would again experience another betrayal by the Canadian government and its institutions. Promises made but then broken lead to deeper levels of mistrust and loss of hope of full healing. This can also lead to greater psychological distress and dysfunction.

In answering specific questions:

1. Do children who have suffered the experiences of those in the 60s Scoop have difficulty with recognizing and/or coming to terms with the experience of a loss of cultural identity?

Yes, it is my professional opinion that these children, now adults, clearly continue to have severe difficulty in coming to terms with the experience of a loss of cultural identity.

2. If surviving children of the 60s Scoop do experience such difficulty, why is that?

The children who were in the 60s Scoop were placed in foster care, largely in non-Aboriginal homes, at an intensely formative part of their lives. Some did not even have knowledge of their own identity as Aboriginal, and did not have any experience of or connection to their Aboriginal culture. As children, they likely absorbed the prejudices and negative stereotypes about Aboriginal people in the community at large. Even when they discovered their own Aboriginal heritage, or reconnected with it, they would have the additional burden of coming to terms with these internalized negative views, at the same time as trying to reclaim their identity.

Since, as outlined in my report of 2009, cultural identity is a fundamental building block of the self and positive mental health, these children grew up with a confused sense of self, a lack of belonging, and also with a potential for self-hatred. In my own clinical experience, I have worked with First Nations individuals who only found out that they were Aboriginal as young adults or older, and had internalized the harsh negative judgements about Indian-ness, which often led to a profound sense of shame. They presented with inner conflict, depressed mood, identity confusion, and an overall sense of lack of belonging.

Because the children taken in the 60s Scoop already experienced disruption from their own families and communities, the additional loss of culture and connection to their history complicates the profile. These double losses have contributed to lower self-esteem, identity confusion, substance abuse, difficulties in creating positive relationships and establishing positive life paths, feelings of betrayal, and a host of other psychological disorders.

In agreement with Justice Perell's summary of psychiatrist Dr. Harvey Armstrong's comments regarding the 60s Scoop:

"The effect of this policy was loss of culture, loss of language, loss of ability to parent as aboriginal person, loss of identity, increased rate of psychopathology, confused identity formulation, psychiatric disorders, substance abuse, emotional isolation, violence, unemployment, feelings of betrayal, and extreme lack of emotional attachment". 7 (See also Dr. Armstrong's comments on identity formation) 8

In my clinical practice, I have worked with Aboriginal individuals, separated from their culture, who have experienced fundamental discord, shame and confusion. The initial step of the healing journey is to address the psychological complexity of their loss of Aboriginal cultural history and connection. The experience of loss of culture and language is also a major factor in depression and suicidality. 9

In my capacity as the Consulting Psychologist for the Aboriginal Mental Health program at the Centre for Addiction and Mental Health (2001-2009), our team recognized the central role of the reclaiming of culture as the fundamental building block to healing from damage done by the loss of cultural identity. This program included, and still includes, an Aboriginal Elder as an intrinsic member of the team, and cultural experiences and teachings are offered as the basis of the therapeutic program. 10

The program also recognizes the many nations that comprise Aboriginal culture, to avoid falling prey Pan-Indianism.

The Truth and Reconciliation Commission recognized that healing and reconciliation have an essential spiritual dimension. This spirituality is empowering and supports the sense of personhood and action.

First Nations Mental Wellness Continuum Framework and Healing

In January 2015, Health Canada published the First Nations Mental Wellness Continuum Framework. This document, the product of collaboration between the Government of Canada and Aboriginal stakeholders, highlights culture as the foundation to healing. In this framework:

"Culture, like language, is spirit-centred. Culture expresses language and the worldview it contains. Culture is manifested in the unique ways of living and being in the world. While culture is not static or homogeneous across First Nations in Canada, there are common fundamental principles. Identity, relationships, purpose, and meaning are all anchored by culture's unique way of seeing, relating, being, and thinking." 11

3. How then, if at all, do the comments of a non-First Nations Chief Judge of Canada have upon them to reconcile their experience with their present functioning? Does this question suffer from an assumption that the survivors of the 60s scoop would even know of the comments of a non-First Nations Chief Judge?

In a lecture entitled "Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance", delivered on May 28, 2015, Chief Justice McLachlin acknowledged that there has been intolerance and persecution of First Nations individuals and communities in Canada over many centuries. She recognized that the 19th century colonialist practices towards the First Nations had "an ethos of exclusion and cultural annihilation", in which the First Nations were denied the right to vote, engage in cultural and religious practices and were forcibly taken to residential schools. She quoted the well-known phrase of John A. McDonald that the aim of these policies was to "take the Indian out of the child". She also recognized the term "cultural genocide" as reflective of the profound damage of these practices. Justice McLachlin also said that tolerance is the only viable path to take, and that this would lead to reconciliation. Although she did recognize government's past injustices towards Aboriginal peoples, there was no acknowledgement of the ongoing difficulties in the government's relationship with First Nations communities and the impact on the lives of Aboriginal peoples today.

I would conclude that survivors of the 60s Scoop might feel some relief at hearing a statement from the Chief Justice of Canada acknowledging that the government's assimilationist policy towards Aboriginal people was very wrong. But there could well be a sense that this is insufficient since the current problems of Aboriginal peoples and a plan of committed action are not addressed. Without action, these statements by the Chief Justice could well be perceived as continuing rhetoric.

With regard to the question that the Chief Justice is non-First Nations, the most important factor is whether there is substantial action taken by the Canadian government to create policies that are translated into concrete action.

4. What impact, if any, does a chapter from the Truth and Reconciliation Commission have upon their capacity to recognize and come to terms with the experience of a loss of cultural identity?

The Summary of the Final Report of the Truth of the Truth and Reconciliation Commission clearly outlines the policy of cultural genocide that was adopted by the Canadian government:

*"The Canadian government pursued this policy of cultural genocide because it wished to divest itself of its legal and financial obligations to Aboriginal people and to gain control over their land and resources. If every Aboriginal person had been 'absorbed into the body politic', there would be no reserves, no treaties and no Aboriginal rights"*¹²

The report outlines the harsh manner in which Aboriginal culture and language was denigrated and suppressed. It also refers to the denigration of the parenting skills of Aboriginal parents and the outlawing of Native cultural and religious practices.

I believe that the recognition and naming of “cultural genocide” can be a helpful first step for an Aboriginal person who has been disconnected from their culture, since this naming brings this tragedy out of the shadows as a collective experience. The contextualizing of individual difficulties within a larger historical framework is crucial in helping Aboriginal people to move from isolation and self-blame to healing.

In my clinical experience, with both residential school survivors and 60s Scoop survivors, Aboriginal cultural identity may not be so easy to reclaim. When there is such a profound severing of connection with one’s culture and an internalization of prejudices and negative stereotypes about being Native, it becomes necessary to work through cultural self-hatred and develop a positive relationship with one’s Aboriginal cultural identity.

5. Can you contrast that said by the Chief Justice or a Commission with the impact of participation in a class proceeding where each survivor becomes a member of a class of persons seeking justice, and which group of people have endured close to 6 years of aggressive litigation carried out by Canada, who has vigorously denied the fact of their experience and vigorously resisted to form a class action proceeding?

Clearly, there is discrepancy between the statements regarding tolerance and reconciliation as shared by Chief Justice McLachlin in her talk of May 28, 2015, and the drawn out struggle over 6- year long struggle involved in the certification of the 60s Scoop as a class action suit. Whether or not the 60s Scoop survivors have direct knowledge of Chief Justice McLachlin’s lecture, Survivors and their families and communities are aware of the fact that there has been a significant delay in the certification. The difficult path in reaching certification, with its corresponding delay, could easily be seen as a dichotomy between word and action, a hypocrisy which could well lead to a further sense of betrayal and disenfranchisement for 60s Scoop Survivors.

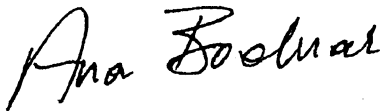
The question remains as to how the words of government apologies, as in the 2008 apology for the government’s role in residential schools, by then Prime Minister Stephen Harper, translate into specific action.

For those touched by the class action suit and for the wider community affected by the 60s Scoop, the delay in certification reflects the government’s lack of acknowledgement of the seriousness of the event. It has quite likely led the group to experience greater levels of disenfranchisement and disrespect, exacerbating the impact of the Scoop. This could lead to a political, social and psychological setback, making healing even more difficult. The fact that the trauma of the 60s Scoop has

been named, but there has been no significant resolution, would only add to the psychological suffering of those involved.

I hope that this response has been helpful in outlining my comments regarding updating my report of 2009. Thank you for the opportunity of commenting on these important issues.

Regards,

A handwritten signature in black ink that reads "Ana Bodnar". The signature is written in a cursive, flowing style.

Dr. Ana Bodnar, C. Psych.
Clinical Psychologist

Endnotes:

1. Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission. Truth and Reconciliation Commission of Canada. Page 2.
2. http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf
3. Intergenerational Trauma from a Mental Health Perspective: In: Journey to Healing Aboriginal People with Addiction and Mental Health Issues: What health, social service and justice need to know: 2014
4. http://www.nccahccnsa.ca/Publications/Lists/Publications/Attachments/142/2015_04_28_AguarHals eth_RPT_IntergenTraumaHistory_EN_Web.pdf, p.7
- 5: <http://www.cbc.ca/news/canada/manitoba/greg-selinger-manitoba-premier-apologizes-for-sixties-scoop-1.3118049>
6. <http://www.cbc.ca/news/canada/manitoba/i-didn-t-get-to-say-goodbye-winnipeg-woman-recalls-60s-scoop-1.3110672>
7. Summarized by Justice Perell, in the Superior Court File of September 27, 2013, ONSC5637. Court File NO: CV-09-372025-CP, p 4
8. Dr. Armstrong stated: "It is true that adolescence is a period of identity growth and confusion and thus arguably common to all persons. But nothing in my work with all persons compares with the experience of the Indian child who confronts the period identity with the breach of trust and betrayal for himself and his people, as he experiences it". (2013, ONSC5637. Court File NO: CV-09-372025-CP. ; P. 5).}
9. "Perspectives on Aboriginal Suicide: Movement toward Healing". Ana Bodnar, In: Journey to Healing Aboriginal People with Addiction and Mental Health Issues What health, social service and justice and workers need to know. 2014
10. "The Role of the Elder in Mental Health Treatment", Ana Bodnar, Native Social Work Journal, 2010.
11. (From: <http://www.hc-sc.gc.ca/fniah-spnia/pubs/promotion/mental/2014-sum-rpt-continuum/index-eng.php#s5a>), p. 33
12. Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission. Page 3

The observations, noted above, arising from my clinical experience are consistent with academic studies and reports. A brief listing of references is included below:

Honouring the Truth, Reconciling for the Future. Summary of the Final Report of the Truth and Reconciliation Commission of Canada, 2015.

Reconciling Unity and Diversity in the Modern Era: Tolerance and Intolerance. Remarks of the Rt. Hon. Beverley McLachlin, P.C. At the Agha Khan Museum. Toronto, May 28, 2015.

Justice Perell, in the Superior Court File of September 27, 2013, ONSC5637. Court File NO: CV-09-372025-CP.

Residential Schools and Aboriginal Parenting: Voices of Parents. Jean La France, Don Collins. Native Social Work Journal. Volume 4 (1). 2003.

"The Role of the Elder in Mental Health Treatment", Ana Bodnar. Native Social Work Journal, Volume 7. 2010.

"Perspectives on Aboriginal Suicide: Movement toward Healing". Ana Bodnar, In: Journey to Healing Aboriginal People with Addiction and Mental Health Issues What health, social service and justice and workers need to know Edited by Peter Menzies and Lynn F. Lavallée, CAMH: 2014

"In Search of Identity: Supporting Healing and Well-Being in Youth", Lynn F. Lavallée and Kelly Anne Fairneym, In: Journey to Healing Aboriginal People with Addiction and Mental Health Issues: What health, social service and justice and workers need to know. Edited by Peter Menzies and Lynn F. Lavallée, CAMH: 2014

"Intergenerational Trauma from a Mental Health Perspective". In: Journey to Healing Aboriginal People with Addiction and Mental Health Issues: What health, social service and justice and workers need to know. Edited by Peter Menzies and Lynn F. Lavallée, CAMH: 2014

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Mental wellness in Canada's Aboriginal communities: striving toward reconciliation. Boksa, Patricia, PhD, Joobar, Ridha, MD, PhD; Kirmayer, Laurence J, MD Journal of Psychiatry & Neuroscience : JPN 40.6 (Nov 2015): 363-365.

First Nations Mental Wellness Continuum Framework, Health Canada 2014 http://publications.gc.ca/collections/collection_2015/sc-hc/H34-278-1-2014-eng.pdf

The intergenerational trauma of First Nations Still runs deep: Kevin Berube, *Globe and Mail*, February 16, 2015. <http://www.theglobeandmail.com/life/health-and-fitness/health-advisor/the-intergenerational-trauma-of-first-nations-still-runs-deep/article23013789/>

The La Loche shootings: The victims, the town and the tragic tale so far. <http://www.theglobeandmail.com/news/national/la-loche-shootings-the-victims-the-town-and-the-tragic-tale-sofar/article28368674/>

Aboriginal Health in Canada: Historical, Cultural and Epidemiological Perspectives, James Waldram. University of Toronto press, 2006.

“The Facilitation of Healing for Indigenous Youth Who Are Suicidal: A Retrospective Exploratory Study.” McCormick, Rod, Sharon Thira, Marla Arvay, and Sophia Rinaldis Routledge International Handbook of Clinical Suicide Research. Ed. John R. Cutcliffe, José Santos, Paul S. Links, Juveria Zaheer, Henry G. Harder, Frank Campbell, Rod McCormick, Kari Harder, Yvonne Bergmans, and Rahel Eynan. New York: Routledge, 2014. 351-363.

“Shamanism, Religious Networks and Empowerment in Indigenous Societies of the Americas”, Frederic Laugrand, Robert R. Crepeau. *Anthropologica* 57 (2015) 289-298.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiff

- and -

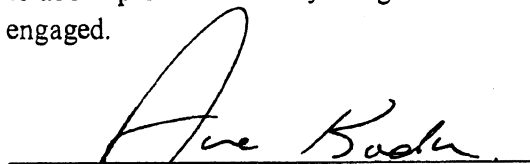
THE ATTORNEY GENERAL OF CANADA

Defendant

ACKNOWLEDGMENT OF EXPERT'S DUTY

1. My name is Dr. Ana Bodnar. I live in the City of Toronto, Province of Ontario.
2. I have been engaged by or on behalf of the Plaintiff, Marcia Brown, to provide evidence in relation to the above-noted court proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date: March 1, 2016



Signature

NOTE: This form must be attached to any report signed by the expert and provided for the purposes of subrule 53.03(1) or (2) of the *Rules of Civil Procedure*.

BROWN
Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA
Defendant

Court File No. CV-09-00372025-00CP

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

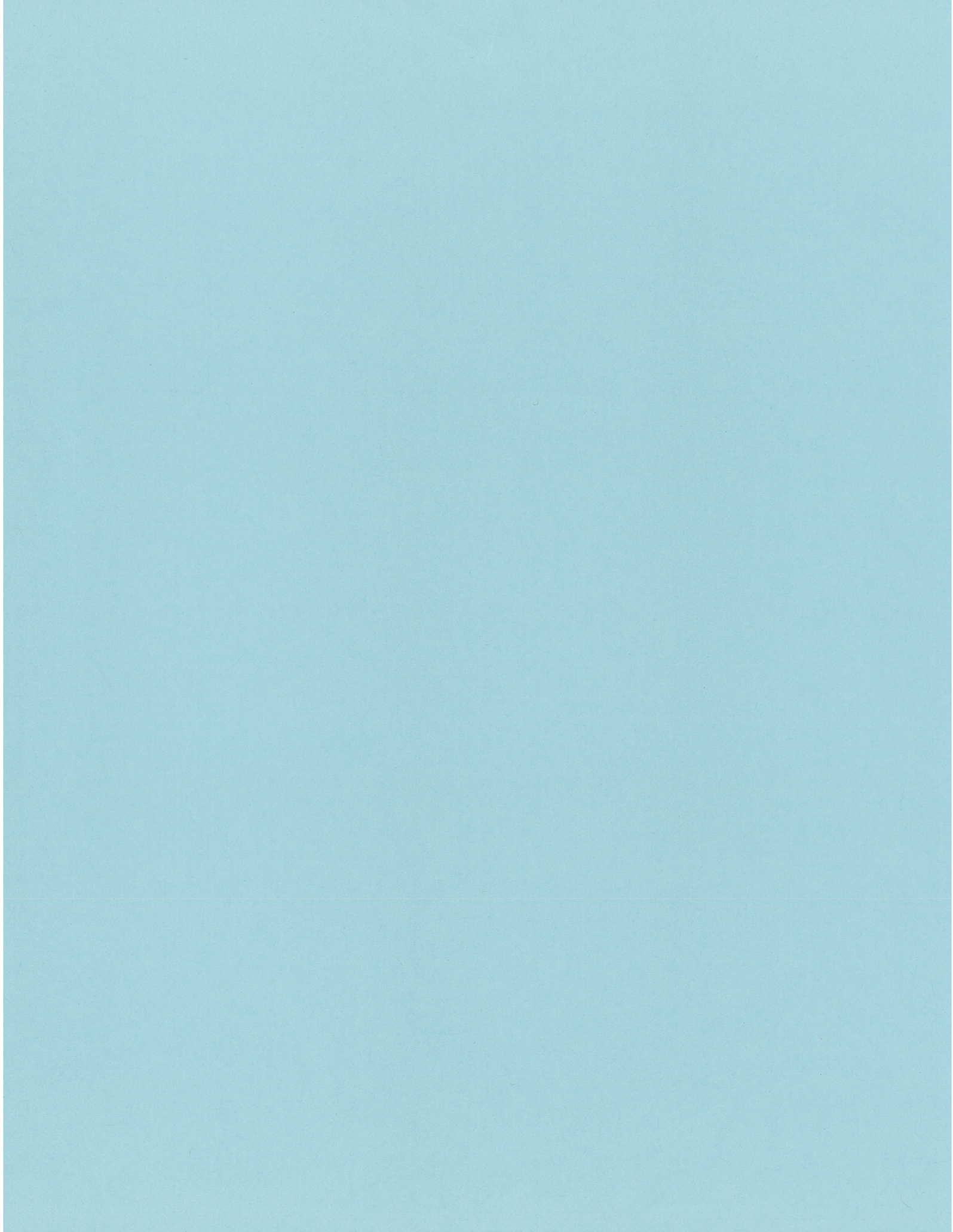
PLAINTIFF'S DAMAGES BRIEF
(Volume 1)

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Counsel for the Plaintiff



**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MARCIA BROWN and ~~ROBERT COMMANDA~~

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**PLAINTIFF'S DAMAGES RECORD
(Volume 2)**

April 28, 2017

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Counsel for the Defendant

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5. Affidavit of Adolphus Cameron, sworn April 3, 2017
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17. Affidavit of George Bott, sworn January 24, 2016, previously filed
18. Affidavit of Jason Smith, sworn December 21, 2015, previously filed
19. Affidavit of James Moss, sworn December 15, 2015, previously filed
20. Affidavit of Mark Seabrook, sworn December 16, 2015, previously filed
21. Affidavit of Luke Hunter, sworn February 3, 2016, previously filed
22. Affidavit of Wilmer Nadjiwon, sworn December 14, 2015, previously filed
23. Affidavit of Christopher Bruce, sworn April 26, 2017

24. Affidavit of Vernon Harper, sworn May 15, 2009, previously filed
25. Affidavit of Kenneth Denis Richard, sworn May 23, 2009, previously filed
26. Affidavit of Dr. Harvey Armstrong, sworn May 28, 2009, previously filed
27. Affidavit of Dr. Harvey Armstrong, sworn February 25, 2016, previously filed
28. Affidavit of Dr. Ana Bodnar, sworn May 25, 2009, previously filed, previously filed
29. Affidavit of Dr. Ana Bodnar, sworn March 1, 2016, previously filed, previously filed

Volume 2

30. Transcript from Cross-examination of Marcia Brown on February 23, 2010, previously filed
31. Transcript from Cross-examination of Ana Bodnar on January 28, 2010, previously filed
32. Transcript from Cross-examination of Kenneth Denis Richard on February 2, 2010, previously filed
33. Transcript from Cross-examination of Harvey Armstrong on February 2, 2010, previously filed
34. Transcript from Cross-examination of Vernon Harper on February 5, 2010, previously filed
35. Fresh as Amended Amended Statement of Claim, dated July 29, 2015, previously filed
36. Amended Statement of Defence, dated September 25, 2015, previously filed
37. Reply, dated November 20, 2009, previously filed, previously filed
38. Questions on Written Examination for Discovery of the Plaintiff, dated November 30, 2015
39. The Defendant's Answers to the Plaintiff's Written Examination for Discovery, dated February 18, 2016, previously filed
40. Questions on Written Examination for Discovery of the Attorney General of Canada, dated December 7, 2015, previously filed
41. The Plaintiff's Answers to the Defendant's Questions on Written Examination for Discovery, dated February 19, 2016, letter from Janet Brooks to Jeffery Wilson and Morris Cooper, dated February 26, 2016, and letter from Jeffery Wilson to Janet Brooks dated February 29, 2016, previously filed
42. Decision of the Honourable Justice Belobaba, dated February 14, 2017

Court File No. CV-09-00372025-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

5

MARCIA BROWN and ROBERT COMMANDA

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

10

C R O S S E X A M I N A T I O N

of MARCIA SALLY SUSAN BROWN, one of the plaintiffs herein,
before Audrey Stewart, Certified Court Reporter,
at the Hockey Heritage North Conference Room,
at Kirkland Lake, Ontario, on February 23, 2010.

15

A P P E A R A N C E S:

20

Mr. Jeffrey Wilson

WILSON CHRISTEN LLP

Counsel for the plaintiffs

Mr. Owen Young

25

DEPARTMENT OF JUSTICE

Counsel for the defendant

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(i)

ONTARIO
SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

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	BROWN, Sally Susan		
	by Mr. Owen Young		1
10		*****	
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15	1	Request for Particulars.	6
	2	Response to the Request for Particulars, with the covering letter of August 7th, 2009.	6
20	3	Draft Order and draft schedule of common issues under cover of a letter of December 21, 2009.	7
25		*****	

UNDERTAKINGS GIVEN (U/T)

5	To provide a breakdown, stated as a percentage, of the children adopted out versus children not adopted out.	40
10	To advise what objective criteria is used to define the term <i>state-sanctioned</i> .	61
15	To advise whether the list on page 22 of Exhibit "B" covers or services Aboriginal persons in all regions of Ontario.	76

UNDERTAKINGS REFUSED (U/R)

NIL

20

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1.

EXAMINATION OF MARCIA SALLY SUSAN BROWN.

TUESDAY, FEBRUARY 23, 2010MARCIA SALLY SUSAN BROWN (SWORN)EXAMINED BY MR. OWEN YOUNG:

- 5 1. Q. Can I have your full name, please, for
the record.
- A. My name is Marcia Sally Susan.
2. Q. Sorry, Marcia?
- A. Marcia Sally Susan Brown. There's a
whole other buncha names to that but....
- 10 3. Q. Well, I'm sorry. I didn't ask the
question to pry into your middle names there.
- A. Yeah.
4. Q. I was just asking...
- A. Yeah.
- 15 5. Q. ...for the basics.
- A. Yes.
6. Q. So we knew it was you.
- A. Yes, that's the basics. That's the
basics.
- 20 7. Q. Good. Marcia, you swore an affidavit in
this case. It's dated May 15th, 2009. Do you have a
copy of it in front of you?
- A. Yes. It appears to be the copy, yes.
8. Q. And it's the one taken from the motion
25 record? If you flip to the front, you'll see that's

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

what it is.

A. Yes.

9. Q. All right. That's your affidavit?

A. It appears to be so, yes.

5 10. Q. All right. That was sworn, not fully a year ago but...

A. Mm-hmm.

11. Q. ...three-quarters of a year ago. Have you had a chance to read it...

10 A. Yes.

12. Q. ...today?

A. Not today.

13. Q. Yes. Recently.

A. Yes, recently, yes.

15 14. Q. And are there any changes that you want to make to it before we start? Any updates?

A. No.

15. Q. Also in the motion record, and it's, I think, Exhibit "A" to your affidavit, is a copy of the statement of claim?

20 A. Yes.

A. Yes.

16. Q. Do you have it there?

A. Yes.

17. Q. Now, in your affidavit, you say that the statement of claim accurately sets out the facts of my

25

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

case and this proposed class proceeding. Have you had a chance to read the statement of claim recently?

A. Yes.

18. Q. Does it still accurately set out the
5 facts of your case and of the proposed class proceeding?

A. Yes.

19. Q. The other thing that I just want to make
10 sure that you have seen is--are two documents, and they're here: One is called a request for particulars, and let me show you that one. Have you seen that document before?

A. I've seen a lot of documents, so I'm not--where in here would this be?

15 20. Q. It's actually not in there. It took place.... It was an exchange between lawyers that followed that document. If you haven't seen it before, don't be shy about saying so, or if you don't remember it, don't be shy about saying so.

20 A. I can tell you that if somewhere I had my signature to something, I have read it. I just have read a lot of things.

21. Q. Yes, okay. Well, let's just stop with
25 that one for a moment, just if you can close it up because here's a related document, which is an answer

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

to it from your lawyers. It's a response to a request for particulars. And, again, don't be shy about saying you haven't read that...

A. This....

5 22. Q. ...before...

A. The same...

23. Q. Because...

A. The same thing.

24. Q. ...I'll tell you, Marcia.

10 A. I....

25. Q. If I.... If you haven't read them before, I'm going to give you a moment to read them; in fact, I'll leave so if you want to talk about them with Mr. Wilson off-the-record, you may, so that you're fully up-to-date on them. All right? So you'll have ample time to read them. So, if you don't recognize it, rest assured you'll get some time to read it.

A. Very good. I would like.... I'm....

20 MR. WILSON: You have received it.

A. I have received.... I know that there is.... I don't have any doubt that I haven't seen it and that I haven't read it. It's just that I haven't read it recently.

25 26. MR. YOUNG: Q. Yes. Fair enough.

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

A. So....

27. Q. Fair enough. Well, then, before I give-
-take a little break to give you a chance to read them
because I want you to be comfortable with them, the
5 other thing that I have that you may not have seen is
a letter from Mr. Wilson, which includes a--the terms
of a proposed draft order, and it includes two things:
one is a description of the class and then some
common issues. And you may not have seen that before,
10 or, if you did, it was buried amongst paper.

A. No. It would have been.... It would
have come to me, knowingly, and I would have
recognized it as what it was.

28. Q. Okay. I do plan to ask you some
15 questions about all three of those things, so if....

A. Yes.

29. Q. What I would like to do is go off the
record briefly and give you a few minutes to read them
and, as I said, we'll leave. I'm not sure you'll have
20 a lot of questions for Mr. Wilson, but it gives you a
chance to talk about them beforehand.

A. Oh, yes.

30. Q. All right?

A. Yeah, that's good.

25 31. Q. Okay.

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

A. Okay.

32. Q. We'll take our water here, too.

OFF RECORD

5 33. Q. Now you've had a chance to have a look
at them?

A. Oh, yes.

34. Q. Okay. Now, the affidavit is already in
the record, and the statement of claim is already in
10 the record.

A. Mm-hmm.

35. Q. But let me just make sure I've got these
in the right order. Here is the request for
particulars.

15 MR. YOUNG: Do you have any objection if we
mark that as Exhibit 1, Mr. Wilson?

MR. WILSON: No.

EXHIBIT NUMBER 1: Request for Particulars.
Produced and marked.

20 MR. YOUNG: Can we have a.... Even if we
write on it here. And the response to the
request, with the covering letter of August
7th, 2009, we could mark as Exhibit Number
2.

25 EXHIBIT NUMBER 2: Response to the Request

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

- for Particulars, with the covering letter of August 7th, 2009. Produced and marked. These stamps say "for discovery" on it, but I'm sure we could figure out the difference.
- 5 MADAM REPORTER: Number 2 is called?
- MR. YOUNG: It's a Response to Request for Particulars, and it's under cover of a letter of August 7th, 2009. And the last thing, if we could mark it as Exhibit 3, is
- 10 the draft order and draft schedule of common issues under cover of a letter of December 21st, 2009.
- EXHIBIT NUMBER 3: Draft Order and draft Schedule of Common Issues under cover of a
- 15 letter of December 21, 2009. Produced and marked.
36. Q. Now, the last thing is, if I can just take you to the statement of claim, which is in the motion record here. It's Exhibit "A" to your
- 20 affidavit. Here it is.
- A. Oh, yeah. It would be in here.
37. Q. Oh, you've got one?
- A. Oh, yeah, I got one.
38. Q. Perfect. Paragraph 6 of your affidavit
- 25 refers to an agreement made December 1st, 1965, which

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is described here as the Canada Ontario Welfare agreement between Canada and Ontario. Paragraph 6 of the statement of claim. You'll see if you could head on another couple of pages, you'll...

5 A. Oh, they....

39. Q. ...find they're numbered.

A. Great. Sorry. There. Yes.

40. Q. Okay. It refers to the Canada Ontario welfare agreement of December 1st, 1965?

10 A. Yes.

41. Q. Have you had an opportunity to read that?

A. This, as in number six, yes.

42. Q. Not paragraph 6 but the agreement that it refers to, the December 1st, 1965 agreement, between Canada and Ontario?

A. Sections of it.

43. Q. Okay. Are you aware of any amendments to that agreement made after December 1st, 1965 which expanded from Indians resident on a reserve to something broader? Aboriginal people? Other Indians, other than just Indians on reserves?

20 MR. WILSON: Well, how....

A. I....

25 MR. WILSON: Just one second. There's no

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evidence of that put forward by Canada
so....

44. MR. YOUNG: Q. I'm just asking if you're
aware of any amendments--and if you need to assist
5 her, Mr. Wilson, that's fine. Are you aware of any
amendments to this agreement made after 1965, which
expanded its terms to include anything, other than
Indians on reserves?

A. Wouldn't that agreement have occurred
10 with Canada, and you wouldn't need to ask me that
question?

45. Q. Can I assume that the answer to the
question is you're not aware of any anyway.

MR. WILSON: Well, but my issue with it is
15 that it, with respect, unless I'm
misunderstanding, there's no.... The....
There's no evidence that you have filed as
to there being any amendments to that
agreement so....

20 MR. YOUNG: But I'm not limited to cross-
examining on evidence that we may have
filed, Mr. Wilson. Surely, I'm entitled to
ask questions about the evidence in the case
that you've put forward.

25 MR. WILSON: That's right, but that's

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

5 not.... So.... But you're asking a question that is not from the evidence that we put forward. You're asking a question--I don't know. Is.... Are there any amendments?

MR. YOUNG: No. I'm....

MR. WILSON: You haven't told us.

MR. YOUNG: Let me rephrase my question.

MR. WILSON: Yes.

10 MR. YOUNG: I didn't ask if there are amendments. I just asked if she was aware of any amendments made to the agreement that expanded its terms from Indians on reserves to anything broader than that, and if she's
15 unaware, she can say that. If she is aware, she can tell me.

MR. WILSON: So, are you aware? If you're not aware, just say you don't know.

WITNESS: No.

20 MR. WILSON: Okay.

WITNESS: Not my....

46. MR. YOUNG: Q. Now, in your statement of claim-- if I can just start there--I'm going to ask you to look at the three documents here. One is
25 the.... In your statement of claim on page 7, I

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

think, of the record, but it's paragraph 2(d). Do you have that paragraph? I just want to make sure you've got it in front of you.

A. Page? Seven?

5 47. Q. Well, there's two numbers at the top, unfortunately. One says...

A. Page 7.

48. Q. ...7, and one says 4.

A. Four. Okay, I got...

10 49. Q. All right.

A. ...7 and 4. Okay.

50. Q. And it.... Do you see the sub "(d)"?

A. Yeah.

51. Q. The (d) in brackets, and it says...

15 A. "D".

52. Q. ..."class." "Class or class members..."

A. Yes.

20 53. Q. "...refer to the approximately 16,000 Aboriginal persons who, as children in Ontario were exposed to the consequences of the defendant's breach of fiduciary obligation, duty of care and protection of Aboriginal rights and identity, genocide during the class period in excluding those who were members of the class in action," and then it's got a number, 25 "00CV192059CP in the Ontario Superior Court of

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Justice, i.e. residential schools abuse class action."

A. Yes. I....

54. Q. I've read it accurately to you?

A. Yes.

5 55. Q. Now, if I could ask you to look at the request for particulars, which is Exhibit number 1. Now, if you go to the back of that. I think it's the second last page.

A. Okay.

10 56. Q. It says, "particulars identifying the class, as pleaded." Do you see that...

A. Yes.

15 57. Q. ...heading? And then it just says, "The statement of claim," and it carries on with a description.

A. Yes.

20 58. Q. And then it puts "the class, as proposed, (a) present day living adults who, as children, were either first Nation registered or status Indians, First Nation non-status Indians, Metis or Inuit, and who in the period from December 1, 1965 to December 31, 1984 were apprehended in Ontario by child welfare authorities and removed from their Aboriginal families and communities and placed in the care of non-Aboriginal adoptive or foster homes, and

25

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

5 who suffered the losses, as pleaded because they were
thereby systematically denied the opportunity to
preserve their Aboriginal identity, but excluding
those who are members of the class Ontario Superior
Court action number," and then it has exactly the same
number we just...

A. Yes.

59. Q. ...read, the residential schools action.
So you've seen that one?

10 A. Yes.

60. Q. Now, if I could take you to Exhibit
Number 2, which is the response to particulars, and
again, I think you have to flip to the very last page,
and just a little bit down on that last page, it says,
15 "Part 3, the class described in the statement of
claim." Do you see that? Just above where it says,
"July 31st, 2009," there's a....

A. No.

61. Q. I think it's on the page on your right
20 there. The very last page.

A. Okay. The (inaudible). All right.

62. Q. And it's referring to the thing we've
just looked at, Exhibit 1. It says, "This is an
accurate description."

25 A. Yes.

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

63. Q. Do you see that? Okay. Now, if I could take you to Exhibit 3. Here is Exhibit 3.

A. Okay.

64. Q. Now, here, you have to go.... I think
5 it's the second last page, and it begins.... It's got a heading in bold at the top that says, "draft order and draft schedule." Do you see that part?

A. Yes.

65. Q. Okay, so we're on the same page. And it
10 has a draft that says, "the court orders that the class be described as," and then it lists them, with lower case, Roman Numerals, "Aboriginal persons, and who were children in Ontario between the years 1965 and 1984, and who were removed from their birth homes
15 and who were removed from their indigenous communities, and who were placed in non-Aboriginal settings during their childhood, either through state sanctioned orders of guardianship, wardship, custody, or adoption, and who, in consequence of which they
20 lost connection to their indigenous culture and identity during their childhood." You've seen that.

A. Yes.

66. Q. All right. Now, these are different in
25 one really important respect, and that is, it doesn't refer to that class action number, with the long

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

number that we just read, the residential schools class action. Is that to be included or not to be included?

MR. WILSON: It's to be included.

5 MR. YOUNG: So....

MR. WILSON: It is exclusive of that.

MR. YOUNG: It's excluded. So, even....
I'm to read--just so I've got it totally
straight. When I read this draft order, I'm
10 to read it as if it includes an item number
7, which is the exclusion of the people in
that class...

MR. WILSON: In that....

MR. YOUNG: ...action, with the number.

15 MR. WILSON: That's correct.

MR. YOUNG: Okay. Now, of these three, and
we have the statement of claim, we have the
response to the request for particulars and
the draft order. We now cleared up the
20 question of the residential schools class
action. But which of these am I to question
on? Which are these--am I to rely on in
terms of being the one that's going to be
presented on certification?

25 MR. WILSON: All three of them, with the

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

explanation that I just gave you.

MR. YOUNG: Sorry. What was the explanation you gave me?

5

MR. WILSON: That the last document should have included the exclusion...

MR. YOUNG: Right.

MR. WILSON: ...of those persons who were part of a class action.

10

MR. YOUNG: So all three are being presented as....

MR. WILSON: They're all part.... They're all before the court.

15

MR. YOUNG: Well, I understand they're all before the court, but which ones are the plaintiffs presenting as the proposed class?

MR. WILSON: The proposed class are all three of them, with the explanation that I've given.

20

MR. YOUNG: And the explanation being that, in fact, they're all to mention this--have this reference to the residential schools class action.

MR. WILSON: Exclusion.

MR. YOUNG: Okay, thank you.

25

67.

Q. I understand from your affidavit, you

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17.

EXAMINATION OF MARCIA SALLY SUSAN BROWN.

were born in June 1963?

A. Yes.

68. Q. Where were you born?

A. I was born in Kirkland Lake.

5 69. Q. Were you born into a First Nation as a registered Indian under the *Indian Act*?

A. I was born into a First Nation. I do not recall when I received my status through my father.

10 70. Q. Was it earlier, or was it when you were mature that you received your status through your father?

A. Well, I don't know.

71. Q. I mean, were you....

15 A. That's why I said....

72. Q. Were you a youngster? You don't know at all. You don't even know what...

A. I....

73. Q. ...part of your life it was?

20 A. Well....

74. Q. Whether you were young or....

A. They.... No. I was, like....

75. Q. I'm not suggesting you're old, but when you were young or older?

25 A. I was a child. That was my mom and

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

dad's business, not mine. But I can tell you--say that Temagami Band knew of a Sally Susan Mathias.

76. Q. Yes. So, is that what the band is on your status card?

5 A. Temagami.

77. Q. Temagami?

A. Yes.

78. Q. Temagami is located--centred around Bear Island and...

10 A. Yes.

79. Q. ...Lake Temagami?

A. Yes.

80. Q. It's part of.... Its Treaty affiliation is Robinson Huron?

15 A. I think south of here is Robinson, yes. I'm.... I could be incorrect...

81. Q. But as...

A. ...on their...

82. Q. ...far as....

20 A. On their treaty, but, yeah, they're south of here.

83. Q. And they're a treaty First Nation.

A. They're an independent treaty. They're independent First Nation.

25 84. Q. I'm sorry. What? They're not part of

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

treaty or they are? I'm not understanding...

MR. WILSON: And only if you know.

85. MR. YOUNG: Q. ...what you mean by
independent First Nation.

5 A. That's all I know about Temagami Band is
that they refer to themselves as an independent First
Nation. They have INAC cards they give out, so they
have, you know.... They give out status cards, so
they have to be with INAC somehow.

10 86. Q. Well, my question really wasn't about
INAC, but I mean, that's helpful. My question is
about treaty, but you don't know what treaty they're a
part of?

A. No, not right off hand.

15 87. Q. Well, I know it's at risk of repeating
an earlier question, but you do know that they're at
least part of a treaty.

A. More than likely. I mean, they're in
that....

20 MR. WILSON: But do you know that?

WITNESS: No, I don't. That's what I mean.

That's....

MR. WILSON: So, just listen to his
question.

25 88. MR. YOUNG: Q. If I ask you a question you

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

don't understand,...

A. Yes.

89. Q. ...and listen, it's happened.

A. Yeah.

5 90. Q. Say so. Say you don't understand that.
I'm not afraid to ask it...

A. Yeah.

91. Q. ...again, and I won't be insulted.

A. Okay.

10 MR. WILSON: And just to be clear, and if
you don't know, you're not the first person
who doesn't know.

WITNESS: Yes.

MR. WILSON: Every day, I don't understand.

15 92. MR. YOUNG: Q. Is Temagami, to your
knowledge, Ojibwa, or has it got another tribal
ancestry?

A. They have Ojibwa ties.

93. Q. Do you consider yourself Ojibwa?

20 A. My ties are also with Beaver House. I
have Ojibwa lineage. I have the.... My mother's side
of the family is from, from Quebec, as they were
Petrimont(ph).

94. Q. Is her ancestry Aboriginal?

25 A. Yes.

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EXAMINATION OF MARCIA SALLY SUSAN BROWN.

95. Q. Is it Algonquin, or is it Ojibwa, or do you know?

A. Oh, it's Algonquin. It's the.... It's between Algonquin and, you know, and some, some really long history--ancient history of some Cree ties way back. We're talkin', I don't know how many generations back, but that's what.... That's what my granny...

96. Q. These are....

A. ...said through one of my brothers. That's all.

97. Q. Okay.

A. That's all I know.

98. Q. And when you say Cree, you mean James Bay Cree, as opposed....

A. Yeah, just along the coast because people used to travel.

99. Q. Along the coast of James Bay?

A. Yeah. Well, people travel down, people travel up. It's an Aboriginal ancestry.

100. Q. Do you know if.... I take it you didn't go to residential school, or did you?

A. No.

101. Q. Do you know if anybody, your parents or grandparents, went to residential school?

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A. I can't say that they didn't because the secrecy of what has happened in their lives sometimes that people keep, so....

102. Q. Your mother was from Beaver House,
5 you...

A. Yes.

103. Q. ...were saying? And where is Beaver
House located?

A. About 35.... About 35 kilometres
10 northeast of Kirkland Lake, in a remote area.

104. Q. You're familiar with that community now.

A. Yes.

105. Q. And is it part of its history that
people of that generation went to residential school?
15 People of your mother's generation.

A. Well, that, that would be a known fact
across Canada, yes.

106. Q. Okay. So they did.

A. I don't know if they went. I just know
20 that people in her generation went.

107. Q. Right, but people in her generation from
that--from Beaver House. I don't mean people in her
generation from anywhere in Canada, but from.... Did
people of your mother's generation from Beaver House
25 go to residential school?

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MR. WILSON: Do you know that?

A. I don't know that.

108. MR. YOUNG: Q. And your father was from
Temagami?

5 A. My father was--has a lineage through
Temagami, yes.

109. Q. Do you know if.... You don't know if he
went to residential school, but do you know if people
from his generation in Temagami went to residential
10 school?

A. I know there's people that, in general,
people in the area, there's people who have gone to
residential school. To name names and say, yes, these
people have made claim to have gone, I can't say that.

15 110. Q. Okay. Well, I'm not concerned about,
and my question was very general, I realize, but
there.... My real questions are about people in your
ancestry: your parents, grandparents. You don't know
if they went. Have I got that accurate?

20 A. You have.

111. Q. Okay. In terms of the rest of your
parents' families, you don't know if they went to
residential school or not?

25 A. In my parents' families? People talk of
their nieces and people like that going to residential

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school, but there's been no.... It's a quiet issue within the community.

112. Q. Are you married, or do you have a life partner?

5 A. I am married.

113. Q. What about your spouse? Did he go to residential school?

A. No.

114. Q. I also understand from your affidavit that you were removed from your birth home, I take it, when you were four or five?

A. Yes.

115. Q. Where was your birth home located?

A. In Beaver House.

15 116. Q. If you were four or five, that would be 1967 or 1968?

A. Well, yeah. It's gotta be. I mean, I was born in '63 so....

117. Q. I'm just making sure my.... Just making sure my arithmetic is right.

A. That or near that, yeah.

118. Q. Okay. So it would be in 1967 or '68.

A. Somewhere in there, yes.

119. Q. Okay.

25 A. If that's....

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120. Q. Were you removed by CAS workers, or was it by somebody acting for the CAS workers?

A. I was four or five. All I knew, there was people coming.

5 121. Q. But have you made inquiries since to determine who removed you?

A. Yes.

122. Q. And...

A. And...

10 123. Q. ...did you learn since?

A. ...community members and community people that were there. Community members who had experienced having CAS workers with officers present was a common event, so people.... You know, and I just took it as these people were there. I remember seeing people.

15 124. Q. So your inquiries consisted of asking people in the community what had happened? Is that....

20 A. That.... That, as well as--along with, you know, speaking with Native and Child Family Services, speaking with the Chiefs, speaking with, you know, and....

25 125. Q. So, did you determine through all those inquiries that it was CAS workers who removed you in

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1967 or 1968?

A. Yes, and asking my family who were there, as they were older, and they spoke English. They were somewhere around.

5 126. Q. And the next event I have.... I mean, I'm sure there are many events, but the next thing I have from your affidavit is you were adopted out to a non-Aboriginal home at about age nine.

A. Yes.

10 127. Q. That would mean, if I've got my arithmetic right, around 1972.

A. Yes.

128. Q. And then you were out of the care of your adoptive parents at age 17 and a half?

15 A. Yes.

129. Q. Which would mean, again, if I've got my arithmetic right, around 1980-81.

A. Eighty-one. In the spring of '81.

20 130. Q. So, if I followed that correctly, that means that there's a period of four to five years where you're in the care of your birth mother or birth parents, the first four to five years of your life.

A. The first years of my life, yes.

25 131. Q. And then there's a period of another four to five years where you're in the care of CAS,

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after your....

A. I was between foster homes and, on the occasion, went back to my biological family for a short period of time.

5 132. Q. At Beaver House?

A. Sometimes at Beaver House and sometimes within the Kirkland Lake area.

133. Q. Would that be dependent on where they were?

10 A. Yes.

134. Q. Your biological family.

A. Yes. That's....

135. Q. And after that, we've got a period of eight or nine years, where you're in adoptive care?

15 A. Yes.

136. Q. And I know from your affidavit that the adoptive care was not Aboriginal, but what about the period where you were in foster care and occasionally going back to your biological family. Was all of the foster care in that period non-Aboriginal, or was there some Aboriginal?

A. I was young. If they were Aboriginal, they weren't my people.

20 137. Q. What do you mean by that? They were not
25 Beaver House?

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A. I didn't.... I wouldn't.... I had no relationship with them. They weren't my people. I.... If they.... If they were Native, I wouldn't have recognized it. Well, they weren't my people.

5 138. Q. I mean, do you mean there was a different culture? a different language? What was the difference?

A. I don't know, but they weren't my people. I, I was young, but they weren't my people. They weren't my Beaver House people.

10 139. Q. Okay. Do you know if when you were-- whether or not when you were taken into the system.... We're talking about this period of time after you're removed by CAS workers from Beaver House.

15 A. Mm-hmm.

140. Q. And we have a four or five year period. Do you know if you were made a Crown Ward in that period, or not?

A. From....

20 MR. WILSON: Only if you know. If you can't.... Do you know if you...

WITNESS: Oh.

MR. WILSON: ...were made a Crown Ward?

A. I'm tryin' to think back here.

25 141. MR. YOUNG: Q. I understand.

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142. A. Yeah.
Q. Take....
A. I'm just tryin' to...
143. Q. Yes.
A. ...think back.
- 5 144. Q. Take your time.
A. Ever going into the CAS office, going--
meeting....
- 10 MR. WILSON: Marcia, but it's not....
WITNESS: It's not comin' easy so....
MR. WILSON: No, but I'm just trying to tell
you-- and Mr. Young will stop me--it's not a
trick question. He just wants to know...
WITNESS: Yes.
- 15 MR. WILSON: Nothing is a trick question,
for that matter, but he just wants to know,
do you know if you were made a Crown Ward.
If you do, then say yes; if you don't, then
you say, "I don't."
- 20 A. No, I don't. I don't.... I don't
recall that.
145. MR. YOUNG: Q. At the time that you were
adopted out,...
- A. Mm-hmm.
- 25 146. Q. Do you know if your case or you were--if

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- your case came before a judge...
- A. Yes.
147. Q. ...to approve the...
- A. I know that.
- 5 148. Q. ...adoption out?
- A. I know that, for certain.
149. Q. Where was that?
- A. Port Hope.
150. Q. Were you there?
- 10 A. Yes.
151. Q. Were you....
- A. I was there with my adopted--my soon-to-be-adoptive mother and her sister.
152. Q. Did the judge ask you any questions?
- 15 A. Yes. He asked me if I wanted to be adopted.
153. Q. And what was your answer?
- A. "What happens if I say 'no'?"
154. Q. What did he say? He or she. I
- 20 shouldn't....
- A. He said, "Well, in a couple a weeks, they, they, they"--whoever people--would come, come and get me, and I.... A couple weeks is (inaudible) a really long time.
- 25 155. Q. I'm sorry. You said, "What happens if I

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say 'no'?" and he said?

A. What happens if I said no. I said,
"No."

5 MR. WILSON: She said, "What happens if I
say 'no'?"

156. MR. YOUNG: Q. That's right.

A. That's what I...

157. Q. You said.

A. ...said.

10 158. Q. And he said... When you said, "What
happens if I said--say 'no'?"

A. Sorry about that.

159. Q. What did he say in response to...

A. He said....

15 160. Q. ...that?

A. He said to me, in response, that I would
be returned to--I'd be going back with my, my
prospective adopted family for a couple of weeks, and
these--they would make arrangements to have someone
20 come and pick me up.

161. Q. To go where?

A. I don't know where.

25 162. Q. Now, other than that hearing with a
judge, do you recall if you or if your case went
through any other hearings before judges? That's why

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I asked you about Crown Wardship, for example.

A. No, I don't.

163. Q. This is something you don't know.

5 A. I don't know of that, yes. I do know
the one about the judge asking me if I wanted to be
adopted.

164. Q. Can I take you to the--I think it's
Exhibit 3, which is the draft order and the
description of the class.

10 A. Okay. Yes.

165. Q. Under item 5, which is the Roman Numeral
(v). Do you see that? "were placed in non-Aboriginal
settings during their childhood"? That paragraph?

15 A. Three, okay. Okay, where are you? Am I
on the right page?

MR. WILSON: Yes. So, "This court orders
that the class be...."

WITNESS: Oh, yeah.

MR. WILSON: It's paragraph 1.

20 WITNESS: There.

MR. YOUNG: We're at sub....

MR. WILSON: Sub 5.

WITNESS: Yes.

166. MR. YOUNG: Q. We're at sub (v).

25 WITNESS: Okay, yes.

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MR. WILSON: Sub 5.

MR. YOUNG: Yes.

WITNESS: I've got it.

MR. WILSON: Yes, okay.

5 MR. YOUNG: Yes.

WITNESS: Got that.

167. MR. YOUNG: Q. In the second line there, it refers to orders of guardianship, wardship. I assume that means Crown Wardship.

10 MR. WILSON: Yes.

168. MR. YOUNG: Q. Custody or adoption. Now, we know in your case, there was an adoption. Do you have any information about the class as to how it breaks down for guardianship, as opposed to wardship, as opposed to custody and adoption? Either of you?

15 MR. WILSON: We know only that there's two sub-sections, if I--if that's the appropriate terminology, and one is those who are placed for adoption and were adopted, and those who were placed as wards of the state. First would be temporary, and then it would be Crown after a certain period of time in accordance with the then *Child Welfare Act*.

20
25 MR. YOUNG: So.... But just

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5 MR. WILSON: Yes.
MR. YOUNG: ...to make sure...
MR. WILSON: Yes, yes.
MR. YOUNG: ...that I'm on the same page...
MR. WILSON: No.
MR. YOUNG: ...about guardianship...
MR. WILSON: We have.... We....
MR. YOUNG: ...and custody....
MR. WILSON: Okay. So we have none....
10 Well, it's hard for me to answer that with--
because we're not a class yet, but in terms
of the inquiries that we made and the work
done to date, there are none because it was
Ontario who were permanent guardians,
15 actually using that term, like in some other
jurisdiction. So it's either temporary
ward, crown ward, or adoption. Those are
the two areas. And none who would be, as in
other jurisdictions that would be simply
20 custody, so it's just those two:
MR. YOUNG: Okay.
MR. WILSON: Wardship or adoption.
MR. YOUNG: And wardship has the two
components: temporary or....
25 MR. WILSON: Crown because there would be a

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- period of time that--as a function of time,
so you start off as a temporary ward, and
then you become a crown ward.
169. MR. YOUNG: Q. I assume you adopt those
5 answers.
- MR. WILSON: You don't have to.
A. It seems reasonable.
170. MR. YOUNG: Q. I'll go with "seems
reasonable." It's just that I'm not questioning Mr.
10 Wilson.
- A. Yeah.
171. Q. I'm questioning you. But he's...
MR. WILSON: Right.
172. MR. YOUNG: Q. ...answered the question,...
15 A. Yes.
173. Q. ...and you adopt that answer as yours?
A. Yes. It would be.... Yes.
174. Q. Okay.
MR. YOUNG: Now, the other thing about the
20 way you've defined the class in this Exhibit
3 is that it's restricted to people who went
into the child welfare stream; that is,
removed from their homes, and people who
were, as you've described, either went into
25 wardship or were adopted out. Do you have

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5 information as to whether or not there are
people who were in other streams; that is,
people who were adopted out, for example, to
non-Aboriginal homes or who had other
outcomes, other than the two that you made
part of this class, or propose to make part
of this class?

10 MR. WILSON: To date, we have no
information. Mr. Young, you're going to
have to define the category, just so that
we're clear. To date, we have no
information of private adoptions, and by
that, I mean you could arguably have a
private adoption where Children's Aid
15 Society is not involved, and so a family
elects to privately place with another
family through the legislation that was in
place at that time, and to date, we have no
information of those. We always have an
intermediary with the information that we
20 have to date called the state, the
Children's Aid Society.

MR. YOUNG: Right.

25 MR. WILSON: A few kinds of adoptions: one
through Children's Aid; then, there are, as

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you point out, adoptions that have nothing to do with Children's Aid.

5 MR. YOUNG: Well, that really wasn't my question because your class says state sanctions, so I...

MR. WILSON: Right.

MR. YOUNG: ...assumed it was only, not private adoptions...

MR. WILSON: Right.

10 MR. YOUNG: ...that you were proposing, but there were other experiences, were there not? There were people who were removed from birth homes, came into the Child Welfare system and were adopted out, for example, or placed out for--placed out into
15 Aboriginal homes or back into their Aboriginal communities. There are people with other outcomes.

MR. WILSON: Well....

20 MR. YOUNG: Or have you not made those inquiries?

MR. WILSON: We've.... We have made those inquiries. They're.... I'm not sure how far you want me to go, but if you're saying
25 to me that there were--of the inquiries we

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made, there were no First Nations children who were removed and then adopted by other First Nations people. And if you....

5

MR. YOUNG: So your inquiries are that, of those who were adopted, they were all adopted, uniformly,...

MR. WILSON: Of the....

MR. YOUNG: ...to non-Aboriginal families?

10

MR. WILSON: Of our inquiries, yes.

MR. YOUNG: And the same with foster care?

15

MR. WILSON: And of our inquiries with respect to foster care, of all inquiries, to be distinguished from my own empirical research, all in non-Aboriginal placements at the time in question.

MR. YOUNG: And have your inquiries been restricted to finding out that information, or have your inquiries been...

MR. WILSON: No, no, I wouldn't....

20

MR. YOUNG: ...general?

MR. WILSON: I wouldn't put blinkers on, no.

25

No, our.... That's the.... Our inquiries has been open-minded in the sense of what happened to individuals during this period of time? Where did they end up? And it's a

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combination of the empirical research, the people with whom I've talked, that leads to those answers.

5 MR. YOUNG: Okay, thank you. That helps. The.... Well, one question is related to that,...

MR. WILSON: Mm-hmm.

10 MR. YOUNG: ...is, do you have.... Have your inquiries demonstrated what portion, approximately, were adopted out, as opposed to not adopted out because we have only the two categories?

15 MR. WILSON: Well, that--those.... That might be a little skewed at this point. I mean, *skewed* meaning that one side received those information, then I'm sort of admitted to you a biased.... It's not a bias, but then I would be looking for people in those two categories, you know, so I can't tell
20 you right now, but I can only guesstimate, just simply guesstimate it. It was about 70-30, but I--that's.... I'd rather give a representation that I'll look at our inquiries and let you know as to the
25 percentage break-down.

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- MR. YOUNG: Okay. If you'd do that.
- MR. WILSON: Yes. U/T
- MR. YOUNG: But when you say you're.... I appreciate you're guesstimating 70-30. 5
Seventy is adoption, or...
- MR. WILSON: Yes.
- MR. YOUNG: ...seventy is....
- MR. WILSON: Yes, 70 is adoption.
175. MR. YOUNG: Q. Now, if I could take you to
10 the statement of claim, paragraph 30. All right?
A. Mm-hmm.
176. Q. In paragraph 30, you speak of the
Aboriginal right to identity?
A. Yes.
- 15 177. Q. I've seen the resolution that's in your
materials from Chiefs of Ontario. Maybe I could take
you to that. That's at tab number, or letter....
- MR. WILSON: Two. Tab "C".
- MR. YOUNG: Yes.
- 20 MR. WILSON: Present Chiefs.
178. MR. YOUNG: Q. Tab "C". Did you make a
presentation to Chiefs of Ontario in respect of this
resolution?
A. Chiefs of Ontario. What date was this
25 done in?

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- MR. WILSON: So this resolution....
179. MR. YOUNG: Q. The date is November 18th, 19th, 20th, 2008. That's when the assembly took place.
- 5 A. No. That's Chiefs of Ontario.
- MR. WILSON: So, the question is, did you make a presentation?
- A. Not on this one, no. Not on this resolution, no.
- 10 180. MR. YOUNG: Q. Did you make a presentation on another resolution...
- A. Yes.
181. Q. ...for Chiefs of Ontario?
- A. Not for the Chiefs of Ontario.
- 15 182. Q. Did you make....
- A. Nishnawbi-Aski Nation, yes.
183. Q. So you made a presentation to NAN?
- A. For the resolution at Nishnawbi-Aski Nation. Signed, yes.
- 20 MR. YOUNG: Do we have that resolution from NAN?
- MR. WILSON: I don't know. I think.... I don't know as I'm sitting here.
184. MR. YOUNG: Q. Do you know when you made
- 25 the presentation to NAN?

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5 A. June or July of 2005, the signing of the
Ostenberg(ph) Treaty, so it'd be easy enough to find
the date because it was the date of the treaty
signings that were up in Ostenberg(ph) when all the
Chiefs went up to...

185. Q. Okay.

A. ...sign the....

186. Q. And you made a presentation for that?

A. Yes.

10 187. Q. Now, this one is, as we've already said,
it's dated November 20th. The statement of claim
itself is from February 2009, so it's a few months
later.

A. Mm-hmm.

15 188. Q. Do you know whether or not the Chiefs of
Ontario had seen your draft statement of claim when
they passed this resolution in November of 2008?

MR. WILSON: She....

20 A. I'm fairly sure that the Chiefs of
Ontario signed--do their own business in their own
way.

MR. WILSON: Okay. So I....

MR. YOUNG: (Inaudible).

25 MR. WILSON: Okay. I'm fairly satisfied of
that too but.... I'm trying to think.

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5 That's why I emphasized you because a presentation was made on behalf of Marcia. It just wasn't done by Marcia directly, and right now, I don't know whether they had the claim.

MR. YOUNG: Do you know whether.... Do you have the material that was presented?

MR. WILSON: No. Personally, no.

10 MR. YOUNG: Do you know whether or not a presentation was made to them in respect of section 35 rights, as pleaded in paragraph 30 of the statement of claim?

MR. WILSON: I don't think she's.... I....

15 MR. YOUNG: Well, she needs your assistance, for sure.

MR. WILSON: Yes. I don't think she'll....
Well, if they had the statement of claim, then the answer is yes; if they didn't have the statement of claim, then I don't know because I don't know what materials were given to them.

20 MR. YOUNG: Okay, but we don't know whether they had the statement of claim, and all we do know is that we have the document here
25 that says what it says, that it's the

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resolution.

MR. WILSON: That's right.

189. MR. YOUNG: Q. Now, the resolution does refer to NAN, Ms. Brown. What's.... What is NAN?

5 A. Nishnawbi-Aski Nation is an organization that has approximately 49 First Nation Chiefs that sit at their table.

190. Q. And they're, principally, Ojibwa?

10 A. Oh, they're all across the north. They're, they're the northern area of Ontario, the Chiefs in the northern area.

191. Q. Now, other than this resolution, did you--do you have any resolution or any statement of approval to bring a section 35 claim where you will speak for the Iroquois people of Ontario, for example? They're in the south, not the north, with NAN.

15 A. There, there has been this resolution, which is the Chiefs of Ontario, all of Ontario, including the southern Chiefs, signed this, by consensus, whether they were from the north or the south.

20 192. Q. Right, but I ask my question, Ms. Brown, and you can take a look, a close look at the resolution doesn't say anything about their section 35 rights.

25

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5 A. The Chiefs of Ontario, I'm fairly sure know that the area that they, they govern within their First Nation, if they're in southern Ontario and their people are in southern Ontario, you know, and, and speak a different language, I, I read this, and I see that this group the Chiefs recognize their people within, within this.

MR. WILSON: Okay. I don't....

10 193. MR. YOUNG: Q. If I understand you correctly, you're saying--and tell me I'm wrong if I'm wrong--that you're saying Chiefs of Ontario covers all of Ontario.

A. Yes.

15 194. Q. Yes.

MR. WILSON: Yes. That's what they....

A. That's why they call them Chiefs of Ontario.

195. MR. YOUNG: Q. Okay.

A. Yes.

20 196. Q. But the Chiefs of Ontario resolution that's in front of us doesn't say anything about section 35 Aboriginal rights. It doesn't have those...

MR. WILSON: Okay, so....

25 197. MR. YOUNG: Q. ...words in it at all.

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- MR. WILSON: Right. So the only question is--the document speaks for itself.
- MR. YOUNG: Yes.
- MR. WILSON: So the only question, does she know....
- 5 MR. YOUNG: Well.... So, let me just do this, step by step.
- MR. WILSON: Yes.
- MR. YOUNG: Right.
- 10 198. Q. You notice that the document doesn't say anything about section 35 rights.
- A. I think the Chiefs of Ontario know that too.
199. Q. That it doesn't say anything about section 35 rights.
- 15 A. Uh-huh, yes.
200. Q. Okay.
- A. And what they signed to.
201. Q. Right. So my question is not...
- 20 A. They believe.
202. Q. ...about.... My question is about something else, though.
- A. Mm-hmm.
203. Q. My question is about section 35 rights, the ones that you plead in your statement of claim.
- 25

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- A. I didn't plan on--I, myself, never....
I mean, if someone wanted to let the Chiefs of Ontario
know that they signed this document.
204. Q. Okay. Well, let me...
5 A. I don't know.
205. Q. ...ask it this way.
A. I don't.
206. Q. Other than this Chiefs of Ontario
document, which we have in front of us, has the words
10 on it that are there.
A. Yes.
207. Q. Other than that document, did you have
discussions even with anybody from any of the Iroquois
Nations, for example?
15 A. If they were at this meeting and they...
208. Q. No.
A. ...signed it,...
209. Q. Did you....
A. ...yes.
- 20 210. Q. Did you, yourself...
A. Somebody. No, not me.
211. Q. ...have discussions...
A. That's what I said. No.
212. Q. ...with them?
25 A. Oh, no.

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213. Q. Did anybody on your behalf, to your knowledge, have discussions with the Iroquois Nations from the south about bringing a section 35 claim on their behalf?

5 A. If they're in the southern part of this country--I mean this province, they would have signed it.

214. Q. When you say "it," do you mean this...

A. This.

10 215. Q. ...resolution number 08-92?

A. Yeah. If there was Iroquois people that signed this resolution, they would be Chiefs for their people and....

216. Q. What about the Algonquin communities? Did you have any communication with the Algonquin communities about bringing a section 35 rights claim on their behalf?

15 A. Oh, there's a whole list of who the First Nations people are.

20 MR. WILSON: She's referring to....

A. Like, I don't....

MR. WILSON: Like, there's a.... Let's just do the question. The first question is, did you personally--we went from Iroquois to Algonquin--have any discussions with any

25

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peoples from the Algonquin...

MR. YOUNG: About bringing a section 35 rights claim on their behalf.

5 MR. WILSON: ...about bringing a section 35 rights claim? Did you personally have any discussions with people from Algonquin?

A. If they at Ostenberg(ph), yes.

217. MR. YOUNG: Q. I'm sorry. So you went to....

10 A. And I didn't mention section 35, however.... I did not mention section 35. What I mentioned was that I gave them a.... I, I talked to them about my life story. That was it.

218. Q. So the presentation that you gave is the one at the treaty signing.

15 A. Yes, and the people that first and seconded this, Chief Arthur Boar and Chief David Babin and those people that signed these, they--those who moved these are the ones who make that--pass that information.

20 219. Q. So I take it, if I--that you, yourself, doesn't--didn't make a presentation or seek permission or authority from Iroquois communities or Algonquin communities to bring a section 35 claim on their behalf.

25

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MR. WILSON: Did....

A. I went to....

MR. WILSON: Could you just be clear with the question.

5 MR. YOUNG: Okay.

MR. WILSON: Did she herself do it?

MR. YOUNG: Yes.

220. Q. You, yourself, didn't.... I was just taking it in baby steps. You, yourself, didn't speak to any--to people from Iroquois communities or from Algonquin communities about bringing a section 35 claim on their behalf.

10

A. No.

221. Q. And you didn't speak to the Chiefs of Ontario about bringing a section 35 claim on their behalf.

15

A. No, not in those words that you used, no.

222. Q. Okay. And when I say section 35, I mean Aboriginal rights claim.

20

A. Mm-hmm. Yes.

223. Q. You were not bringing an Aboriginal.... You didn't ask them about bringing an Aboriginal rights claim on their behalf. You told them your story.

25

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5 A. I told them my story. I told them that.... I spoke with Jeffrey Wilson, and there's just a logical sequence of things that.... You know, and these are Chiefs. I didn't need.... I didn't feel I needed to put it into baby steps for them. These people govern their Nations.

224. Q. In paragraph 30 of your statement of claim,...

A. Okay.

10 MR. WILSON: Hang on. A lot of paper.

225. MR. YOUNG: Q. ...you assert an Aboriginal right. Do you have that paragraph?

A. Yes.

226. Q. Okay. Now, I've asked you about some 15 First Nation communities, the Iroquois groups and the Algonquin.

A. Mm-hmm.

227. Q. Are you also, as a representative 20 plaintiff, advancing a claim on behalf of First Nations or Aboriginal people who don't have a land base in Ontario, in paragraph 30?

MR. WILSON: Yes.

MR. YOUNG: And what are the groups on whose behalf you're bringing a claim?

25 MR. WILSON: All persons who fall into the

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5

class, as we've defined it. Whatever group.... I hope I'm not evading, or I hope I don't sound like that, or avoiding. All persons who fall into the class, whatever group they belong.

MR. YOUNG: When you say "whatever group," you mean whatever their tribal affiliation.

MR. WILSON: That's what I meant: whatever their tribal affiliation.

10

MR. YOUNG: Okay. Does the claim include Metis people? This is the claim that's made in paragraph 30 of your statement of claim.

MR. WILSON: Yes.

15

MR. YOUNG: What Metis communities are you including?

20

MR. WILSON: All persons who are First Nations who are Aboriginals. We don't define it by way of communities. We define it by way of whether they were persons who, during the defined class period of time, had the experiences so described.

MR. YOUNG: This is the experience of a form of wardship, one of the two, or adoption out.

25

MR. WILSON: That's correct.

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5 MR. YOUNG: Can I ask the same question about the Inuit. Is it being advanced on behalf of any Inuit communities, or is it simply people who happen to be of Inuit ancestry who are subsumed in the class?

MR. WILSON: It's the latter.

MR. YOUNG: Bear with me a second. I've got all these volumes of stuff around. I have to find the right one.

10 MR. WILSON: I don't have.... Do I have....
It's the same record, right? Yes.

MR. YOUNG: Yes. I just happen to have two.

MR. WILSON: Okay.

15 MR. YOUNG: And I see that I've been flipping back and forth between the two.

228. Q. In your affidavit at paragraph 4, you say that you truly believe that you can fully and adequately represent the interests of the class and that you've studied and understand the issues in the case, and then you go on and say "we have...." "We share common issues." Do you see that paragraph?

20

A. Yes.

229. Q. All right. Can I take you from there back to where we were with the draft order and the proposed class.

25

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MR. WILSON: Right.

A. Yes.

230. MR. YOUNG: Q. And the common issues. See
paragraph one, it begins, "This court orders the class
5 be described"? Now, this is a...

A. Yes.

231. Q. ...draft. Right?

A. Yes.

MR. WILSON: Yes.

10 232. MR. YOUNG: Q. Okay. The beginning, item
one,...

A. Mm-hmm.

15 233. Q. ...and if you wish assistance from your
counsel on this, then that's fine, but I will ask you
to adopt what he says.

A. Yes.

20 234. Q. All right? At item one, you refer to
Aboriginal persons, item one, Aboriginal persons.
What do you propose as the test for determining
whether a person is Aboriginal within the meaning of
your class?

25 MR. WILSON: Aboriginal persons would be all
persons, treaty or non-treaty, who were
present in here when the European arrived--
whose ancestry, of course, goes back to when

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the European arrived.

5

MR. YOUNG: And there's no limitation on that? As long as a person had an ancestor who is here at contact, then they're in this class?

MR. WILSON: Yes, in conjunction with the other...

MR. YOUNG: Element.

10

MR. WILSON: ...factor. Other elements, yes.

MR. YOUNG: But in terms of the Aboriginal component, when you say "Aboriginal persons," it's anybody who had an ancestor here at contact?

15

MR. WILSON: And who is non-European and who would be identified as Aboriginal or First Nation.

MR. YOUNG: Oh, sorry, then you have to help me...

20

MR. WILSON: Sure.

MR. YOUNG: ...through the rest.

MR. WILSON: Please.

25

MR. YOUNG: The first one I understood, which was they had an ancestor here at contact. Granted, that the ancestors here

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at contact were non-European.

MR. WILSON: There you go.

MR. YOUNG: Right. So I'm trying to make
sure when you added those other
5 qualifications, what that was doing to the
definition.

MR. WILSON: No. I'm just amplifying on
that.

MR. YOUNG: So they had an ancestor here at
10 contact.

MR. WILSON: Yes.

MR. YOUNG: And that, presumably, includes
Indians on reserves.

MR. WILSON: Yes.

15 235. MR. YOUNG: Q. So far, you agree with what
he said?

A. Yes.

236. Q. The next thing is, you say "there are
children in Ontario between the years 1965 and 1984."
20 Now, I had asked you earlier about the statement of
particulars, where they're described.

A. Mm-hmm.

237. Q. And if you.... You're welcome to take a
look at that. It's in front of...

25 A. Yes.

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238. Q. ...you. It actually says something different. It says they were removed between 1965 and 1984. So I'm just seeking some clarification as to whether or not your proposed class is that they were merely children in Ontario in those years or whether, in fact, they were removed by state authorities...

MR. WILSON: Okay.

239. MR. YOUNG: Q. ...in that period.

MR. WILSON: This may help. It may not, but in the draft, and it's admittedly a draft, sub-2 says "they're children," and then it says "and who," sub-3, "were removed."

MR. YOUNG: Right.

MR. WILSON: And sub-4.

MR. YOUNG: If they were removed....

MR. WILSON: So the class is not just that they were children in Ontario, nor that they were children in Ontario in the years '65 to '84. They had to be children in Ontario, children within those years and who were removed.

MR. YOUNG: So, does children mean.... Is that an age bracket? Is that what you're referring to?

MR. WILSON: Yes.

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5 MR. YOUNG: Okay. What's the age bracket
for being children in Ontario between the
years 1965 and 1984?

MR. WILSON: Zero to.... Well, birth to 18.
Because if they were wards, then 17--16 and
17 would be picked up by the provincial--the
Child Welfare Act, so it's birth to 18.

MR. YOUNG: All right.

MR. WILSON: Okay.

10 240. MR. YOUNG: Q. And you adopt that. You
have to give a verbal answer.

A. Yes.

MR. WILSON: She's.... And can we do this:
that you.... You don't like it if we just
15 use the rule, she adopts it, unless we
otherwise advise? Okay, it's all right.
It's okay. It's a better check. Your way
is a better check. Make sure that we're all
paying attention.

MR. YOUNG: Attention.

MR. WILSON: Mm-hmm.

20 241. MR. YOUNG: Q. Item 3, "were removed from
their birth homes." By "removed," I take it you mean
removed in the way you've described, which is by CAS
25 authorities.

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5 MR. WILSON: Right. The.... In sub 5, Mr. Yungwirth says "through state-sanctioned orders." You're quite right. The state applies to numbers three and four, as well.

MR. YOUNG: And that's state-sanctioned orders is the.... CAS is the agency or organization sanctioned under the then *Child Welfare Act*.

10 MR. WILSON: Yes, and also under the--well, we would argue, not the *Child Welfare Act* but also under the auspices of the Federal Crown.

MR. YOUNG: But what is the authority that you're relying on of the Federal Crown? Is it the 1965 agreement?

15 MR. WILSON: Yes, and that--I don't want to argue--and that they can't--and that Canada is always the only authority, but that's for argument.

20 MR. YOUNG: That's your argument.

MR. WILSON: That's right.

MR. YOUNG: I'm trying.... When you...

MR. WILSON: Okay.

25 MR. YOUNG: ...say here, "state," you mean Ontario's authority under Ontario's *Child*

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Welfare Act and the 1965 Federal/Provincial agreement. Is that....

5 MR. WILSON: Yes, and the operation of the Indian Act by Canada. Canada is within the definition of state.

MR. YOUNG: So, what provisions of the Indian Act are we looking at here? And now, I'll be candid, Mr. Wilson. Obviously, these have to be objective criteria, so I'm
10 trying to make sure that somebody reading this, who isn't...

MR. WILSON: Yes.

MR. YOUNG: ...Jeff Wilson or Owen Young,...

MR. WILSON: Yes.

15 MR. YOUNG: ...will understand what state sanction means.

MR. WILSON: Yes.

MR. YOUNG: And state-sanctioned, it's clear if it means Provincial CAS authority.

20 MR. WILSON: Yes.

MR. YOUNG: That part is easy. It's clear if it means Provincial Courts under the Child Welfare Act.

MR. WILSON: Similarly, easy. So....

25 MR. YOUNG: So I want to know what else it's

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supposed to mean.

MR. WILSON: Okay, so I'll give you that as an undertaking. I just want to make sure that I'm correct in my sections of the Indian Act.

5

MR. YOUNG: So you're going to tell me what state-sanctioning means is the federal sanctioning under the Indian Act. That's....

10

MR. WILSON: That's right.

MR. YOUNG: And we have the 1965 agreement.

MR. WILSON: We already have that, yes.

MR. YOUNG: Yes. Okay. And....

15

MR. WILSON: So undertaking--what, other than the '65 agreement, the Child Welfare authorities, the *Child Welfare Act*, do you mean when you use the word *state-sanctioned*?

U/I

MR. YOUNG: Well, I thought you were going to tell me about the *Indian Act*.

20

MR. WILSON: Right.

MR. YOUNG: If there's something out....

MR. WILSON: If there's something else, I'll tell you, as well, but it's the *Indian Act*.

25

MR. YOUNG: Well, I mean I don't want to hear argument. I want....

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MR. WILSON: No, no, no. I understand.
Objective criteria.

MR. YOUNG: Yes.

242. Q. Now, if I can continue on with this item
5 5, Ms. Brown. This is.... It says "non Aboriginal
settings." Earlier, I asked you about what the--what
were the criteria for determining whether somebody was
Aboriginal in item one. What are the criteria for
determining if somebody is non-Aboriginal or if it's a
10 non-Aboriginal setting?

MR. YOUNG: And you can assist her, of
course, Mr. Wilson, if that's necessary.

MR. WILSON: A non-Aboriginal setting means
in place with persons of European ancestry.

15 MR. YOUNG: This is a person?

MR. WILSON: Non-Aboriginal.

MR. YOUNG: A person who did not have an
ancestor here at contact?

MR. WILSON: Yes.

20 MR. YOUNG: Now, in paragraph 4, you've
referred to indigenous communities. What
are the criteria, and you say again,
indigenous in paragraph 6, so what are the
criteria for determining whether or not it's
25 an indigenous community from which they've

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been removed?

MR. WILSON: The criteria is that the community whence the person was born, where the person was born, and where her birth parents are, and where her community resides, and where she did reside or he did reside, as the case might be.

5

MR. YOUNG: Right, but I asked you questions about section 35 earlier, and you said in respect of the Metis, you were not linking them to communities. Then you said in respect...

10

MR. WILSON: Yes.

MR. YOUNG: ...of other people, you were not linking them to communities.

15

MR. WILSON: Right.

MR. YOUNG: So....

MR. WILSON: We're not linking the, you know.... We're not linking the section 35 Aboriginal rights to a collection--to a treaty or to a collective body.

20

MR. YOUNG: Right.

MR. WILSON: It applies to the individual, but the term *indigenous* means that any individual who meets this criteria, one of

25

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which is that they were removed from the place where they were born and were living.

That's what's meant by the adjective *indigenous*.

5 MR. YOUNG: So indigenous communities is a geographic place?

MR. WILSON: No. Indigenous communities is-
-just one second. I'm looking for the right
10 term--it's not a function of.... It's a function of geography, but it's a function of the place in respect of which the child was dependant, where the child was living.

MR. YOUNG: I'm sorry, so it's a function of the.... Can I....

15 MR. WILSON: Sure.

MR. YOUNG: Can you spell this out for me.

MR. WILSON: I'll try.

MR. YOUNG: Indigenous.... Well, okay. An indigenous...

20 MR. WILSON: Indigenous....

MR. YOUNG: ...community means it's a....

MR. WILSON: An indigenous community means, of course, a place in the sense, a certain place and a certain geography, but it's not
25 the element of geography alone. It is the

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place with which the child had a connection or where the child was before being removed and represents that child's heritage and culture.

5 MR. YOUNG: So that's the indigenous component?

MR. WILSON: Yes.

MR. YOUNG: Above that, you refer to birth homes. Did you intend to exclude
10 grandparents' homes and things of that sort, or is it to include something broader than....

MR. WILSON: No. Birth homes could be....
15 Birth homes could include grandparents' homes.

MR. YOUNG: So, what's the criteria by which one is to determine whether it's their birth home?

MR. WILSON: The criteria to determine
20 whether it's their birth home is the place where they were born, the community in which they were born, and the community with which they have a blood connection.

MR. YOUNG: So "homes" in paragraph 3
25 includes communities, and then, when you say

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"communities" in paragraph 4, that's just communities.

MR. WILSON: That's correct.

5 MR. YOUNG: And I take it that in paragraph sub 6, when it says "indigenous culture," is that the same meaning as the meaning you had given...

MR. WILSON: Yes.

MR. YOUNG: ...in paragraph 4?

10 MR. WILSON: Yes.

MR. YOUNG: Can we just take a break for one quick second because I'll just have a chance to talk to my...

MR. WILSON: Sure.

15 MR. YOUNG: ...colleague, and we'll figure out.... We'll just step out for one quick second.

OFF RECORD

20 243. MR. YOUNG: Q. Now, I didn't follow up my own advice and go through and ask if you adopted the questions, but I take it from the answers that Mr. Wilson has given, there's none of the answers he gave to these questions about the class you've objected to
25 as being wrong. He's got it right, I take it.

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A. Yes.

MR. WILSON: I don't know if I have it right, but you adopt what I'm saying.

WITNESS: Yes. Yeah, I agree.

5 244. MR. YOUNG: Q. Could I take you to paragraph 9 of your statement of claim. Do you have that?

A. Somewhere.

245. Q. Okay, no, take your time and find it.

10 A. Yeah, I'm gettin' there.

MR. WILSON: There you go.

246. MR. YOUNG: Q. So I'm going to ask you to have that in front of you, but I'm also going to ask you to have something else in front of you, which is part of Exhibit 3. This is common issues.

15

MR. WILSON: Done.

247. MR. YOUNG: Q. All right. So you see both things?

A. Mm-hmm.

20 248. Q. All right. In paragraph 9, you--the pleading is about the provincial *Child and Family Services Act* that came into effect in 1985.

MR. WILSON: He's asking you a question. Yes.

25 249. MR. YOUNG: Q. And you say it served as a

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necessary correction to Canada's breach of its duties,
correct?

A. Mm-hmm.

250. Q. Now, if I could take....

5 MADAM REPORTER: I'm sorry, I need a verbal
answer.

A. Yes.

251. MR. YOUNG: Q. Is that a yes?

A. Yes. Sorry.

10 252. Q. Okay. If I could take you--refer you
over to the list of proposed common issues, and the
first one says, "by its conduct in respect of the
class and during the period so identified above, the
defendant breached any fiduciary duty." Now, if I put
15 these two together, are you saying that the *Child and
Family Services Act* served as a necessary correction
to any breach of fiduciary duty by Canada?

A. Could you reword that.

20 253. Q. You said that the Act served as a
necessary correction to Canada's breach of its duties.
Then, in the issues, you break them out into
different duties, so I'm trying to make sure that
we've--they link together or not.

A. Mm-hmm.

25 254. Q. So when you say it served as a necessary

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correction to the breach of duties, does that include the breach of a fiduciary duty that's listed in the first...

MR. WILSON: Yes.

5 255. MR. YOUNG: Q. ...question?

MR. WILSON: Yes.

A. Yes.

10 256. MR. YOUNG: Q. Thank you. And does it refer.... Does it also include any duty of care which is referred to in the second proposed question?

MR. WILSON: Yes.

257. MR. YOUNG: Q. Do you adopt that?

A. Yes.

15 258. Q. And then it carries on: "and a breach of any duty"--I'm sorry--"breach any duty of protection of Aboriginal rights." You see that in the next question? It's the one that...

MR. WILSON: Third question.

259. MR. YOUNG: Q. ...Mr. Wilson's....

20 A. Mm-hmm.

260. Q. It's the one that Mr. Wilson is pointing at.

A. Mm-hmm.

261. Q. Right.

25 A. "...breach any duty or protection of

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Aboriginal rights." Is that also a duty that is included in paragraph 9, where the Act served as a necessary correction of Canada's breach of its duties?

MR. WILSON: Yes.

5 262. MR. YOUNG: Q. Do you adopt that?

A. Yes.

263. Q. Does it also have the effect, if you look at paragraph 9 as a whole, of bringing an end to any actionable wrong of identity genocide? Is that
10 your pleading?

MR. WILSON: Bringing an end.... Yes. I don't.... I'm not sure our pleading goes beyond 1985. It was just a necessary correction.

15 MR. YOUNG: But the necessary correction, I take it, brought an end to the breach.

MR. WILSON: Yes.

MR. YOUNG: And the necessary correction, did it bring an end to the actionable wrong
20 of identity genocide?

MR. WILSON: In respect of this class, yes.

MR. YOUNG: So it's continued in respect of some other class?

MR. WILSON: Well, we don't--I don't know.
25 I'm not.... I've only.... I'm only dealing

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with this particular class as so identified,
who went through this experience.

MR. YOUNG: What is the group against whom
genocide is committed?

5 MR. WILSON: The group against whom....

MR. YOUNG: No, against whom the plaintiffs
allege genocide is committed.

MR. WILSON: It's this class of persons.

10 MR. YOUNG: And the class of persons
includes all of the people we've discussed.

MR. WILSON: We've discussed.

MR. YOUNG: Do we know whether or not....
Oh, I asked you about the identity genocide.

15 264. Q. Do you adopt your counsel's answer on...

MR. WILSON: Yes.

A. Yes.

265. MR. YOUNG: Q. ...identity genocide?

20 MR. WILSON: Yes. Your colleague was quick
to that. Yes, she does.

MR. YOUNG: Thank you. Do we know whether
or not Aboriginal children continue to be
adopted out to non-Aboriginal homes post
1985? Or is that when your inquiries end?

25 MR. WILSON: Our inquiries end.

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266. MR. YOUNG: Q. In your affidavit, you have Exhibit "B", which includes, I think, a list of Aboriginal Child and Family Services agencies set up.

MR. WILSON: Page 19.

5 MR. YOUNG: They're page 22.

MR. WILSON: Twenty-two? Okay. It starts at 19. Yes.

267. MR. YOUNG: Q. It divides it into two. Do you see that list?

10 A. Mm-hmm.

268. Q. It divides it into two: association membership list and pre-mandated agencies. What's the difference between the mandated agencies and the pre-mandated agencies?

15 MR. WILSON: May I assist?

MR. YOUNG: Yes.

MR. WILSON: Okay. The mandated agencies are those who have full status under provincial *Child and Family Services Act* under provincial *Child Protection Law* to apprehend and to, effectively, carry out all the duties of a *Children's Aid Society*, as we know that term to be defined in the *Child and Family Services Act*. The pre-mandated agencies are those who provide helping

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- 5 services to Aboriginal persons, but, as I understand, do not have the same authority as the Children's Aid Society, so they do not have the authority, for example, to apprehend children, so they're not full status Children's Aid Societies.
269. MR. YOUNG: Q. Are you associated with any one of these organizations?
- A. Associated?
- 10 270. Q. In any way? Do you work with one, or are you...
- A. I....
271. Q. ...involved with one?
- A. I sit on the Board of Kunuwanimano Child and Family Services.
- 15 272. Q. And that's one of the pre-mandated agencies?
- A. That's one of the pre-mandated.
273. Q. Okay. And I think there's a description of its objections or objective that follows here at page 29. Is that the one?
- 20 A. Mm-hmm.
274. Q. So, is this organization established under the *Child and Family Services Act*, or is it established on some other basis?
- 25

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5 MR. WILSON: My understanding, and I can confirm, if you want, is that it's not a licensed Children's Aid Society under the *Child and Family Services Act*. It is not a licensed...

MR. YOUNG: So....

MR. WILSON: ...Children's Aid Society.

10 MR. YOUNG: I take, from what you said earlier, that means it's not able to apprehend children.

MR. WILSON: That's right, but if you're asking whether it gets any provincial funding as a mental health centre or a community health centre. That, I don't know right now.

MR. YOUNG: Yes, it is. It's not formally sanctioned under the *Child and Family Services Act*.

MR. WILSON: That's correct.

20 MR. YOUNG: All right.

275. Q. The objectives.... You see at page 29, it has the objectives?

A. Yes.

276. Q. This is.... You sit on the Board of this organization?

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A. Yes.

277. Q. It says "to service the Aboriginal population, both on and off reserve."

A. Mm-hmm.

5 278. Q. And then it carries on: "The programs take into consideration the best interests and well-being of the child, specifically the programs that recognize the uniqueness of First Nations culture, heritage, and traditions of preserving a child's cultural identity." Is that still.... Are those still the objectives of this organization? They were when you swore...

A. Yes.

15 279. Q. ...your affidavit. They continue to be today?

A. Yes. They continue that (inaudible). They haven't been mandated yet.

280. Q. Is there a prospect that they will be mandated?

20 A. Well, to full, you know--to whatever the other CAS's do across the country. They're not there yet.

281. Q. Okay. If I take you--flip you back to page 22 where you have the list. Are those.... I take it those are all Ontario organizations in the

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sense that it's the province--within, geographically,
within the Province of Ontario?

MR. WILSON: Yes.

5 MR. YOUNG: And do they cover all--provide
services to all Aboriginal communities
within the Province of Ontario, or are some
left out of this list? Or, are there some
that have no access to Aboriginal Child and
10 Family Services, one of these nine
organizations?

MR. WILSON: I think it covers all, but I
can't say conclusively. I can't say
conclusively, but I believe it covers all.

MR. YOUNG: Will you let me know?

15 MR. WILSON: Yes. Can we just pause there
for a moment? Undertaking to advise whether
the list on page 22 of Exhibit "B" covers
all regions of Ontario? covers or services
Aboriginal persons in all of Ontario?

U/I

20 MR. YOUNG: Yes.

MR. WILSON: Okay.

MR. YOUNG: All right.

MR. WILSON: Is that (inaudible)?

25 MR. YOUNG: Yes. Subject to the
undertakings, those are all of my questions.

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Thank you for coming in.
MR. WILSON: Thank you.

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is a true and accurate transcription
from the record made by sound recording
apparatus by Audrey Stewart, Certified
10 Court Reporter, to the best of my
skill and ability

15

Suzette S.M. Chrétien,
Certified Court Reporter.

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