

**FEDERAL COURT  
PROPOSED CLASS PROCEEDING**

BETWEEN:

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

Plaintiffs

and

**HER MAJESTY THE QUEEN**

Defendant

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

**VOLUME 3 OF 6**

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**(*Brown v. Canada*, Court File CV-09-00372025-00CP)**

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

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARCIA BROWN and ROBERT COMMANDA,

Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,

Defendant.

-- This is the Cross-Examination of Dr. Ana Bodnar, a witness herein, on her affidavit, sworn May 25, 2009, taken at the offices of Atchison & Denman Court Reporting Services Limited, 155 University Avenue, Suite 302, Toronto, Ontario, M5H 3B7, on Thursday, the 28th day of January, 2010.

APPEARANCES:

Owen Young For the Plaintiffs

Jeffery Wilson For the Defendant

Also Present:

Shannon Kinch Observer

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- 1 --- Upon commencing at 10:10 a.m.
- 2 DR. ANA BODNAR: Sworn.
- 3 CROSS-EXAMINATION BY MR. YOUNG:
- 4 1 Q. Could I have your full name,  
5 please?
- 6 A. My name is Ana Bodnar.
- 7 2 Q. And you swore an affidavit in this  
8 case dated May 25, 2009, and I have a copy. I'm going  
9 to give you a copy quickly to make sure I'm working  
10 with the right piece of paper.
- 11 A. Yes, it looks like it is correct.
- 12 3 Q. It was sworn a few months ago. Is  
13 there anything to be updated in it or changes to be  
14 made before we start today?
- 15 A. No.
- 16 4 Q. It includes a CV. Is that to be  
17 updated?
- 18 A. Yes, that is. Actually, as of  
19 December first, I'm no longer working with the Centre  
20 for Addiction and Mental Health.
- 21 5 Q. That's CAMH?
- 22 A. Yes.
- 23 6 Q. Where was the shift after leaving  
24 CAMH?
- 25 A. I was always primarily in private

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1 practice when I was a consultant with CAMH, so it was  
2 my primary...

3 7 Q. The consulting ended, but you  
4 continued with your private practice?

5 A. My private practice continued.

6 8 Q. The other thing is that, in your  
7 CV, you are doing some work in the residential school  
8 program that is put together as a result of the  
9 settlement?

10 A. Yes.

11 9 Q. And that's related to the hearings  
12 process?

13 A. It is related to providing  
14 psychological assessments at the request of an  
15 adjudicator for individuals going through the process.

16 10 Q. And the psychological assessments  
17 are related to physical and sexual abuse?

18 A. Physical, sexual, emotional abuse.

19 11 Q. But it is the abuse component of  
20 the clients that is the specific mandate?

21 A. It is really the overall  
22 experiences that the individual suffered at residential  
23 school.

24 12 Q. This is the affidavit?

25 A. Yes.

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1 MR. YOUNG: Could we mark this as  
2 Exhibit 1 to our cross-examination?

3 EXHIBIT 1: Affidavit from Dr. Ana  
4 Bodnar dated May 25, 2009.

5 BY MR. YOUNG:

6 13 Q. The other thing is Mr. Wilson sent  
7 me an acknowledgement of experts. Is that your  
8 signature?

9 A. Yes.

10 14 Q. You should probably look at it?

11 A. Yes, it is my signature.

12 MR. YOUNG: We'll mark that  
13 acknowledgement as Exhibit 2, please.

14 EXHIBIT 2: Acknowledgement of experts  
15 from Mr. Wilson to Mr. Young.

16 BY MR. YOUNG:

17 15 Q. And your affidavit is written in  
18 response to a series of questions posed by Mr. Wilson?

19 A. Yes.

20 16 Q. You have come as an expert witness,  
21 Dr. Bodnar. Are you a paid expert witness or did you  
22 volunteer?

23 A. I am paid.

24 17 Q. And do you have a payment  
25 arrangement or have you been paid up to date for your

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1 services?

2 MR. WILSON: Why is that relevant?

3 BY MR. YOUNG:

4 18 Q. It goes to the issues in the  
5 acknowledgement. It is not whether you have been paid.  
6 Do you have a special arrangement for payment that  
7 relates to the outcome of the case?

8 A. That relates to the outcome? I'm  
9 being paid for the time being spent.

10 19 Q. The two plaintiffs in this case are  
11 Robert Commanda and Marcia Brown. Do you know either  
12 of them?

13 A. No, I do not.

14 20 Q. Have you met either of them?

15 A. No.

16 21 Q. And not treated either of them?

17 A. I have not.

18 22 Q. And there is another witness in the  
19 case whose name is Vernon Harper. Do you know him?

20 A. I do.

21 23 Q. How do you know him?

22 A. Vernon Harper is the elder that  
23 works with the CAMH aboriginal services program where I  
24 worked for nine years. So, he was my colleague.

25 24 Q. Did he teach or provide courses or

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1 other kinds of instruction that you were part of?

2 A. Yes.

3 25 Q. Was it formal or just informal  
4 because you knew each other?

5 A. It was formal in the sense that he  
6 did healing circles and provided teachings as part of  
7 trainings we did, and I participated in those trainings  
8 as another colleague.

9 26 Q. Now, if I could turn to your  
10 affidavit. As I said, it was written in response to  
11 questions posed by Mr. Wilson, and I wanted to make  
12 sure that I had really caught the thesis of the  
13 affidavit. So, if I put it to you and I am wrong,  
14 please tell me I'm wrong. It is not about my being  
15 right. It's about getting it right after I ask you  
16 about it.

17 There are different aspects, but one  
18 aspect is that an aboriginal child who has experienced  
19 a disruption of the link to his or her culture because  
20 of removal and replacement in a non-aboriginal home is  
21 likely to develop mental health issues or pathologies.  
22 Is that a fair statement of the beginning of your  
23 affidavit?

24 A. There is a larger, a stronger  
25 predisposition to the development of mental health

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1 problems.

2 27 Q. For that group?

3 A. For that group.

4 28 Q. And then there is a second

5 component, and this relates to the other questions

6 asked by Mr. Wilson. The disruption of the link we

7 have talked about, in respect of individual children,

8 also has a negative impact on the community or

9 collective whose culture it is?

10 A. In terms of the removal of the

11 child from the culture and the community, yes.

12 29 Q. And the impact is on the community

13 and its culture?

14 A. I would say yes.

15 30 Q. Have I captured that? I know that

16 you are saying yes, but is that, in essence, one of the

17 thing you are saying in your affidavit?

18 A. What I'm saying is that it affects

19 both the individual who is removed, and it affects the

20 culture, the community and the culture, where the child

21 is removed from, in terms of the disruption of the

22 presence of that child and all of the cultural, social,

23 psychological engagements that the community has with

24 that child that is no longer available because of the

25 removal of that child.

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1 31 Q. And the third component of it, in  
2 terms of trying to describe the thesis, is that -- this  
3 is the last question that Mr. Wilson had asked you --  
4 is being permitted to seek justice as a collective  
5 would itself advance the healing process for the  
6 individuals and the collective?

7 A. Yes, I believe that is the case and  
8 because it is a collective process rather than an  
9 individual process, there isn't a sense of self-blame  
10 for the difficulties that have occurred. And also, we  
11 can see that, out of the apology that happened by Prime  
12 Minister Harper, that was extremely beneficial from a  
13 therapeutic level for many individuals, as well as, it  
14 would be easier, would be more viable, for people to  
15 come forward as a group to discuss these issues or to  
16 put forth their difficulties in these areas. So, for  
17 all of those reasons, the collective would be more  
18 powerful.

19 32 Q. All right. The apology is in the  
20 residential school context?

21 A. Yes.

22 33 Q. And you have described it as a  
23 collective process. What is the collective process  
24 that you have in mind? You start off by saying  
25 "because it is a collective process", and then you

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1 answered the question.

2 A. I think what I was saying, in  
3 response, if I understood your question, was that it  
4 was in response to why would it be more therapeutic if  
5 it were a group and that's what I was meaning.

6 34 Q. You saw them seeking justice in a  
7 collective process. Is that what you understood it to  
8 be?

9 A. No, I think what I was trying to  
10 say was that, because it was an apology, it had an  
11 effect on the collective, and that was therapeutic.

12 35 Q. So am I to understand, when you are  
13 answering his question, you had in mind things like the  
14 apology as part of the collective process. I'm trying  
15 to make sure I understand what you had in mind when you  
16 say this would be therapeutic because it is a  
17 collective process?

18 A. It is therapeutic for several  
19 reasons. That is one element. I wouldn't want to  
20 focus on that as the one example. But we see that if  
21 people are in a group, and you recognize that they have  
22 common difficulties, that is very therapeutic, rather  
23 than seeing people one for one for the therapeutic  
24 issues.

25 36 Q. Yes.

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1                   A. So that, in terms of sharing common  
2 experiences, it is extremely therapeutic because then  
3 individuals do not feel that they are personally -- it  
4 is not a personal failure, that they are personally to  
5 blame for their mental health difficulties, that there  
6 is a common experience that speaks to that, and that's  
7 far more therapeutic than if they see themselves as a  
8 failed individual or an individual with problems. That  
9 was the gist of what I was trying to communicate.

10 37               Q. Having asked you those questions,  
11 let me go back, specifically, to your CV and your  
12 qualifications. You are here today as a clinical  
13 psychologist?

14                   A. Yes.

15 38               Q. And I take it you have had  
16 experience with First Nations communities but you are  
17 not coming before the court asking the judge to hear  
18 you as a sociologist, for example?

19                   A. I'm not a sociologist, but I have  
20 done a significant amount of research in this area, and  
21 I have done teaching in that area and have engaged in  
22 many conferences in this area. So I'm not a  
23 sociologist but I do have significant experience in the  
24 research dimension and teaching as well.

25 39               Q. Research dimension in the

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1 psychological implications?

2 A. The research dimension in terms of  
3 First Nations aboriginal scholars as they reflect upon,  
4 as well as western scholars as they reflect upon,  
5 aboriginal history and its implications.

6 40 Q. We'll talk about that in a moment.  
7 I take it you are not here asking the judge to hear you  
8 as an expert who is an anthropologist?

9 A. No.

10 41 Q. And certainly, you are not asking  
11 the judge to hear you as somebody who is going express  
12 legal opinions?

13 A. No.

14 42 Q. Do you have -- your doctorate is  
15 from what university?

16 A. University of Toronto.

17 43 Q. And what was the subject of your  
18 thesis?

19 A. My thesis was called Dialogue at  
20 the Meeting Place of Psychotherapy and Spiritual  
21 Practice.

22 44 Q. When you were dealing with  
23 spiritual practice in the context of it, did that  
24 include aboriginal spiritual practices, that is North  
25 American indigenous spiritual practices?

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1 A. My thesis did not include that.

2 45 Q. I think it is your CV that deals  
3 with First Nations experience. There is a section of  
4 First Nations experience. If I could get you to go to  
5 that?

6 A. Okay.

7 46 Q. Through this list you have worked  
8 backwards?

9 A. Yes.

10 47 Q. In terms of chronological order, it  
11 starts in '93 to '95 with Sioux Lookout. Is that when  
12 it did begin?

13 A. Yes.

14 48 Q. What was the year you were awarded  
15 your doctorate?

16 A. In '92.

17 49 Q. If I could take you to the last one  
18 in the list but the first chronologically?

19 A. Yes.

20 50 Q. All right. Sioux Lookout is not  
21 actually an aboriginal community per se, but is near a  
22 couple of reserves?

23 A. Our project was based in Sioux  
24 Lookout and we worked in four aboriginal communities,  
25 Pikangikum, Webequie, Kingfisher Lake and Lansdowne

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1 House, as well as going into other communities. But  
2 those were the primary areas where my project was  
3 based. Most of the time was spent on reserve. So  
4 Sioux Lookout is where Northern Health Services is  
5 located, where I worked.

6 51 Q. The communities around there are a  
7 mixture of Treaties Three and Nine?

8 A. I believe so.

9 52 Q. In terms of language, are they  
10 generally what?

11 A. Ojicree.

12 53 Q. Which is a dialect this is a  
13 mixture of Ojibway and Cree?

14 A. I believe that's correct.

15 54 Q. So what was your role there?

16 A. My role?

17 55 Q. Assuming you had gone there as a  
18 clinical psychologist.

19 A. I was hired to be the consultant to  
20 the program, and it was a program funded through Health  
21 Canada, and it was called the suicide bereavement  
22 program, and our role -- there were four aboriginal  
23 staff, the clinical director of Northern, and the  
24 executive director of Northern was somewhat involved,  
25 she was involved as well.

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1                   My role was, we went into these four  
2 communities to support communities dealing with  
3 suicidal loss. And these communities had very high  
4 rates, particularly high rates of suicide or loss, and  
5 we provided training for the other staff, the clinical  
6 staff, on how to deal with suicidal loss. We did a  
7 great deal of debriefing. We worked with Chief and  
8 Council. There was a research element to the project,  
9 as well, in terms of patterns of grieving and loss  
10 within First Nations traditions. We met with elders.  
11 So it was a very multi -- varied process. We also  
12 attended to crises at the time of suicidal death, very  
13 often a youth, but not always.

14                   So my role was as a psychologist to the  
15 program and also program development, research, writing  
16 briefs, many different aspects, as well as direct  
17 assessment. I also did assessments of clients who were  
18 in great need of clinical assessments.

19 56                Q. Were there different kinds of  
20 diagnoses that you would make in terms of the mental  
21 health issues you found that were consistent? Did you  
22 find them repeating themselves or were they all  
23 different?

24                   A. They were very -- they were very  
25 specific kinds of themes. Certainly not everyone, but

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1       there were very high incidences of post-traumatic  
2       stress disorder, depression, major depression. You  
3       know those were very often -- there was very high  
4       incidences of substance abuse. A lot of family angst,  
5       which is not so much a clinical diagnosis, a great deal  
6       of family dysfunction, attachment difficulties,  
7       parenting difficulties, depressed isolated youth, high  
8       incidence of suicidal ideation and attempts as well.  
9       So, we also worked, in conjunction, when individuals  
10      needed to be hospitalised, we were also available to  
11      the Sioux Lookout Hospital on a consultative basis as  
12      well.

13   57                    Q. I assume, as part of the project,  
14      you were exploring causes?

15                        A. Yes.

16   58                    Q. Is it safe to assume you found a  
17      multiplicity of causes?

18                        A. Absolutely.

19   59                    Q. Some social, some family, some  
20      whatever?

21                        A. It's a complex, I think as you are  
22      saying, it is a complex web, but it is historical,  
23      social, familial. I think most of the research  
24      literature, as well as clinicians working in this area,  
25      would say that the suicidal ideation and suicidal

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1 attempt is very complex in terms of causation and is  
2 very complex in terms related to social causes as well.

3 60 Q. These are people in the  
4 community -- I expect you would not have encountered  
5 situations of people who had been taken into the child  
6 welfare system, as we have here, adopted out into  
7 non-aboriginal homes or non-aboriginal foster homes,  
8 that wouldn't be a significant part of the picture you  
9 were looking at?

10 A. That wasn't the focus we were  
11 looking at, but there would be some of the individuals  
12 who have had some of those experiences.

13 61 Q. Yes. Am I right in thinking that  
14 they fit the complex pattern of the others?

15 A. I'm sorry?

16 62 Q. They didn't stand out? You would  
17 go into the community and of the patients you had or  
18 others that you would see, you could identify those  
19 people that had that unique experience from all of the  
20 others, until they had given you the history?

21 A. Sorry, in their history?

22 63 Q. Until they had given you their  
23 actual history?

24 A. Right.

25 64 Q. They, like the others, would be

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1 part of that complex of, have that complex...

2 A. That wasn't our focus in that  
3 program, so that wasn't the salient thing we were  
4 addressing.

5 65 Q. If I take you to the next one? I  
6 have lost my page.

7 A. Page four.

8 66 Q. The Kettle and Stoney Point. You  
9 went there also as a clinical psychologist?

10 A. Yes.

11 67 Q. What was the thrust of your work  
12 there?

13 A. I was actually called in after the  
14 death of Dudley George as part of the crisis support  
15 team, and we did a critical incident debriefing, trauma  
16 debriefing of people who had been affected by that.  
17 And then, over that period, I was asked to stay on and  
18 became involved in working as a consultant in the  
19 school and in the children's program as a clinical  
20 psychologist, doing assessments and treatment, as well  
21 as providing some consultation to the school in terms  
22 of mental health issues. So it kind of metamorphosized  
23 into that more on-going involvement from the initial  
24 involvement.

25 68 Q. And you said that you were called

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1 in. Who called you in?

2 A. It was the, I think there was a  
3 recommendation from somebody who knew me from my work  
4 in Sioux Lookout to the person in Kettle Point.

5 69 Q. You were called in by Kettle and  
6 Stoney Point?

7 A. Yes, saying we have heard about  
8 you, could you come.

9 70 Q. When it morphed into the other --  
10 as I understood it, you went there in response to a  
11 specific problem, the shooting of Dudley George at the  
12 Ipperwash raid, and then it morphed into something more  
13 general in terms of responses to mental health needs in  
14 the community. Is that it?

15 A. Yes.

16 71 Q. Did you find the same kinds of  
17 issues that you had found in Sioux Lookout or were they  
18 different?

19 A. They were very similar kinds of  
20 issues. The community had a slightly different  
21 character because it was not such an isolated remote  
22 community, but overall it was similar kinds of issues.

23 72 Q. Did it have a similar range of  
24 causes?

25 A. I would say yes.

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- 1 73 Q. What is the language?
- 2 A. I don't remember. Sorry.
- 3 74 Q. Ojibway?
- 4 A. I don't recall.
- 5 75 Q. Were there many traditional  
6 language speakers?
- 7 A. I don't recall.
- 8 76 Q. It is a community that sits in the  
9 heart of southwestern Ontario, very English?
- 10 A. Yes, I don't recall that. There  
11 was a lot of dialogue in the community between the  
12 people who were following traditional practices and the  
13 people who were following kind of more Christian  
14 practices. So there was a fair bit of conflict in the  
15 community around those issues. So those factions were  
16 very strong, and there was a difficulty in the  
17 community at that time.
- 18 77 Q. Did the -- I'm trying to use as  
19 neutral word as possible -- the interface between those  
20 two different groups, was that something that you were  
21 involved in in any way?
- 22 A. I only heard about it.
- 23 78 Q. The next one, in 1997, is the  
24 Nishnawbe Aski Nation, sometimes known as NAN. That is  
25 a political organization?

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1 A. Yes.

2 79 Q. A collection of anishinabe nations?

3 A. It's a political organization but  
4 they do a fair bit of programming and mental health  
5 research and training and they have many projects.

6 80 Q. Were you there actually treating  
7 people or were you there as a consultant?

8 A. I was there as a consultant.

9 81 Q. It suggests here, the focus of it  
10 was sexual abuse programming research?

11 A. Yes. They had actually asked me to  
12 go into a specific community because they were having  
13 difficulties, particular difficulties in the area of  
14 sexual abuse, to see how I could assist them to develop  
15 appropriate programming to that issue.

16 82 Q. And am I right in thinking that NAN  
17 is largely Objibway speakers as well?

18 A. That is my understanding. I think  
19 there is also Ojicree, as well, spoken.

20 83 Q. NAN is an organization that  
21 represents communities across what, from here, we call  
22 northern Ontario, what they would probably call central  
23 Ontario?

24 A. Central.

25 84 Q. North -- Thunder Bay and east and

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1 west of Thunder Bay. Is that right?

2 A. Actually, I don't recall the exact  
3 parameters.

4 85 Q. Generally?

5 A. Generally speaking.

6 86 Q. The next one is the Aboriginal  
7 Healing Lodge, 1998, 1999?

8 A. Yes.

9 87 Q. Is that a specific program as well?

10 A. That is a centre that is just  
11 around Barrie, and they do healing, specific healing  
12 work, and they asked me to come and do training with  
13 their staff. So, I have done a fair bit of staff  
14 training in this area, training aboriginal staff on  
15 clinical issues. So, I was asked to come and provide  
16 these training programs.

17 88 Q. You were not treating patients  
18 there?

19 A. No.

20 89 Q. Was there any clinical work?

21 A. Only in a group setting. There was  
22 some clinical interventions in the group setting  
23 because clinical issues came up. So in among the  
24 staff, aboriginal staff, what we tend to see as well is  
25 that there are a fair number of unresolved mental

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1 health issues. So that in most training settings,  
2 there is a fairly strong element of providing some kind  
3 of mental health iteration. People do become quite  
4 emotional, and they do share personal stories, so it  
5 ends up being kind of a hybrid, in terms of providing  
6 clinical training and providing clinical intervention  
7 in a group setting. But I didn't treat individual  
8 patients.

9 90 Q. Did the kinds of issues that arose  
10 cover the same spectrum as Sioux Lookout or was it not  
11 quite as extreme?

12 A. Probably not quite as extreme. It  
13 really depended on the individual. There were some  
14 people with fairly strong histories of trauma.

15 91 Q. And I take it that, to the extent  
16 it was similar with Sioux Lookout, there was a complex  
17 range of causes?

18 A. Yes.

19 92 Q. You said that was an organization  
20 near Barrie. Who sponsors the organization?

21 A. I actually don't know. It is  
22 independent. I don't know. It's been a while, ten  
23 years, probably longer than that. It was 1998.

24 93 Q. You don't know if it is federally  
25 or provincially supported?

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1                           A. No, I don't know about the funding  
2     structure.

3     94                    Q. I take you forward to 2004. You  
4     have the International Health Centre Mexico Project?

5                           A. Yes.

6     95                    Q. Is that in Mexico?

7                           A. Yes.

8     96                    Q. What was that project?

9                           A. That was through the office of  
10    international health at CAMH, the Centre for Addiction  
11    and Mental Health, and I went down to deliver some  
12    training on aboriginal health issues to staff working  
13    in the Psychiatric Institute in Mexico City, and also,  
14    we went out into the community to do some interfacing  
15    with one particular First Nations community. They were  
16    called an indigenous community, and I speak Spanish, so  
17    this was all done in Spanish.

18    97                    Q. What was the indigenous community?

19                           A. I'm sorry, I don't remember.

20    98                    Q. You don't remember?

21                           A. I don't remember the name.

22    99                    Q. It was Spanish-speaking?

23                           A. It wasn't entirely. It had its own  
24    language that I don't remember the name of the  
25    language. But I worked, actually, in -- I did have a

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1 year living in Mexico, and in 1974, actually at that  
2 time, I was an anthropologist, and I have my BA degree  
3 as an anthropologist, so I did live for one year in  
4 Mexico doing research into indigenous culture, Mexican  
5 culture.

6 100 Q. When you went there as a clinical  
7 psychologist and there was some work directly in  
8 indigenous communities, you said you went into the  
9 communities, were you identifying particular types of  
10 mental health issues?

11 A. No, it was really kind of a  
12 goodwill call. It was an introduction and others of  
13 the CAMH team went down. I was sort of the first  
14 person that went down. Not sort of, I was the first  
15 person that went down and others from the CAMH  
16 aboriginal services team, where I worked for nine  
17 years, went in subsequent years to do follow-up. But I  
18 was the first person who went to participate in this  
19 project that was a project between CAMH and the Mexican  
20 Psychiatric Association. So I was the first person who  
21 made that. I was the first person who went as part of  
22 this project, but in subsequent years, other staff went  
23 and they went into the community to do exchanges about  
24 aboriginal issues in Mexico and in Canada and dialogue,  
25 you know, learning. So it was an exchange, a joint

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1 project.

2 101 Q. But you said you had gone there to  
3 deliver some training. There must have been a need  
4 identified you were trying to address?

5 A. I was delivering training to staff,  
6 yes.

7 102 Q. So that they could?

8 A. It was a kind of a knowledge  
9 sharing, a sharing of knowledge. What are the issues  
10 that we see here in Canada, in Ontario? What are some  
11 of the clinical interventions that we find helpful? So  
12 it was in that context.

13 103 Q. Was there a parallel between the  
14 issues from a psychologist's perspective or were they  
15 quite different?

16 A. They were somewhat different  
17 because, I mean there were similarities in terms of  
18 high incidences of mental health problems, high  
19 instances of substance abuse issues. They did not have  
20 such a high incidence of suicide in the community,  
21 although it was present, and they had a different kind  
22 of social history. So there were differences there as  
23 well. There was a real, you know, this was a new area  
24 in terms of providing mental health services for  
25 indigenous communities.

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1 104 Q. Well, that is one of the things  
2 that struck me, because you have had this direct  
3 involvement beginning in 1993. In terms of the  
4 provision of mental health services to indigenous or  
5 aboriginal communities, is that a relatively new  
6 phenomenon?

7 A. You mean, I think we're talking  
8 about in terms of western clinical services?

9 105 Q. Yes.

10 A. I don't know that it is a  
11 relatively new phenomenon, but it's, you know, I know  
12 that the University of Toronto started a remote  
13 outreach program and it was, I don't know exactly when  
14 it started.

15 106 Q. Could you take us to approximately  
16 when it was?

17 A. 1980 maybe, something like that.  
18 I'm not sure. I'm not entirely sure.

19 107 Q. And the outreach program that you  
20 were thinking of for University of Toronto would be in  
21 aboriginal communities in Ontario?

22 A. Yes. And it was based in Sioux  
23 Lookout.

24 108 Q. Sorry?

25 A. Based in Sioux Lookout and going

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1 north from there. And they had consulting  
2 psychiatrists more than psychologists, who would go on  
3 a, once or twice a year, but there was nothing  
4 on-going. They would go for assessment and diagnosis  
5 but there was very, very little on-going service. It  
6 was somebody would go for a few days a couple of times  
7 a year, something like that.

8 109 Q. Well, the kinds of issues that you  
9 found when you went to Sioux Lookout, and the  
10 communities around there, in terms of a means of both  
11 identifying those and addressing those, when does that  
12 begin?

13 A. I'm not sure what your question is.

14 110 Q. I see, in 1980, we have the remote  
15 services through U of T that you have described, which  
16 is a consulting psychiatrist once or twice a year, and  
17 then the program, by 1993 is it, that you...

18 A. Yes.

19 111 Q. Describe in Sioux Lookout. So  
20 there is a 13-year period in there. Are you the first  
21 following the 1980s?

22 A. No, I wasn't the first, no. I  
23 certainly wasn't the first.

24 112 Q. In terms of the awareness amongst  
25 psychologists, psychiatrists in the mental health field

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1 of the kinds of problems you did find when you went to  
2 Sioux Lookout, when does that begin to become something  
3 that is addressed, whether in school curricula or  
4 publications or so forth for psychologists?

5 A. I think that probably would also  
6 be, I mean there was a native mental health  
7 organization that was started, I think, somewhere  
8 around the late seventies, something like that. And  
9 then there was also a working group of the American  
10 Psychological Association in terms of dealing with  
11 aboriginal mental health issues.

12 113 Q. This is in the United States?

13 A. Yes, but we share the literature,  
14 so, and in the Canadian Psychological Association -- I  
15 don't know that I can give you a specific answer on  
16 that, but there have been working groups and particular  
17 areas of interest in that. Laurence Kirmayer, in  
18 transcultural psychiatry, Dr. Kirmayer, out of McGill,  
19 has been working in terms of research and publications  
20 in this area for, I don't know, a good 30 years.

21 114 Q. Which would take us back to the  
22 late '70s, early '80s?

23 A. I would think.

24 115 Q. Yes.

25 A. So there is a fair amount of

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- 1 scholarship in this area over the last 30 years or so.
- 2 116 Q. Yes.
- 3 A. Probably a little longer.
- 4 117 Q. You have, as I bring you forward in  
5 time to 2008, an item under First Nations experiences,  
6 research and consultation, 20 Best Practices in Native  
7 Health. What did that involve?
- 8 A. That was actually a research  
9 project where I reviewed, I did a very large literature  
10 review in terms of evidence-based mental health  
11 practices in working with First Nations communities.  
12 And I was hired by Sliammon First Nation in Powell  
13 River, British Columbia, and I went to the community to  
14 do two days of dialogue about that and exchanges with  
15 them about their experiences of their programs.
- 16 118 Q. Did that result in a paper or  
17 presentation?
- 18 A. That was a presentation I went to  
19 present. It is a written paper and it was presented to  
20 the staff at Sliammon First Nations.
- 21 119 Q. Has it been published?
- 22 A. No.
- 23 120 Q. But it reviews the history of the  
24 literature?
- 25 A. It reviews 20 practices and

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1 programs that were seen to be useful. It is certainly  
2 not exhaustive but this is what they asked me to do.  
3 So, I actually came in half-way through that because  
4 the person who had started the project had a personal  
5 crisis and couldn't continue. So I was actually called  
6 in about half-way through, but it did result in a good  
7 fat piece of work.

8 121 Q. Is the paper available?

9 A. The paper is available. I might  
10 need to consult with them to release it. It is the  
11 property of the First Nation.

12 122 Q. Could you make inquiries, Mr.  
13 Wilson?

14 MR. WILSON: We'll make reasonable  
15 inquiries.

16 MR. YOUNG: If it is unavailable for  
17 some reason, if you can let me know, and if it is  
18 available, could you provide a copy?

19 U/T MR. WILSON: Yes.

20 BY MR. YOUNG:

21 123 Q. In terms of the literature you  
22 examined, what were the subjects generally?

23 A. The subjects were kind of the wide  
24 range of mental health difficulties - substance abuse,  
25 sexual abuse, historic trauma, anxiety, depression

00033

1 disorders, programs to support people to overcome  
2 difficulties from residential school. So it was a very  
3 wide range of various issues of mental health  
4 difficulties.

5 124 Q. Was it the same kind of range of  
6 difficulties that you had encountered in Sioux Lookout?

7 A. I would say likely.

8 125 Q. Was it the same range of cause?

9 A. I don't know if I can answer that  
10 because it is a such a wide range of literature, but in  
11 the overall sense, yes.

12 126 Q. Are you able to give me some sense  
13 of the period of time that the literature covered. You  
14 said there had been work on this for the past 30 years.  
15 Is it within that 30-year timeframe? Shorter or  
16 longer?

17 A. Probably within the last 30-years  
18 timeframe, maybe shorter. I was probably using  
19 literature that was somewhat more recent than 30 years.  
20 There were also projects. There was also reviews of --  
21 other reviews that had been done of successful  
22 substance abuse programs. Some of them had been done  
23 for Health Canada and it was done specifically to  
24 support Sliammon First Nation in terms of potential  
25 applications to their staff, to their programming. So,

00034

1 it had an applied context and you know, each of these  
2 20 is only maybe five pages long, so it is a real  
3 summary.

4 127 Q. At CAMH?

5 A. Yes.

6 128 Q. Can you describe for me what your  
7 role was as a consulting psychologist at CAMH?

8 A. I did a really large range of  
9 things and particularly, as I was there for such a long  
10 time. I was there from the inception of the program  
11 and I was involved with direct psychological  
12 assessments and treatment recommendations that would be  
13 passed on to staff. I did assessments for people who  
14 needed them for court.

15 We also were involved -- there are so  
16 many things over that period -- we were involved in  
17 providing training to other CAMH staff in terms of  
18 aboriginal and mental health with the team. I was  
19 involved in doing a fair bit of leadership around those  
20 materials. In conjunction with the team, we presented  
21 numerous trainings for CAMH staff. We presented at  
22 many conferences. We did clinical training.

23 That program is in partnership with many  
24 Toronto-based, Toronto aboriginal services. So we did  
25 clinical training for organizations such as Native

00035

1 Men's Residence, Native Women's Resource Centre, you  
2 know, other organizations, aboriginal organizations,  
3 specific clinical training.

4 We had, you know, a research component  
5 in terms of the mental health issues we were finding  
6 among the clients that were being seen on-going by the  
7 staff. I provided clinical consultation to the staff,  
8 as well, to the full-time staff. Involvement in  
9 international programs.

10 129 Q. Like the one in Mexico you  
11 described earlier?

12 A. A lot of program development  
13 because I was there from the start.

14 130 Q. Do I take it from that that you  
15 had, did have, a patient load, both assessments and  
16 treatments?

17 A. Only assessments.

18 131 Q. And of the patient load, is there a  
19 portion of it that was aboriginal and a portion  
20 non-aboriginal?

21 A. Probably 95 percent aboriginal.

22 132 Q. That was the program you were in?

23 A. Yes, we didn't turn people away,  
24 but it was almost entirely aboriginal.

25 133 Q. Were people drawn into the program,

00036

1 that is people who came to you for assessment, drawn  
2 into it from all across Ontario, or was there a  
3 specific locus that they came from?

4 A. It was probably more people who  
5 were local in Toronto. Occasionally, someone would  
6 come in for an assessment, but it was mainly people who  
7 are Toronto-based.

8 134 Q. What was the period of time? We  
9 have got 2001 to the present. Is that the period?

10 A. That was December. I just left  
11 there December 1, 2009.

12 135 Q. So it is 2001 to 2009?

13 A. Yes.

14 136 Q. Can you describe for me the range  
15 of mental health issues that you had run into in terms  
16 of the aboriginal patients who came to you for  
17 assessment?

18 A. Very often substance abuse issues,  
19 post-traumatic stress disorder issues, major  
20 depression, some personality disorder difficulties, a  
21 lot of histories of trauma and abuse, parenting  
22 difficulties, issues of adoption, identity loss. Those  
23 kinds of things would come up quite often in those  
24 assessments as well. Reunification following adoption.  
25 Really, I did a lot of assessments in the time I was

00037

1           there, so a very wide range of issues.

2   137                   Q.   Were there mental health issues or  
3   pathologies that were specifically associated with the  
4   adoption problems you describe, or are they part of the  
5   array of mental health issues you ran into?

6                   A.   We probably saw more issues of a  
7   sense of anomie, a sense of lower self esteem, a  
8   different profile in terms of the trauma, in terms of a  
9   kind of lostness in the world, loss of motivation, you  
10   know a lot of the internalised self-hatred, those kinds  
11   of things. We saw a little bit more of that.

12   138                   Q.   This is in the adopted cohort, if I  
13   can call it.

14                   MR. WILSON: Adoption...

15                   MR. YOUNG: Cohort.

16                   THE DEPONENT: That group?

17                   MR. YOUNG: That group.

18                   MR. WILSON: Cohort.

19                   MR. YOUNG: Cohort. C-O-H-O-R-T. I'm  
20   surprised with all of the other words that have been  
21   thrown out in terms of place names, that was the  
22   stumbling block, with all of the other names.

23                   MR. WILSON: It is the pronunciation.

24   It is hard when you have an O and an R together.

25                   MR. YOUNG: Maybe it's just hard for me

00038

1 to pronounce an O and an R together.

2 BY MR. YOUNG:

3 139 Q. I guess, just to draw it a bit, you  
4 have this cohort that would present with these, more  
5 characteristically, with these kinds of feature  
6 symptoms or whatever. But they wouldn't be unique to  
7 that cohort?

8 A. They would have more, it would be  
9 more pronounced. There would be a thematic, more of a  
10 theme, in that regard.

11 140 Q. In terms of whether it is at CAMH  
12 or in your own -- let me deal with your own practice...

13 A. Sure.

14 141 Q. Independently of CAMH. What is the  
15 range of patients you deal with there? Is there a  
16 separation or division between aboriginal and  
17 non-aboriginal?

18 A. I am not sure what you mean by  
19 separation.

20 142 Q. Just a division.

21 A. I have a private practice, and I  
22 have had for years, and I consistently had aboriginal  
23 clients, you know, this entire period.

24 143 Q. What portion of your clientele  
25 would be aboriginal?

00039

1 A. Maybe 20 percent.

2 144 Q. Again, are they drawn largely from  
3 local area?

4 A. Yes.

5 145 Q. Or are they from remote  
6 communities?

7 A. On-going patients would be from  
8 local area. When I have done assessments for the  
9 residential school process, they have come in  
10 specifically for the assessment, but those wouldn't be  
11 people I would see on-going. The on-going patients are  
12 from the local area. They are not born, necessarily,  
13 in Toronto, but they do live in Toronto. Most people  
14 have actually come south from other places.

15 146 Q. In your private practice, you not  
16 only assess but you do treatment?

17 A. Yes, I do.

18 147 Q. Well, either through your work at  
19 CAMH or in your own private practice, have you had an  
20 opportunity to do any specific research on the  
21 problems, the mental health issues, that you associate  
22 with your aboriginal patients?

23 A. Well, research, not in the sense of  
24 formal research, you know, in terms of statistical  
25 research, but certainly qualitative research for

00040

1 research papers, research for papers I have given at  
2 conferences. So, I mean, I am very reflective on the  
3 practice and I follow a lot of the literature as well,  
4 but, based on my clinical experiences, so, you know,  
5 research in that sense.

6 148 Q. Is there a component of your  
7 research that deals particularly with the subject of  
8 adoption out to non-aboriginal homes or placing in  
9 non-aboriginal foster homes?

10 A. In preparation for these  
11 proceedings, I did, I went over my cases and reflected  
12 on the clients that do fit that profile. So I have  
13 been looking at it specifically.

14 149 Q. For purposes of the case?

15 A. Yes.

16 150 Q. Well, what did you discover in  
17 terms of the -- because I assume you contrasted or  
18 compared that group that you had identified from your  
19 case load with others you had?

20 A. Again, I don't want to give the  
21 impression that I did a formal piece of research on it.  
22 It was more of a case review, but I think, again, in  
23 the same way, that is the profile.

24 In the many studies done in CAMH, there  
25 are particular thematic profiles and particular themes

00041

1 that tend to emerge for people who have had a rupture  
2 in terms of their cultural identity, and those I have  
3 outlined in the affidavit in terms of historic trauma  
4 issues, self-esteem issues, a sense of existential  
5 loss, anomie, lack of motivation. Just a similar, some  
6 of the similar things that I have seen over the years  
7 in other settings, but here, because I'm treating the  
8 individual, it is more familiar.

9 Also a lot of issues relating to not  
10 knowing which culture people, individuals, belong to, a  
11 real struggle to embrace either native culture or  
12 non-native culture, a real sense of being caught in  
13 between the cultures, which is pretty devastating in  
14 terms of a secure stable sense of self. So I have seen  
15 that a great deal in these individuals' histories.

16 151 Q. Apart from doing this affidavit,  
17 have you written on the subject?

18 A. This particular subject?

19 152 Q. Yes. You have said there are  
20 certain themes that appear.

21 A. No, I haven't.

22 153 Q. What you have just described now,  
23 in evidence?

24 A. No.

25 154 Q. Have others in your field written

00042

1 on that subject?

2 A. Yes.

3 155 Q. Can you give us some sense of where  
4 I'm going to find that literature?

5 A. Actually, I list some of the  
6 literature in the affidavit and there is also, if I put  
7 it in here, there is a very good book, because I do  
8 list literature here.

9 156 Q. I see that. Let's turn to that  
10 while we're at it.

11 A. I'm sorry?

12 157 Q. Let's turn to that while we're at  
13 it.

14 A. And there is another specific...

15 158 Q. Let me just pause for a second.  
16 Just starting in with the, again, reverse chronological  
17 order, Breathing and Healing in a First Nations  
18 Context. Is this your presentation?

19 A. Sorry?

20 159 Q. Research, publications,  
21 presentations.

22 A. I was at the affidavit in terms of  
23 the literature that is not my own. I was referring  
24 to -- because you had asked about other scholars.

25 160 Q. We're at the segment of your

00043

- 1 affidavit, Clinical Experience and Academic Studies and  
2 Reports.
- 3 A. Yes.
- 4 161 Q. The first one,  
5 Culturally-Appropriate Means and Ends of Counselling?
- 6 A. Yes.
- 7 162 Q. When was that published?
- 8 A. I'm sorry, I don't recall. It's in  
9 the '90s, maybe even, you know, early 2000.
- 10 163 Q. Historic Trauma and Aboriginal  
11 Healing, that is 2004?
- 12 A. Yes.
- 13 164 Q. That is the Aboriginal Healing  
14 Foundation that was put together as a response to the  
15 residential schools settlement?
- 16 A. Mm-hmm.
- 17 165 Q. You have to give an answer.
- 18 A. I don't know if it was the  
19 settlement, but it was part of that process. I don't  
20 know where it came in that process, but it is put out  
21 by the Aboriginal Healing Foundation.
- 22 166 Q. The Mental Health of Aboriginal  
23 Peoples, 2000?
- 24 A. Mm-hmm.
- 25 167 Q. You have to give a verbal answer.

00044

- 1 A. I'm sorry, yes.
- 2 168 Q. Somebody has to write it down.
- 3 A. Yes, okay. No problem.
- 4 169 Q. Aboriginal People, Resilience is
- 5 2003?
- 6 A. Yes.
- 7 170 Q. From Truth to Reconciliation, 2008?
- 8 A. Yes.
- 9 171 Q. The Return to the Sacred Path. Are
- 10 you able to tell me what year that was?
- 11 A. Probably early 2000, somewhere in
- 12 there. I'm sorry I didn't put the date in that.
- 13 172 Q. 2000-ish?
- 14 A. -ish.
- 15 173 Q. The Way of the Pipe, 1997?
- 16 A. Yes.
- 17 174 Q. Shingwauk's Vision, 1997?
- 18 A. Yes.
- 19 175 Q. And Western Colonization as a
- 20 Disease, 2002?
- 21 A. Yes. There is also another very
- 22 excellent resource called Stolen from Our Embrace which
- 23 is not listed here.
- 24 176 Q. When was it released?
- 25 A. By Suzanne Fournier. I think that

00045

1 is more recent, probably 2000. I could provide that to  
2 you.

3 177 Q. So this literature, was this  
4 something you were familiar with before doing this  
5 affidavit?

6 A. Yes.

7 178 Q. And are you able to tell us whether  
8 or not this is a representative sample or does it go  
9 back a significant distance in time, past the late  
10 1990s?

11 A. Could you tell me the question  
12 again?

13 179 Q. Well, the range of dates we have  
14 got here is basically 1990 something, late 1990s to  
15 early 2008?

16 A. Mm-hmm.

17 180 Q. And I am just trying to make sure  
18 you haven't done that just so we may see recent things,  
19 but the question is, is there a collection of similar  
20 writings that would take us back past 1997?

21 A. Yes, there would be earlier  
22 writings.

23 181 Q. All right and are they the same?  
24 Is there a, would you say there would be fewer...

25 A. There are. There are earlier

00046

1 writings.

2 182 Q. These appear in the literature for  
3 clinical psychologists or for psychology...

4 A. These appear in the literature for  
5 clinical psychology. These appear in the literature  
6 for transcultural psychiatry. If you look at the  
7 Journal of Transcultural Psychiatry out of McGill,  
8 there are many, many papers that have been produced by  
9 the McGill group.

10 183 Q. Many papers on?

11 A. First Nations mental health.

12 184 Q. So the real focus of my question --  
13 first of all, let me ask you, before I move on, you  
14 said earlier that we would be expecting to find that  
15 back through the last 30 years?

16 A. Expecting to find?

17 185 Q. Literature of that type back  
18 through the last 30 years. Is that still the same? Th  
19 literature you have in mind goes back roughly 30 years.

20 A. I'm not sure what the difference in  
21 the two literatures is.

22 MR. WILSON: Can you define the two  
23 literatures? I think...

24 BY MR. YOUNG:

25 186 Q. You had asked, given me a

00047

1 description of literature in your affidavit. I  
2 apologize. It wasn't a very clear question. There is  
3 a description of literature in your affidavit, and then  
4 we got talking about other literature that dated back  
5 past, beyond that. And am I right in understanding  
6 from earlier questions you answered that that would  
7 take us back, probably, into the 1980s?

8 A. That there is other literature in  
9 this area that would take us to the 1980s?

10 187 Q. Yes.

11 A. Yes.

12 188 Q. With respect to the specific  
13 subject we were talking about, which was the sequelae,  
14 as you have described them, or the indicia of, that  
15 accompany the themes that appear with respect to  
16 adoption, loss of cultural identity, what about that as  
17 a subject in the literature? Is that discussed back  
18 into the 1980s or is that something that begins to  
19 appear more recently?

20 A. You know, I honestly can't give  
21 you, I'm not sure how to answer that question, so I  
22 don't want to give you a wrong answer. I know there is  
23 literature present, but I cannot tell you exactly when  
24 it began to be written. I know there are papers going  
25 back ten, 20 years. I don't know when the first paper

00048

1 would have been written.

2 189 Q. I wasn't asking about the very  
3 first paper, but when it begins to appear as a body of  
4 writing.

5 A. It begins also to appear as a body  
6 of writing and, you know, kind of parallel experiences  
7 in the United States, parallel experiences in Australia  
8 and New Zealand. So there are many, many papers and  
9 research documents that have come up internationally,  
10 as well as in Canada.

11 190 Q. On this specific issue?

12 MR. WILSON: On adoption?

13 THE DEPONENT: On adoption.

14 BY MR. YOUNG:

15 191 Q. Loss of cultural identity?

16 A. Yes. There is a body of  
17 international literature.

18 192 Q. Does that take us back the past ten  
19 or 20 years?

20 A. Absolutely.

21 193 Q. The list of items in your  
22 affidavit, are you an author or co-author of any of  
23 those?

24 A. No.

25 194 Q. Are you an author or co-author of

00049

1 any papers in the field of adoption and what you have  
2 identified as loss of cultural identity?

3 A. It is within other things I have  
4 written about, but no, not specifically.

5 195 Q. Now, the other things that you have  
6 written about, saying it's within those, I can now get  
7 back to the list where I started. Are those the items  
8 in your list of research publications and  
9 presentations?

10 A. Yes.

11 196 Q. And they run through the period  
12 from 1994, not surprising post-doctorate, to 2009?

13 A. Yes.

14 197 Q. In your affidavit, or in the letter  
15 that you wrote to Mr. Wilson, you do identify a list of  
16 sequelae. Loss of cultural identity, it says, can  
17 result in the following sequelae.

18 A. Yes.

19 198 Q. Amongst the -- and these are drawn  
20 from your own clinical and assessment experience?

21 A. My clinical experience and also my  
22 own reading and scholarship and dialogue with other  
23 clinicians.

24 199 Q. I had spoken earlier of different,  
25 one of the cohorts, but is there literature that, or

00050

1 are there studies that explore the effect of, whether  
2 the sequelae are associated with the adoption  
3 experience of aboriginal children who go to other  
4 aboriginal homes but of a different language and  
5 culture?

6 A. I'm not familiar with that. I  
7 don't know if they do exist.

8 200 Q. Sorry?

9 A. I don't know if they exist.

10 201 Q. If there is literature on it?

11 A. If there is literature on it.

12 202 Q. Is that an experience you have run  
13 into or does that mean they just don't, they might not  
14 have come into your practice?

15 A. I haven't had a lot of experience  
16 with that in my clinical practice.

17 203 Q. Is there literature that tracks or  
18 records children having gone through this adoption  
19 experience, aboriginal children to non-aboriginal  
20 homes, in which they have not produced these symptoms?

21 A. You are saying is there literature  
22 that when a child is taken to a non-aboriginal home,  
23 they have, they don't have mental health problems.

24 204 Q. Yes.

25 A. Not that I'm familiar with.

00051

1 205 Q. I assume we're not suggesting that  
2 they all do have mental health problems?

3 A. We're not suggesting that.

4 206 Q. Is there any work done on the  
5 effect, through the period that we have dealt with here  
6 in this lawsuit, which is essentially '65 to the  
7 mid-'80s, of the process of customary adoption and its  
8 effect on children and whether or not it produces any  
9 of these sequelae.

10 MR. WILSON: Does everybody here  
11 understand what that means?

12 MR. YOUNG: Customary adoption as  
13 opposed to -- you have been describing, I apologize,  
14 you have been describing children who have been  
15 involved in the child welfare system and adopted out to  
16 non-aboriginal homes?

17 THE DEPONENT: Mm-hmm.

18 MR. YOUNG: And the prospect of children  
19 who are involved in the child welfare system and then,  
20 through the process of customary adoption, were adopted  
21 out, whether to aboriginal or non-aboriginal, is there  
22 any literature on that?

23 MR. WILSON: I think it is only fair to  
24 the witness, you use this term, an operative term,  
25 customary adoption. So she might not, you can ask her,

00052

1 she might not understand this term.

2 BY MR. YOUNG:

3 207 Q. Did you, in dealing with the  
4 aboriginal communities you dealt with, did you run into  
5 circumstances where people were adopted through a  
6 process they described as customary adoption?

7 A. Actually, if you could define that,  
8 that would be helpful.

9 208 Q. If I could define it, you said that  
10 would be helpful.

11 A. Are you asking if I am familiar  
12 with the term?

13 209 Q. I'm asking if people described to  
14 you a process that they, where they referred to the  
15 term customary adoption?

16 A. The clients themselves did not use  
17 that term.

18 210 Q. Is there literature, or from your  
19 own studies, are you able to tell me whether or not  
20 this loss of cultural identity that you described, or  
21 the sequelae that you have identified, are common only  
22 to the situation where there is a loss of an aboriginal  
23 cultural identity as opposed to some other cultural  
24 identity?

25 A. Well, because the nature of your

00053

1 dialogue is on aboriginal culture and the particular  
2 history of aboriginal people in Canada, it has a very  
3 different flavour. You know, it is a very different  
4 expression, aboriginal culture, than other cultures in  
5 my experience, although I have probably more experience  
6 in aboriginal culture than another specific group that  
7 I could refer to as a comparison.

8 211 Q. I presume, I don't know the answer  
9 but I presume, that we're going to find some form of  
10 sequelae appearing in Chinese children adopted into  
11 western culture over the past ten years, and into the  
12 future, we're going to find some mental health issues  
13 as they recognize they have lost their Chinese culture?

14 A. I can't comment on that or predict  
15 that, no.

16 212 Q. So your experiences and your  
17 evidence is based on your focus on aboriginal children?

18 A. My experiences, I don't work  
19 with -- because I have been working in this area for so  
20 long, I cannot comment on similar issues in the Chinese  
21 culture or other cultures. I do have other people,  
22 other ethnicity in my practice, but not in terms of  
23 this amount of experience.

24 213 Q. And aboriginal culture holds a  
25 unique place in Canadian society?

00054

1 A. Yes.

2 MR. YOUNG: Can we take a couple of  
3 minutes break?

4 --- Recess at 11:05 a.m.

5 --- Upon resuming at 11:15 a.m.

6 BY MR. YOUNG:

7 214 Q. Just to pick up one point from  
8 earlier questions, you said you identified these themes  
9 as they appear amongst this group of people?

10 A. Mm-hmm.

11 215 Q. And the first question seems really  
12 obvious. I assume, although you identified these  
13 themes here, they do arise in people who have other  
14 histories, other than adopted, being adopted out, these  
15 themes do appear but not clustered the way you have  
16 described them?

17 A. They do appear that they are  
18 particularly, kind of, common signatures and common  
19 themes that appear specifically to this group.

20 216 Q. And in identifying them in your  
21 practice, what portion of your practice has gone  
22 through that experience, that is the theme that you  
23 identified, the common signature? What portion of your  
24 practice is that in terms of percentage or numbers?

25 A. I mean, I have probably seen

00055

1 hundreds of aboriginal clients while I have been in my  
2 20 years of practice.

3 217 Q. Right.

4 A. So, you know, of those, probably  
5 maybe half of the aboriginal clients would have those  
6 kinds of issues.

7 218 Q. Does that mean half of them were  
8 adopted out?

9 MR WILSON: When you say adopted out,  
10 you mean...

11 MR YOUNG: From aboriginal homes to  
12 non-aboriginal homes.

13 MR. WILSON: Are you limiting it to  
14 adoption or do you mean to say placed out?

15 BY MR. YOUNG:

16 219 Q. Okay. You say half of them show  
17 this cluster of symptoms?

18 A. Mm-hmm.

19 220 Q. Is that half equal to the cohort  
20 that is either placed out or adopted out from  
21 aboriginal to non-aboriginal homes?

22 A. A very large number of the people  
23 who have sought my clinical services have had histories  
24 of adoption or placement out, and yes, a large  
25 proportion of them would have these kinds of themes.

00056

- 1 221 Q. Is there a direct correlation? You  
2 have said about half would show this cluster.
- 3 A. Yes.
- 4 222 Q. Is it also half who are, half of  
5 all these hundreds of people, who have actually had  
6 that experience as well?
- 7 A. Oh no. It wouldn't be that many.  
8 No. I mean I don't think I can give you a specific  
9 number on that. I mean, it is, you know -- just so I  
10 understand the question, of the aboriginal clients I  
11 have seen, how many would have been adopted out or  
12 placed out that would have these kinds of clusters of  
13 symptoms.
- 14 223 Q. I'm going at something entirely  
15 different. You said, over the time, including  
16 assessments and treatments you have seen hundreds of  
17 aboriginal patients?
- 18 A. Yes.
- 19 224 Q. About half of them would show this  
20 cluster of symptoms, these themes would appear?
- 21 A. Actually, I would say most of  
22 these, more than half, would show these kinds of  
23 clusters of themes, in terms of the kinds of things I  
24 have described, would be more, you know, in terms of  
25 the overall pathology, psychopathology.

00057

1 225 Q. Yes.

2 A. The people that are consulting me,  
3 they are having difficulties. So, most of the people  
4 would have some kind of a symptomatology.

5 226 Q. When you are talking about some  
6 kind of symptomatology, my question is really related  
7 to the list of sequelae you have here.

8 A. Yes.

9 227 Q. And is that what you are referring  
10 to?

11 A. Yes.

12 228 Q. I take it from what you say, that  
13 there is, that people who have gone through adoption  
14 out or placement out can be counted on to show this  
15 cluster of symptoms?

16 A. Yes.

17 229 Q. But that other people also show  
18 that cluster of symptoms, even if they haven't had that  
19 experience?

20 A. It would be organized in a  
21 different way, as we have been dialoguing this morning,  
22 that there is a common signature and theme of people  
23 who have had experiences of being adopted or placed  
24 outside of aboriginal homes.

25 230 Q. That takes me back to my first

00058

1 question.

2 A. Yes.

3 231 Q. A couple of minutes ago. Of a  
4 proportion of your practice, how many will show that  
5 signature issue described which you attribute or relate  
6 to being adopted out or placed out?

7 A. Of the aboriginal clients, how many  
8 of those would show that?

9 MR. WILSON: Percentage.

10 THE DEPONENT: Percentage-wise, of the  
11 people who have been adopted out -- I'm sorry, for some  
12 reason I'm not getting this.

13 BY MR. YOUNG:

14 232 Q. I'm trying to find whether or not,  
15 from what you are saying, is there always a direct  
16 correlation between the signature you have described as  
17 being adopted out or placed out or does the signature  
18 appear in other circumstances as well?

19 A. I think that particular signature  
20 has, in my clinical experience, a direct correlation or  
21 clear connection to experiences of being adopted out or  
22 placed out. So that is what I have seen in terms of  
23 that particular theme or signature.

24 233 Q. And the signature isn't necessarily  
25 the sequelae, it is a particular pattern in which the

00059

1 sequelae are put together?

2 A. I think it is a collection of these  
3 kinds of sequelae that I'm describing, yes.

4 234 Q. So what portion of your practice  
5 show that sequelae that you then correlate with the  
6 adoption out or placement out experience?

7 A. I would have to go over my records  
8 and see how many of the people I have seen have been  
9 adopted out or had treatment or placed in treatment  
10 outside of aboriginal centres. So I am hesitant to  
11 respond to the question without kind of saying, yes,  
12 this is a number of people in my practice that have  
13 this history. Most of the people that I have seen with  
14 this history do have this kind of theme. So, but I  
15 don't know, you know, if I can give you a kind of  
16 statistical percentage on that. I would say most of  
17 them have this kind of signature or theme.

18 235 Q. Most of them?

19 A. Most of the people who have had  
20 this history would have this kind of signature.

21 236 Q. In your practice, are we talking  
22 half a dozen people, a hundred people?

23 A. I probably -- over the years, of  
24 how many aboriginal clients I have seen?

25 237 Q. Yes. Not how many you have seen,

00060

1 but how many fit into the, show the signature that you  
2 correlate with...

3 A. I would say, I have seen hundreds  
4 and hundreds of aboriginal clients, so I would say  
5 definitely at least a hundred people.

6 238 Q. Over the years?

7 A. Yes.

8 239 Q. Now, I had gone through what I had  
9 identified, or was hoping to identify, as the theses  
10 that appeared in your affidavit and the last one had to  
11 do with concept of the collective.

12 A. Yes.

13 240 Q. I asked the question earlier and we  
14 both said the word collective, but I want to make sure  
15 I actually have the same, we are on the same page as  
16 far as vocabulary is concerned.

17 A. Okay.

18 241 Q. So we're not inadvertently talking  
19 about different things.

20 A. Okay.

21 242 Q. I say that a collective -- tell me  
22 I'm wrong, you are entitled to disagree with me  
23 totally. I want to know your definition, not mine. I  
24 will try and elicit it by putting it to you, that a  
25 collective is something...

00061

1 MR. WILSON: Is that what you are  
2 asking?

3 MR. YOUNG: I am putting it to her that  
4 this is what I understood when we talked about  
5 collective. What I am saying when I say collective, I  
6 want to make sure we are ad idem or not.

7 THE DEPONENT: Okay.

8 MR. WILSON: That is, on the same page?

9 THE DEPONENT: Right, right. Thank you.

10 MR. YOUNG: You can disagree. I want to  
11 know what you think, not what I think.

12 THE DEPONENT: Okay.

13 BY MR. YOUNG:

14 243 Q. I have enough problem knowing what  
15 I think at times.

16 When I say collective, I mean something  
17 that is greater than the sum of its parts. It's an  
18 organism, not just a collection of people with  
19 something in common.

20 A. Mm-hmm.

21 244 Q. It is something that is greater  
22 than the sum of its parts.

23 A. Mm-hmm.

24 245 Q. So is that how, when you were  
25 describing the collective, it was good for the

00062

1 collective, this collective process, to proceed this  
2 way was good for the collective, were you using

3 collective in that sense or another sense?

4 A. I wouldn't disagree with your  
5 definition of collective. I would say that it is,  
6 there is something that, you know, when something is  
7 defined in a more macro, as opposed to micro, level, in  
8 terms of a more macro level, it does have a particular  
9 weight, particular substantive power, that is more  
10 than, you know, six individuals having similar  
11 experiences.

12 246 Q. But the collective you were  
13 speaking of, is that bound together by this experience,  
14 that produces this signature you have described? Is  
15 that what you have in mind?

16 A. That is what I have in mind. I'm  
17 talking about common experience. I'm talking about the  
18 concept, the idea, produced in other aboriginal  
19 literature and aboriginal psychology literature and  
20 also in the policy, in terms of common experience. So  
21 I use more that word, common experience, rather than  
22 collective. That is more familiar in my way of  
23 thinking.

24 247 Q. Bound together by what you call  
25 common experience, not bound together by common

00063

1 language?

2 A. That is not the axis on which I'm  
3 looking at this common experience.

4 248 Q. The axis is not one of common  
5 history, common ancestral history?

6 A. Yes, I would say there is common  
7 ancestral history in terms of aboriginal people in  
8 Canada and Ontario. So there is common history.

9 249 Q. So, your view is, for example, that  
10 even though there would be warring tribes a hundred  
11 years ago, two hundred years ago, you still bind them  
12 together as having a common history?

13 A. Yes, and I think they are organized  
14 in political bodies. Even though they may have been  
15 warring a hundred years ago, they are now living in  
16 common experiences and organizations. So they are  
17 working to a common end. So yes, I would look at, you  
18 know, commonalities in the experiences of being First  
19 Nations people in Ontario at a particular juncture in  
20 history with particular social events.

21 250 Q. For somebody to gain the benefit  
22 of, the collective benefits from proceeding as a  
23 collective, if I understood what you are saying, for  
24 somebody to get the benefit of that, do they actually  
25 have to be active and participate in it or is it enough

00064

1 to be a passive spectator? Do you get the  
2 psychological benefit you are describing?

3 A. I'm not sure what you are talking  
4 about.

5 251 Q. You are talking about proceeding as  
6 a collective.

7 A. Mm-hmm.

8 252 Q. And the collective would benefit,  
9 all the people in the collective, would benefit from  
10 that, but in order to get the benefit that you are  
11 interested in, not the legal benefit...

12 A. The therapeutic.

13 253 Q. The therapeutic benefit, do they  
14 have to be an active participant or is it enough that  
15 they are a spectator watching it all unfold?

16 A. You are saying somebody who had  
17 this experience of being adopted out?

18 254 Q. Yes.

19 A. Or placed out, who was not  
20 specifically involved in the class action proceeding  
21 but saw it unfold? Would that be beneficial to them?  
22 Is that what you are talking about?

23 255 Q. Is that the benefit you are talking  
24 about in your affidavit?

25 A. I don't think that would be the

00065

1       only benefit, but again, you are asking me to make  
2       conjecture and assumption, so I can't really know for  
3       sure.

4   256                Q.   I thought that is what Mr. Wilson  
5       was asking you to do.  I'm trying to explore it.

6                    A.   If I'm understanding what you are  
7       saying, the people who, themselves, would be involved  
8       in such a proceeding would benefit, and the people who  
9       would know about this proceeding, even if they were not  
10      directly involved, would benefit.  If that is what you  
11      are saying, I would say yes.

12   257                Q.   Let's go back to what you're  
13      saying.

14                    A.   Yes.

15   258                Q.   It really turns on what you are  
16      saying, Doctor.  And at page -- this is -- I don't know  
17      what...

18                    A.   13.

19   259                Q.   I have got two numbers on the page.  
20      So a whole group or nation, you say, has experienced a  
21      harm caused as outlined above.  Then you continue on  
22      through that paragraph, the collective aspect of the  
23      experience is consistent with native culture and thus,  
24      absent the collective experience, the healing would not  
25      been nearly as effective.

00066

1 I'm trying to ask, when I ask about  
2 collective, I'm asking about your meaning and what you  
3 are telling us. I'm trying to determine whether or not  
4 what you had in mind there means that the collective  
5 needs to proceed as a collective, whether people need  
6 to actually participate in that process to gain the  
7 benefit that you are talking of, or whether they can  
8 simply sit on the sidelines and watch it unfold.

9 MR. WILSON: This is inquiring. So we  
10 have got to get down to one question at the time.  
11 Don't you think so?

12 THE DEPONENT: Thank you.

13 BY MR. YOUNG:

14 260 Q. I have asked you about collective  
15 and what you meant by the term collective.

16 A. Yes.

17 261 Q. In your affidavit.

18 A. Yes.

19 262 Q. And you talked about the benefit of  
20 proceeding, to the collective.

21 A. Yes.

22 263 Q. Do the members of the collective,  
23 this is from your perspective in terms of the benefit  
24 they gain, not the legal benefit...

25 A. Therapeutic.

00067

1 264 Q. The therapeutic benefit they gain.  
2 Is there a difference between actually participating in  
3 the process as you described it or being a spectator to  
4 the process? Is the therapeutic benefit gained, I'm  
5 just rephrasing the same question, gained by  
6 participation, or is it gained by being a spectator?  
7 Is there a difference?

8 A. In my experience of any situations  
9 where there is even some sense of similarity, I would  
10 say there is quite a difference in those two. There  
11 would be quite a difference in those two activities.

12 265 Q. Describe the difference between  
13 participating...

14 A. Participating and being a  
15 spectator, yes.

16 266 Q. In the aboriginal context, you have  
17 described the collective here. For the collective to  
18 benefit therapeutically in the way you have described,  
19 is it necessary for the people who represent it to be  
20 seen by the collective as having some legitimacy, or  
21 can it be anybody who puts themselves forward?

22 A. I think that is kind of taking the  
23 conjecture further than I could, you know,  
24 therapeutically, comment on that.

25 MR. YOUNG: Subject to the undertakings,

00068

1 which undoubtedly we'll have no questions arising from  
2 it, because I think it is just the paper, those are all  
3 my questions then.

4 MR. WILSON: I don't have any questions.

5 --- Whereupon the proceedings adjourned at 11:30 a.m.

6

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9

I HEREBY CERTIFY THE FOREGOING

10

to be a true and accurate

11

transcription of my shorthand notes

12

to the best of my skill and ability.

13

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Carol Denman, CSR

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Chartered Shorthand Reporter

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARCIA BROWN and ROBERT COMMANDA,  
Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,  
Defendant.

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--- This is the Cross-Examination of KENNETH DENIS RICHARD, a witness herein, on his affidavit sworn March 23, 2009, taken at the offices of Atchison & Denman Court Reporting Services Limited, 155 University Avenue, Suite 302, Toronto, Ontario, M5H 3B7, on Tuesday, the 2nd day of February, 2010.

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APPEARANCES:

JEFFREY WILSON For the Plaintiffs

OWEN YOUNG For the Defendant

MICHAEL BADER, Q.C.

Also Present:

Nicholas Mitchell Department of Indian Affairs

Shannon Kinch Articling Student

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1 --- Upon commencing at 12:04 p.m.  
2 KENNETH DENIS RICHARD; Sworn.  
3 CROSS-EXAMINATION BY MR. YOUNG:  
4 1. Q. Could I have your full name for the  
5 record, please?  
6 A. It is Kenneth Denis Richard.  
7 2. Q. And, Mr. Richard, you swore an  
8 affidavit in this case. It's dated, I think, March 23rd,  
9 2009. I've got a copy, if you could have a look at it

10 and confirm that that's the affidavit?

11 A. Should I read it? Jeffrey, should I  
12 read this?

13 3. Q. Be comfortable that it --

14 A. Well, it looks very much like the  
15 affidavit without having read it again.

16 4. Q. There is absolutely no reason it  
17 should be a different affidavit.

18 A. It's my affidavit.

19 MR. WILSON: It's Canada, but it's the  
20 same affidavit.

21 MR. YOUNG: Can we mark that as Exhibit 1.  
22 EXHIBIT NO. 1: Affidavit of Kenneth Denis  
23 Richard dated March 23, 2009.

24 MR. WILSON: Does it include --

25 MR. YOUNG: It should include the CV. Any

00006

1 other exhibits?

2 MR. WILSON: Yes, there was, there was  
3 Exhibit "A" and then there was an Exhibit "B", that's why  
4 I'm asking.

5 MR. YOUNG: Bear with me. Exhibit "A" is  
6 the CV. Then there's an Exhibit "B", which is "mandated  
7 native society," it begins.

8 MR. WILSON: Which is referenced at  
9 paragraph 8.

10 MR. YOUNG: Okay. So Exhibit 1 is  
11 complete, complete with Exhibits "A" and "B".

12 BY MR. YOUNG:

13 5. Q. Mr. Richard, there's a CV with your  
14 affidavit, is there an updated one or is that up to date?

15 A. This is the most recent.

16 6. Q. Okay. At the very beginning of your  
17 affidavit, paragraph 1, it refers to an article you wrote  
18 in 2007, I believe, on the matter of cross-cultural  
19 adoptions. It was chapter 9 to a book.

20 A. Yes.

21 7. Q. I've got a copy of what looks like  
22 that chapter. Could you have a look at it and tell me  
23 whether or not I've, in fact, found the right chapter  
24 from the right book. Just be careful -- off the record  
25 for a second.

00007

1 --- Off-the-record discussion.

2 THE DEPONENT: Without reading it, I mean,  
3 it appears to be that article.

4 MR. YOUNG: Could we mark that as Exhibit  
5 2.

6 EXHIBIT NO. 2: Article written by Kenneth  
7 Denis Richard on the matter of cross-cultural adoptions.  
8 Chapter 9 to a book.

9 BY MR. YOUNG:

10 8. Q. So I take it this article that was  
11 marked as Exhibit 2 was, in fact, written by you?

12 A. Yes, it was.

13 9. Q. And was it written in 2007?

14 A. Actually, it was written over

15 sometime. It was, in fact, written probably a couple  
16 years before that and published in the First Nations  
17 Caring Societies journal. And it was taken from that  
18 journal and reproduced for that book.  
19 10. Q. All right.  
20 A. 2004 or '05, I think, would be when  
21 the journal would have published it. This is the First  
22 Nations, again, Caring Society. First People's Child and  
23 Family Review.

24 11. Q. That's where it first appeared?  
25 A. Yes.

00008

1 12. Q. And it would be 2000...approximately?

2 A. I'm going to say it's going to be

3 around there.

4 13. Q. 2004, '05?

5 A. Yes.

6 14. Q. I see here it has suggested citation,  
7 it says on it, "Richard K., 2007," but that's the  
8 publication of the book?

9 A. Publication in that book.

10 15. Q. Did that article accurately reflect  
11 your opinions in 2004/2005?

12 A. Yes.

13 16. Q. Does it still accurately reflect your  
14 opinions?

15 A. Yes.

16 17. Q. Now if I could just turn to your CV.  
17 You graduated from the University of Manitoba in 1973  
18 with your Bachelor's degree.

19 A. In social work.

20 18. Q. And a Master's degree in Social Work,  
21 also University of Manitoba, 1978. How many years were  
22 you working on your undergraduate degree? And I'm not  
23 suggesting it took you a long time, I'm just trying to  
24 find the period of time covered.

25 A. The BSW?

00009

1 19. Q. Yes. Is that a four-year program?

2 A. It's a four-year program. So four  
3 years prior to that.

4 20. Q. Okay. So this would take us through  
5 the period, the very early 1970s that you were an under  
6 grad.

7 A. Oh, yes.

8 21. Q. And in the Bachelors, the  
9 undergraduate program of social work at the University of  
10 Manitoba, in those years, was part of the curriculum the  
11 study of social work, its aboriginal implications of  
12 dimension?

13 A. Typically not at that time, no.

14 22. Q. And the University of Manitoba, if it  
15 was going to be anywhere, it would be there; is that  
16 fair?

17 A. Well, that was the beginning of the  
18 thinking associated with, Is there something particular  
19 to aboriginal child welfare that is warrant to some

20 academic considerations, so there was lots of academic  
21 discussion. There wasn't a lot of publication associated  
22 with it. There were no specific courses associated with  
23 it. But certainly those of us who were thinking these  
24 things had an opportunity to certainly have these  
25 discussions, in any academic environment as you would.

00010

1 23. Q. Yes.

2 A. It really happened, in terms of the  
3 crystallization of these issues, more in my Master's  
4 work.

5 24. Q. That's where I was going to move next.

6 A. Yes.

7 25. Q. And what was the subject of your  
8 Master's thesis?

9 A. It was titled, "Whole-ism in Social  
10 Work."

11 26. Q. I'm sorry?

12 A. "Whole-ism in Social Work, The  
13 Differential Impact of Practitioner Orientation on  
14 Practice Methodologies."

15 27. Q. Was there an aboriginal component to  
16 that because of the Whole-ism aspect?

17 A. It was the beginning in the '70s of  
18 crystallizing conceptually how aboriginal world view can  
19 work itself into professional practice. One of the  
20 concepts that was seen to be a bridging concept would be  
21 the concept of Whole-ism, the integrated -- the whole  
22 being more than they were different from themselves. It  
23 was part of the integration. And, yes, I was one of  
24 those that spent time on that, too long actually, two  
25 years, but I found out some interesting things.

00011

1 28. Q. During the time that you were writing  
2 your thesis, was the curriculum changing so that it  
3 included these kinds of courses either for undergraduates  
4 or graduates.

5 A. I don't really recall whether there --  
6 there was a few of us who were keenly interested on the  
7 issue of child welfare. Was there a course, um, you  
8 know, it's a long time ago, I don't remember. I  
9 certainly remember a lot of dialogue with my thesis  
10 advisors, who went on to become quite instrumental in  
11 furthering the knowledge base on connecting colonialism  
12 and aboriginal child welfare. Peter Hudson, Brad  
13 MacKenzie both wrote a seminal article on it called,  
14 "Child Welfare's an Extension of Colonialism." I was  
15 very much a part of their student cadre, where we spent a  
16 lot of time. As we do in universities, as you know,  
17 talking these things out.

18 29. Q. We're talking about the same period,  
19 though, the late 1970s. Was their article -- was it  
20 published in the '70s or did that move into the '80s?

21 A. It was published in the '70s in the  
22 most mainstream of all social work journal called,  
23 "Social Work."

24 30. Q. Okay. You said that was seminal. But

25 what about other writing in the period, did that tend to  
00012

1 follow it or were there other contemporary writers?

2 A. There was just the beginning of  
3 writing it. There was certainly not an aboriginal  
4 conceptualisation that was specific to any particular  
5 writer. Again, this was related to people working in the  
6 field who were beginning to get concerned about what was  
7 before them with respect to child welfare. I'm not an  
8 academic, I'm a practitioner; however, this was an  
9 academic time in my life. And at the point I was more  
10 informed probably by my own observation of the world  
11 around me. My discussion with scholars, like Peter and  
12 Brad. And writings that would be indirectly related. It  
13 was quite -- you know, Ivan Illich and Paul Fieire, sort  
14 of new world writers that factored in oppression and the  
15 politics of oppression with its manifestation in terms of  
16 social work and social problems and what social work  
17 might be compelled to do with that level of analysis. It  
18 was a bit of a radical -- you know, the '70s, right, a  
19 little different from these days, I must say, as was I.

20 31. Q. So it was a radical line of thinking?

21 A. Well, it was a unconventional.  
22 Radical has a connotation I don't want to bring to this.  
23 But, you know, it was certainly pushing the thinking a  
24 bit and trying to introduce some other elements, like  
25 social justice.

00013

1 32. Q. Was part of the knowledge base that  
2 contributed to the thinking or the writing or was the  
3 subject of discussion something that came out of the  
4 adoption out to non-aboriginal homes, the placement out  
5 to foster homes, was that a component of the thinking  
6 that you're talking about?

7 A. The wholesale removal -- wholesale is  
8 a strong word -- but the disproportion, number of  
9 aboriginal children in state care was certainly an issue.  
10 It became a much bigger issue in the '80s. But those of  
11 us who were spending time thinking of these things,  
12 certainly -- and I was doing, at that time, night duty  
13 work, putting myself through school for the local  
14 Childrens Aid Society. And I certainly was aware of the  
15 apprehension of children because I was apprehending  
16 children. And that was what I did. And at the same time  
17 reflecting on what I was doing, in fact, the Monday  
18 morning in an academic environment, so I was well  
19 positioned, I think, to get the complete picture of what  
20 was going on. Whether I processed that in a manner, with  
21 the clarity I have today, I'm not sure. But it was a  
22 dawning of realization about some real issues in the  
23 field with respect to aboriginal kids.

24 33. Q. This is particularly through your  
25 postgraduate period, is that --

00014

1 A. Yes.

2 34. Q. You had alluded to it, but whether  
3 it's -- sometime in here you have street experience or

4 on-the-ground experience with Childrens Aid in Winnipeg.

5 A. Sure.

6 35. Q. Other aspects of child welfare  
7 services.

8 A. I have been a practitioner in child  
9 welfare, in the protection side, since the '70s, since  
10 '73, in fact.

11 36. Q. And how many years in Winnipeg before  
12 coming to Toronto?

13 A. I came to Toronto in '79/80, about a  
14 year after I graduated.

15 37. Q. Do you know either of the Plaintiffs,  
16 Marcia Brown or Robert Commanda?

17 A. No.

18 38. Q. Never met them?

19 A. No.

20 39. Q. One of the things that you refer to in  
21 your affidavit -- let me just take you to the paragraph,  
22 5, I think. Let me look at it to know. Paragraph 5.  
23 This is, in a sense, on the treatment side, if I might  
24 call it that. "The reclaiming of their identity as an  
25 Indian or native person," it begins, that paragraph.

00015

1 A. Mmm-hmm.

2 40. Q. Is a component of the treatment or the  
3 response side, does it have to be tailored to the actual  
4 cultural connection that the person is trying to  
5 reestablish the connection, that is linguistic based,  
6 ceremonial based, spiritual based or can it be one size  
7 fits all?

8 A. I don't understand the question.

9 41. Q. Well, you have a number of people that  
10 you are dealing with present day in Toronto.

11 A. Sure.

12 42. Q. And they come -- presumably some are  
13 Cree, some are Ojibwa, some are Iroquois --

14 A. It's very multi-cultural, yes.

15 43. Q. In terms of the treatment -- I call it  
16 treatment -- is it necessary to try to establish the link  
17 with that community, Cree, Ojibwa, Iroquois, whatever it  
18 might be, or is that -- that's what I meant and may have  
19 sounded pejorative, I apologize -- of one size fits all?  
20 It is a common treatment or is the link to the actual  
21 heritage of some consequence?

22 A. It's a common treatment. And where an  
23 actual link is possible, certainly that is something that  
24 seem to be valuable and something that the client  
25 generally seeks to have happen on some level, although it

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1 is different for every -- every case has some differences  
2 with respect to the resolution. They share commonalities  
3 with respect to the problem.

4 44. Q. Yes. And there are commonalities with  
5 respect to the problem, but are there also uniquenesses  
6 that you have to take into account?

7 A. Well, there's a difference between a  
8 longhouse person and a mushkago person from northern

9 Ontario and a blood person from Alberta. There are some  
10 strong cultural differences, but there's some, also,  
11 fairly common elements in terms of world view and sense  
12 of aboriginalness, which is kind of a difficult one to  
13 find.

14 45. Q. What about the role of their actual  
15 individual experiences, that is whether they were from  
16 homes that were healthy and --

17 A. You mean their natural homes?

18 46. Q. Yes, their natural home. Whether it  
19 was healthy or unhealthy, dysfunctional, whether there  
20 was disease or alcohol or anything else. And I'm sorry I  
21 picked the negative ones, but there are positive ones,  
22 too. What about the uniqueness of that aspect of it?  
23 How does that figure in terms of the response you bring  
24 to it?

25 A. It's not the most relevant. The

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1 degree of difficulty they may have had in their family  
2 life would not be the most salient future in terms of  
3 their identity and issues related to identity. Although  
4 if you equate aboriginal culture with a bunch of negative  
5 experiences, you know, I can't deny that that won't have  
6 some impact on your view of things. You know, here we're  
7 in the area of individual kind of history and resilience  
8 and those sorts of things, so it's hard to give you a  
9 clear answer. Actually, your question for me is not all  
10 that clear in truth, but we'll move forward.

11 47. Q. Well, I was dealing with the extent --  
12 you picked up part of it -- the extent to which cultural  
13 context, whether it's longhouse or something different,  
14 has an impact on either the character of the problem or  
15 the response from a social work perspective. And then I  
16 was shifting. So that was one question we were dealing  
17 with. And I'm not saying don't deal with it, that was  
18 one question.

19 The other question had to deal with the  
20 individual experience, whether the person is longhouse or  
21 otherwise, but the individual experience, the extent to  
22 which that had an impact on the nature of the problem  
23 that they presented to you or the resolution that was  
24 required.

25 A. Everything has a -- you know, I can

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1 only answer in a very general way. Everything has a  
2 context. Personal problems have a contextual base to  
3 them or a contextual influence. That would be certainly  
4 the case in the experience of aboriginal people who are  
5 expressing problems who may have gotten involved in the  
6 child welfare system, absolutely.

7 48. Q. If I can take you to your article. I  
8 know you probably haven't read this in awhile, so I'm  
9 happy to give you moments to see it again. Here it is,  
10 the one with the big stamp on it. Now I have asked you  
11 if this still reflected your view. And I'm going to ask  
12 you about three particular parts. And I'm just  
13 highlighting this. But I've asked you about the whole

14 article, so I'm not trying to take these out of context.  
15 But at the very beginning, when you're dealing with the  
16 introduction, in the very first paragraph you say this,  
17 "Despite court battles on individual cases, human rights  
18 tribunals related to class actions from both sides and  
19 considerable newspaper and related media attention to the  
20 issue, there exists no real consensus on what is in the  
21 best interest of aboriginal children in need of long-term  
22 care." I'd like to think there has been some positive  
23 evolution since the time you wrote that to today, but  
24 what's the state of affairs?

25 A. I think we're not much further ahead  
00019

1 than when that article was written. There's a  
2 fundamental -- I don't know if it's perceptual, because  
3 it's certainly not in science. But in this -- let me  
4 just tell you, this comes from the experience associated  
5 with working in the real world and being party to and  
6 observing particularly litigation associated with the  
7 issue of what's the best interest of an aboriginal kid.  
8 And there are two conflicting often perceptions at play.  
9 One is a bond between a child, aboriginal child in this  
10 case, and a care provider, non-aboriginal often in this  
11 world with respect to foster care, would be sufficient to  
12 predict success in later life. And there are another  
13 perception, that I hold more dearly, that the bond is, in  
14 fact, the independent variable in that resolution of  
15 identity and the appropriate time in adolescence would  
16 be, in fact, what trumps the bonding issue. And that  
17 bonding has no particular of successful resolution with  
18 respect to aboriginal identity. And there has been many  
19 forums where that has been debated. And the debate, I  
20 think, has continues. This is not being submitted. It's  
21 just an reference in an article that I just pulled from a  
22 friend of mine called, "Cultural Restorative Child  
23 Welfare Practice." A special -- and this is on cultural  
24 attachment theory. This particular author is attempting  
25 to -- and I think she's getting there. Identified third

00020

1 paradigm, either or. It talks about how do aboriginal  
2 kids attach and can you attach to a community, a  
3 collective and a culture. And is that, in fact, how  
4 aboriginal kids successfully attach. I think she's on  
5 the right track.

6 49. Q. Sorry, the name of the article is or  
7 where was it published?

8 A. It's actually the same...

9 50. Q. If you could just give me the front  
10 page and we can probably track it down. We'll make Mr.  
11 Wilson track it down.

12 A. Estelle Simard.

13 51. Q. Estelle Simard. And it's published in  
14 2009.

15 A. Yes.

16 52. Q. "First Peoples Child and Family  
17 Review."

18 A. Which published my article, in fact,

19 originally.

20 MR. YOUNG: Mr. Wilson, I expect we can  
21 find this, but if we can't --

22 MR. WILSON: If you can't, let me know.

23 THE DEPONENT: I'll leave a copy with  
24 Jeff.

25 BY MR. YOUNG:

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1 53. Q. If I can take you back on through your  
2 2004/05 article, to page 191 of the -- page number is at  
3 the bottom there. See that? And about half way down,  
4 you cite some numbers from Department of Indian Affairs.  
5 And then you continue, "Among many professionals,  
6 aboriginal and non-aboriginal alike, there is emerging  
7 consensus that the shift toward the control of aboriginal  
8 child welfare by aboriginal communities holds more  
9 promise than historical mainstream child welfare  
10 practices. Although aboriginal child welfare is still in  
11 the early stages of development, many people believe that  
12 aboriginal children are now better off in the newer  
13 developing aboriginal controlled systems than they were  
14 before." Has that progressed since 2004/05 or is the  
15 debate still continuing and the jury is still out?

16 MR. WILSON: How is that relevant in this  
17 case? Is it a question that goes to his expertise or his  
18 bias? I mean, how is that relevant?

19 MR. YOUNG: Well, I'm entitled to  
20 cross-examine on his affidavit.

21 MR. WILSON: Yes, but you're entitled to  
22 cross-examine on his affidavit within the context of the  
23 certification motion not as a discovery.

24 MR. YOUNG: Yes.

25 MR. WILSON: So if you're not going to

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1 tell me how it's relevant, than I'm going to tell him not  
2 to answer the question. Bring a motion, do what you  
3 want.

4 MR. YOUNG: Well, I'll take it he adopted  
5 it and we'll carry on from there.

6 BY MR. YOUNG:

7 54. Q. Now one of the things that you decry  
8 in your paper is, and I asked you about, was the state of  
9 research in 2004 or '05 was inadequate. Has that  
10 improved?

11 A. Yes, I think it has.

12 55. Q. We have the article that you referred  
13 to, for example.

14 A. Yes, for example that one. But I know  
15 there's been -- Dr. Trocné out of McGill University has  
16 done a lot of work through a national study, actually,  
17 the childhood study. And there was a particular focus on  
18 aboriginal kids, is a special consideration. So what has  
19 been most significant, it's not so much that, but the  
20 development, in fact, in this particular journal at First  
21 Nations Child and Family Review. The First Peoples Child  
22 and Family Review coming out of the First Nations Child  
23 Caring Society. And they have done a lot of work in

24 furthering the knowledge base. They have put together a  
25 bibliography that is tremendous in capturing not only the  
00023

1 Canadian, but this phenomena in Canada is not unique to  
2 Canada. If you go to New Zealand or Australia or even  
3 Wales, for that matter, to see how child welfare can be a  
4 part of colonial dynamic. And then there's been a lot of  
5 from the structural and to the personal with respect to  
6 people's experience and what that was work done through  
7 these journals. In fact there's a lot of aboriginal  
8 academics now in various universities and they all have  
9 a -- it's a hot button issue for aboriginal people, as it  
10 would be, I think, for any population that has lost their  
11 children as much as they have.

12 56. Q. So in terms of this, are we talking  
13 about the last decade that this has --

14 A. In terms of the uptick in knowledge  
15 base?

16 57. Q. Yes, exactly.

17 A. Yes, yes, more -- but it was -- it  
18 didn't just start spontaneously. It in fact came -- its  
19 seeds were sewn in the '70s, I think, through -- I see  
20 myself as a small piece of that, but more of my mentors  
21 at the time, Peter Hudson and Brad MacKenzie. I think  
22 we've seen that with those articles on colonialism and  
23 child welfare.

24 58. Q. Beginning to talk about the problem  
25 and proposed solutions?

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1 A. Beginning to say there's something  
2 wrong here.

3 59. Q. You undoubtedly followed the auditor  
4 general's report dealing with what the --

5 A. The federal auditor general's, yes.

6 60. Q. And the suggestion was, although it is  
7 hard to understand the exact basis for the numbers, but  
8 the suggestion was that the numbers still continue to be  
9 bad despite changes like the 1985 act and so forth.

10 A. Yes.

11 61. Q. What --

12 A. Well, it says something about the  
13 condition of aboriginal people and children. That those  
14 conditions -- child welfare is an institution that deals  
15 with deficits in the social fabric, deals with  
16 marginalized and poor people, generally. And without  
17 structural changes in the conditions of life for  
18 aboriginal kids, the statistics will continue, I think.

19 62. Q. All right. Thank you for coming.

20 A. That's it.

21 REPLY BY MR. WILSON:

22 63. Q. One question. Mr. Richard, at 12:23,  
23 at least my notes indicate, you were asked a question,  
24 you gave an answer talking about the personal experiences  
25 of the people who come to you play a role; do you

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1 remember saying that?

2 A. Just, no, but if I -- I would say it

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again.

64. Q. So can you turn to paragraph 4 of your affidavit. Can you read that, please.

A. "In my experience --

65. Q. No, you don't have to read it out loud. Read it to yourself. Does anything that you stated here today to my colleague change what you've written there?

A. Not at all.

MR. WILSON: Thank you.

--- Whereupon proceedings adjourned at 12:38 p.m.

I HEREBY CERTIFY THE FOREGOING  
to be a true and accurate  
transcription of my shorthand notes  
to the best of my skill and ability.

---

DAYNE SNELL  
Court Reporter

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARCIA BROWN and ROBERT COMMANDA,  
Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,  
Defendant.

--- This is the Cross-Examination of HARVEY ARMSTRONG, a witness herein, on his affidavit sworn May 28th, 2009, taken at the offices of Atchison & Denman Court Reporting Services Limited, 155 University Avenue, Suite 302, Toronto, Ontario, M5H 3B7, on Tuesday, the 2nd day of February, 2010.

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APPEARANCES:

JEFFREY WILSON For the Plaintiffs  
OWEN YOUNG For the Defendant  
MICHAEL BADER, Q.C.

Also Present:

Nicholas Mitchell Department of Indian Affairs  
Shannon Kinch Articling Student

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1 --- Upon commencing at 10:00 a.m.  
2 HARVEY ALEXANDER ARMSTRONG; Affirmed.  
3 CROSS-EXAMINATION BY MR. YOUNG:  
4 1. Q. Could I have your full name, please,  
5 for the record?  
6 A. It is Dr. Harvey Alexander Armstrong.  
7 2. Q. You swore an affidavit in this case.  
8 And I think there's a clean copy in front of you. The  
9 affidavit was sworn May 28th, 2009.

10                           A. Thank you for the clean copy. Yes, I  
 11 think.  
 12 3.                        Q. Well, have a quick look at it.  
 13                           A. I just assume you're not --  
 14 4.                        Q. Flip to the last page, you'll see a  
 15 date on there.  
 16                           A. Okay. Last page, date, yes, 28th day  
 17 of May.  
 18 5.                        Q. 2009. Could we mark that as Exhibit  
 19 1.  
 20                           MR. BADER: Can I just have this, please?  
 21                           THE DEPONENT: Okay.  
 22                           EXHIBIT NO. 1: Affidavit of Harvey  
 23 Alexander Armstrong dated May 28th, 2009.  
 24                           BY MR. YOUNG:  
 25 6.                        Q. Dr. Armstrong, the affidavit

00006  
 1 includes -- let's characterize this -- an outdated CV; do  
 2 you have an updated CV?  
 3                           A. Yes, it is about 40 pages long.  
 4 7.                        Q. Yes.  
 5                           A. Probably the last time I did anything  
 6 with it was about five years ago.  
 7 8.                        Q. So the essence of it is in the version  
 8 that's attached to this affidavit?  
 9                           A. It's abbreviated.  
 10 9.                        Q. The Readers Digest version?  
 11                           A. Yes, more or less.  
 12 10.                       Q. You're a psychiatrist?  
 13                           A. I'm a psychiatrist.  
 14 11.                       Q. That means you're a medical doctor  
 15 dealing with mental health and other kinds of issues.  
 16 Can you describe that for me? You're a medical doctor?  
 17                           A. Yes, I'm a medical doctor.  
 18 12.                       Q. And the area of your specialty other  
 19 than -- if someone were to ask you, What does a  
 20 psychiatrist do, what's the area of specialty?  
 21                           A. I deal with people who have mental  
 22 disorders, emotional disorders and many who have severe  
 23 trauma in the past.  
 24 13.                       Q. Difference between a psychiatrist and  
 25 a clinical psychologist? I assume a psychologist cannot

00007  
 1 prescribe or treat medically?  
 2                           A. Well, that's changing a little bit  
 3 some places.  
 4 14.                       Q. Yes.  
 5                           A. But, yes, it's that I have an MD.  
 6 15.                       Q. Yes.  
 7                           A. That means I've taken out appendices  
 8 and done anaesthetics and set broken bones and stuff like  
 9 that that a psychologist normally don't do.  
 10 16.                       Q. I've read in some places that  
 11 psychologists do talk therapy, but psychiatrists may use  
 12 other modalities.  
 13                           A. I think psychologists use many  
 14 different modalities, also, depending on their training

15 and their knowledge and what they've done since they've  
 16 graduated.  
 17 17. Q. You indicate in your abbreviated CV  
 18 that you testified before the courts in civil cases.  
 19 A. I have.  
 20 18. Q. And criminal cases, too.  
 21 A. That's correct.  
 22 19. Q. The civil cases, I did track you down,  
 23 you'll be honoured to know that we tried to figure them  
 24 out.  
 25 A. Maybe you'd give me a copy.

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1 20. Q. One is -- and this is in no particular  
 2 order other than the order they're stacked in front of  
 3 me. One is Ken Deluca's case, is that one of them?  
 4 A. Yes, I was involved in that in  
 5 assessing the victims for damages.  
 6 21. Q. That's just a case of sexual abuse,  
 7 essentially, physical abuse?  
 8 A. The real issue is the administration  
 9 and the principal of the separate school board in Sault  
 10 Ste. Marie had all sorts of notifications that their  
 11 students were being sexually assaulted by Ken Deluca and  
 12 took no actions to pass the trash somewhere else, which  
 13 was there want in those days.  
 14 22. Q. This was in the mid-1990s?  
 15 A. Somewhere like that, I don't know.  
 16 23. Q. But I'm trying to fix the decade.  
 17 A. Well, you know the decade, it's right  
 18 here.  
 19 24. Q. It says 1994 here, but it says he was  
 20 charged. I don't know when it got wrapped up because a  
 21 civil case it can take a long time.  
 22 A. He was charged before, actually, I was  
 23 involved.  
 24 25. Q. Yes. The civil case followed after  
 25 that.

00009

1 A. Yes.  
 2 26. Q. Was there an aboriginal component to  
 3 that?  
 4 A. Not much, no.  
 5 27. Q. One of the other cases was in  
 6 Kingston.  
 7 A. Yes.  
 8 28. Q. John Gallienne.  
 9 A. John Gallienne, that's right.  
 10 29. Q. And this had something to do with St.  
 11 George's Cathedral in Kingston, he was the choir master.  
 12 A. He was a choir master. And he had  
 13 been convicted in the criminal courts already.  
 14 30. Q. So your role in the civil case was?  
 15 A. To help document the extent of the  
 16 damages and the costs to the victims and their families.  
 17 31. Q. Was this, again, a case of physical  
 18 and sexual abuse?  
 19 A. Well, you know, abuse is interesting

20 because it has many components. And I don't think you  
21 can sexually abuse without emotionally abusing, too, so  
22 you can't separate that. I don't recall dealing with  
23 many episodes of physical violence against the kids. He  
24 had the power, so he didn't have to use any violence.  
25 32. Q. Was there an aboriginal component to

00010

1 that?

2 A. Probably not, but I don't know. I  
3 have forgotten. It is a long time ago.

4 33. Q. I take it you weren't called in  
5 because there was a uniquely aboriginal component, you  
6 were called in because these children were subjected to  
7 abuse, which had the elements of power and so forth that  
8 you've described.

9 A. I think I was called in because I had  
10 written an article in a textbook, a chapter in a textbook  
11 on abuse of children, sexually. And I had been  
12 testifying in the courts here and had run programs in  
13 which lots of the people had been abused.

14 34. Q. Abuse of children?

15 A. Abuse of adults who were later --  
16 abuse of children who later became adults. And as a  
17 result became very ineffective parents. And as a result  
18 of parental response, through their anger and anti-social  
19 behaviour, which was fear, which was about transference.  
20 They behaved worse and worse.

21 35. Q. Yes.

22 A. So many of them were refusing to  
23 involve themselves in any kind of helping of programs, so  
24 most of them continued in very unpleasant courses.

25 36. Q. And the last of the three was Doug

00011

1 Brown's case.

2 A. Yes, Doug Brown, UCC.

3 37. Q. This is Upper Canada College.

4 A. Yes.

5 38. Q. Same kinds of issues?

6 A. Well, similar issues. Damages to  
7 children and their families as a result of the Upper  
8 Canada College administration knowing about our boy doing  
9 things with kids and not intervening. They knew about  
10 it, they didn't do anything.

11 39. Q. And I may not be using the right  
12 shorthand, so correct me if I'm wrong, but it was  
13 essentially a sexual abuse kind of a case?

14 A. And with violence, too.

15 40. Q. Yes.

16 A. There was some. And there was  
17 emotional abuse, too. Emotional because of the -- but  
18 the main issue was sexual abuse.

19 41. Q. I assume I'm safe in thinking that if  
20 it was Upper Canada College, it didn't have a significant  
21 aboriginal component?

22 A. No, it did not have a significant  
23 aboriginal component.

24 42. Q. Do you know either of the Plaintiffs,

- 25 Marcia Brown and Robert Commanda?  
00012
- 1 A. I don't know either of them.  
2 43. Q. Never met them, even?  
3 A. Never met them, no.  
4 44. Q. The affidavit that you swore, did you  
5 take pen to paper and write it or was it written for you?  
6 A. I wrote it for myself. Unfortunately,  
7 I didn't have a secretary at the time to type, so I typed  
8 it.  
9 Q. Well, in the affidavit -- it is the  
10 one that's in front of you with the stamp on it -- one of  
11 the reason I ask that question of you is, if I take you  
12 to paragraph 3, doctor, you've chosen to insert the word  
13 "genocide".  
14 A. Uh-huh.  
15 46. Q. Now I know that you haven't come to  
16 court as a lawyer, you've come as a medical doctor and  
17 psychiatrist. So what medical meaning did you want us to  
18 take from that as a reader of your affidavit?  
19 A. What page is that on?  
20 47. Q. It is at paragraph 3, it's right on  
21 the front page near the bottom. You say, "In Ontario --  
22 A. I have got it.  
23 48. Q. Bear with me a second. For the sake  
24 of the reporter, we have to actually talk at separate  
25 times. Let me just bring it to your attention. "In  
00013
- 1 Ontario, our First Nations people experienced intentional  
2 and inadvertent cultural/identity genocide." So what was  
3 the medical meaning in genocide that you wanted us to  
4 take from that word?  
5 MR. WILSON: Psychiatric meaning?  
6 MR. YOUNG: The psychiatric meaning,  
7 medical psychiatric, both.  
8 THE DEPONENT: There's lots of documented  
9 history. About 90 percent of the aboriginal population  
10 died off in epidemics.  
11 MR. YOUNG: Yes.  
12 THE DEPONENT: And that really harmed  
13 their capacity to have knowledge about elders and older  
14 family members to advise. And in addition to that, there  
15 was the Chilliwack incident, you probably know about, in  
16 which small pox blanketed -- the Pontiac uprising. Small  
17 pox blankets from the small pox ward were cut up in  
18 little pieces and made in nice gifts. And gave them to  
19 as part of a peace offering. And as a result, there was  
20 another huge epidemic of small pox.  
21 BY MR. YOUNG:  
22 49. Q. What was the period of time in which  
23 that happened?  
24 A. When the British were in charge. I  
25 have forgotten the exact date.  
00014
- 1 50. Q. So take us into the late 1600s, early  
2 1700s?  
3 A. Late 16/1700s.

4 51. Q. Is that what you were referring to --

5 A. Well, in addition to that, the  
6 residential schools --

7 52. Q. Yes.

8 A. -- were a bit of a problem in that  
9 children were taken away from their families and their  
10 communities and put in residential schools, where there  
11 were lots of pedophiles, both male and female, in which  
12 there was a lot of physical violence. You know, one of  
13 the common characteristics is when you went into the  
14 residential school, you had your hair cut. The next  
15 thing you had to do would be forbidden from speaking your  
16 own language.

17 53. Q. Yes.

18 A. You had to worship at their chapel,  
19 which was not their own religion. You had to adopt  
20 western clothing. You weren't allowed to do any of the  
21 things that your parents would have done with you, which  
22 take you to the fish camp, basically take you out  
23 trapping and teach you how to live in the environment and  
24 teach you about their understanding of spirituality, the  
25 creator, the spirit quest, things like that. They were

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1 all deprived of that.

2 54. Q. So that's what you're referring to in  
3 paragraph 3 when you talk about "intentional and  
4 inadvertent cultural/identity genocide"?

5 A. That's part of it. And then the  
6 bringing in of all sorts of authorities. You know, the  
7 Indian agent had a pile of authority. He was like an  
8 ambassador. He had tremendous amount of power and a  
9 tremendous amount of control about what resources came  
10 into the community.

11 55. Q. But, doctor, I'm asking you about the  
12 medical aspect of it. I mean, I appreciate the  
13 historical component, but I'm asking you about what we  
14 were to take from this that your medical and psychiatric  
15 expertise would bring to the term.

16 A. Well, there's tons and tons of  
17 evidence that this kind of behaviour towards children is  
18 incredibly damaging. Damaging psychologically -- if you  
19 want to look up the Centre for Disease Control, ACE  
20 studies, "Adverse Childhood Experiences." This isn't  
21 just about aboriginals. Any kind of disease you want to  
22 think about, (heart disease, hypertension, diabetes,  
23 suicide, incarcerations, domestic violence) anything you  
24 can try and think of, is far more frequent amongst  
25 children who have many adverse experiences. And the data

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1 is collected by researchers and by psychiatrists about  
2 children. And the more adverse experiences that  
3 children have and the more intense they are and the  
4 longer they last, the more destructive they are to  
5 children in the future.

6 And, in particular, the aboriginals lost  
7 their capacity to be Indians. In my experience, I've got  
8 lots of people who were in residential schools, they were

9 too far away from their home village to take home in the  
 10 summer. And they were in their residential school up to  
 11 the age of 16. They returned home to their villages,  
 12 they knew nobody, they couldn't speak the language.  
 13 56. Q. Doctor, did you have experience with  
 14 any residential schools directly or is this based on your  
 15 reading of the history?

16 A. I have never visited them, but I've  
 17 had lots of patients who have been in residential schools  
 18 and described their experiences, including experiences of  
 19 sexual assault, violence, et cetera.

20 MR. YOUNG: Now, Mr. Wilson, just so I  
 21 know, in terms of common issues that you've propounded,  
 22 is there a claim based upon the epidemics and diseases of  
 23 the 1600s and 1700s; is that claim being made in this  
 24 case?

25 MR. WILSON: The claim that's being made  
 00017

1 is that at the time the European arrived, there was a  
 2 certain culture and certain identity that the Indians  
 3 have and there was a duty upon the crown going back to  
 4 the 1600s/1700s. It's your cross-examination --

5 MR. YOUNG: No, I understand that, but I'm  
 6 trying to make sure that I don't spend a lot of time on  
 7 something that's not the subject of the claim, but might  
 8 be the subject of his evidence. Is there a claim for  
 9 compensation for the epidemics of the 1600s and 1700s, or  
 10 is this just for context?

11 MR. WILSON: I think that that's fairly  
 12 obvious. We've identified the class from the periods  
 13 just before the -- from 1964/65 to 1985. How could we be  
 14 possibly claiming that?

15 MR. YOUNG: I'm sorry, how could you  
 16 possibly?

17 MR. WILSON: How could we be possibly  
 18 claiming that, the pleading speaks for itself.

19 MR. YOUNG: Thank you.

20 MR. WILSON: And you've invited this whole  
 21 area by trying to limit it to the question of medicals  
 22 saying that he's only in the field of medical.

23 MR. YOUNG: Well, he carries on in the  
 24 paragraphs after that, so we'll deal with it. But is  
 25 there a claim made in this action for compensation for  
 00018

1 injuries or other losses sustained as a result of  
 2 residential school experiences? I take it that's  
 3 excluded.

4 MR. WILSON: The pleading speaks for  
 5 itself.

6 MR. YOUNG: Thank you.

7 THE DEPONENT: I think that's a separate  
 8 issue that's being dealt with in different forums.

9 BY MR. YOUNG:

10 57. Q. Now, doctor, in this material and in  
 11 the pleadings and in other places there have been  
 12 descriptions of the circumstances of children who were  
 13 from Indian or aboriginal communities and got into the

14 child welfare system and were either placed in  
15 non-aboriginal foster homes or adopted out into  
16 non-aboriginal homes. And the term we've come to use is  
17 that they were placed out or there was a placement out or  
18 they were adopted out. And is that a term that makes  
19 sense to you, if I say "placement out," you know I mean  
20 placement out into a non-aboriginal home?

21 A. I can hear your definition, yes.

22 58. Q. And it was no more than that, doctor.  
23 I just want to make sure we actually are using the same  
24 vocabulary, that's all?

25 A. That's all right.

00019

1 59. Q. Okay. Now I had asked you about the  
2 genocide point. And then you gave me some information  
3 about the epidemics, they're described in paragraph 4 of  
4 your affidavit. And then the residential school  
5 experience described at paragraph 5. It's touched on  
6 there. And I'll come back to it. But just in terms of  
7 the impact of experiences of that type, one of the  
8 impacts or one of the effects that you describe --

9 A. What type are you talking about?

10 60. Q. You describe them. Let me take you  
11 forward to paragraph 7.

12 A. Paragraph 7, okay.

13 MR. WILSON: One second. You started off  
14 in this question at paragraph 3 --

15 MR. YOUNG: Yes.

16 MR. WILSON: Then you told him you're  
17 going to paragraph 5 --

18 MR. YOUNG: Yes, I said I'd come back to  
19 it.

20 MR. WILSON: Paragraph 5, you said that  
21 you gave a statement as to what you think paragraph 5  
22 means. And then you're at paragraph 7.

23 MR. YOUNG: Yes.

24 MR. WILSON: So what do you want him to  
25 look at?

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1 MR. YOUNG: Can we go to paragraph 7,  
2 please.

3 MR. WILSON: Paragraph 7.

4 MR. YOUNG: Yes. All right.

5 BY MR. YOUNG:

6 61. Q. And the paragraph begins, "The effects  
7 were as follows." So when I had asked you a question  
8 about effects, that's where I drew the term.

9 A. Thank you.

10 62. Q. And you say in sub 4 that, "Many had  
11 to deal with the negative and destructive stereotypes of  
12 aboriginals that appeared in the media. The had learned  
13 to route for the cowboys winning against the cruel bad  
14 Indians as barn burners et cetera." Doctor, in terms of  
15 adoption out or placement out, I assume you're not  
16 suggesting that adoptive parents required their  
17 aboriginal children to route for cowboys when they saw  
18 them on television?

19 A. I was referring to the culture that  
20 had been imported into aboriginal communities and how  
21 their own cultures were suppressed by that.

22 63. Q. Yes.

23 A. And there was also a negative  
24 stereotype. One of the things that happens when people  
25 adopt, they adopt either because the unconscious

00021

1 motivation is to steal somebody else's child because they  
2 can't produce or it's from a rescuer fantasy. And both  
3 of those are very problematic.

4 64. Q. Yes. But in this particular example,  
5 is what you're talking about pervasive American pop  
6 culture; is that what you're talking about?

7 A. I'm talking about sitting in a school  
8 house, a log school house, where the teacher lives in the  
9 back of the school house. And sitting down with a whole  
10 pile of students and watching them watch western movies,  
11 movies, and have them cheer for the non-aboriginals. And  
12 I can also say that, in my context, there was a  
13 pervasive, back in the 60s, there was a pervasive  
14 discrimination against aboriginal people, almost  
15 everywhere. And many of them told me I thought I was a  
16 normal human being until I got into a white town and then  
17 I learned I was a dirty drunk and uneducated aboriginal.  
18 There was all sorts of stereotypes directed at them as  
19 they moved into our culture.

20 65. Q. The reason I'm asking you, doctor, is  
21 I follow all that you've said, but you've described the  
22 situation where in a school house, for example, children  
23 would be required to watch these movies. But we're  
24 looking focused here --

25 A. They're not required, this is an

00022

1 evening activity. They're a bit bored.

2 66. Q. Fair enough. But we're talking about  
3 placement out into foster home and adoption out into  
4 non-aboriginal adoptive homes. And so what I'm asking  
5 about is I take the example from a different setting, but  
6 are you suggesting that in the placement out and the  
7 adoptive out setting, this same kind of thing happened?

8 A. Yes.

9 MR. WILSON: Don't you think it's fair,  
10 really, don't you think it's fair if you're going to put  
11 paragraph 7 to him, it's your cross-examination, but I  
12 think it's only fair to the witness, you're putting  
13 paragraph 7 to him, "he says the effects were as  
14 follows," then you focus in, understandably, on the word  
15 "the effects," but "the effects were as follows" follows  
16 from paragraph 6.

17 MR. YOUNG: Yes. I'm entitled to ask  
18 about whether or not when he's talking about movies being  
19 shown to children and he says that they had learned to  
20 route for the cowboys whether his evidence is that that's  
21 a result of the adoptive placement experience or whether  
22 that's a result or occurred in some other context.

23 MR. WILSON: Good, so now we have the

24 question.

25 MR. YOUNG: Well, with respect, that was

00023

1 the question. And if you let me ask the questions, then  
2 we'll get through this.

3 MR. WILSON: No, no, you're entitled to  
4 ask the questions, but you're not entitled to ask six  
5 questions and put six paragraphs to the witness.

6 MR. YOUNG: I'm entitled to ask him one  
7 question at a time.

8 MR. WILSON: So do it one question at a  
9 time.

10 BY MR. YOUNG:

11 67. Q. Doctor, you said that in school houses  
12 children were not required, but as a recreational  
13 activity they sat and watched movies because they were  
14 bored. And I'm asking you, because you've sworn this  
15 affidavit in a case involving adoption out and placement  
16 out, whether it's your evidence that in fact adoptive  
17 parents or foster parents did this same thing, required  
18 their children to route for the cowboys against the cruel  
19 bad Indians.

20 A. I don't know enough about all the  
21 adoptive children to know what their parents did. I'm  
22 sorry I can't comment on that. But what I can say is,  
23 when aboriginal children were moved into white children,  
24 they were at a disadvantage in lots of different ways.  
25 And I followed quite a few of them over time. And many

00024

1 of them got into great deal of difficulties in  
2 relationship to the many stereotypes that were directed  
3 at them in white communities.

4 68. Q. Does that include children who were  
5 moved into white communities in a variety of different  
6 ways, either because they moved their, because their  
7 parents moved their, because they were adopted there,  
8 they were placed there et cetera?

9 A. And back in that time, there was tons  
10 of prejudice against aboriginal people. And it has  
11 listed over time, thank goodness. And even if they moved  
12 into white communities, there was prejudice, but in some  
13 ways the parents, if they lived with their parents, they  
14 could get some protections.

15 69. Q. Yes. If they lived with their  
16 biological parents, you mean? Is that what you mean?

17 A. Yes. I also want to say that I've  
18 been in many, many native communities and I've talked to  
19 a ton of kids who were in the communities and I've seen  
20 kind of miseries there. And I think that the people who  
21 did the scooping had no idea of the strength of their  
22 communities, had no idea of the number of relatives they  
23 had. And the Children's Aid workers that came in by  
24 plane, sometimes with me, early on in the 60s everything  
25 was by charter. So it was an incredibly expensive trip.

00025

1 There were no air strips, there was no scheduled  
2 airlines. Came in by charter. It was very, very

3 expensive for them to come in. And then they would come  
4 in for just a little while and wouldn't really know the  
5 extent that these kids were embedded in a very large  
6 community and had many, many substitute parents who were  
7 available in their communities. So there's no awareness  
8 of...

9 70. Q. Did you say they came in with you,  
10 that you were on some of these trips?  
11 A. Most of them came in on their own  
12 charters --

13 71. Q. Yes.  
14 A. -- sometimes there would be an extra  
15 seat and somebody would jump on.

16 72. Q. And would you be one of the people who  
17 would jump on periodically?  
18 A. No, no, I would come up initially and  
19 just charter some floats and skis because there were no  
20 air strips.

21 73. Q. Yes.  
22 A. And then later on, the air strips  
23 appeared after this commission on air safety in  
24 northwestern Ontario. And there was a condemnation of  
25 all the crashes there had been.

00026

1 74. Q. My question, doctor, wasn't about  
2 airplanes.  
3 A. Okay.

4 75. Q. My question was about whether or not  
5 when child care workers went into communities, you were  
6 there either with them or at the same time.  
7 A. I was with them at the same time,  
8 quite often. And I got to know some of them.

9 76. Q. Yes. And were you consulted as to  
10 your views, at the time, on whether or not interventions  
11 were appropriate or whether removal of children out of  
12 the community was appropriate?  
13 A. I would say seldom.

14 77. Q. Seldom. Did you express your views at  
15 the time?  
16 A. Well, one of the difficulties -- I'm a  
17 child psychiatrist, too.

18 78. Q. Yes.  
19 A. And one of the difficulties that we  
20 had was in getting access to children. The teachers  
21 would identify which child they thought was disturbed.  
22 And we would ask the teachers to get a consent form to  
23 the parents and have the parents give consent for us to  
24 see them. Most of the teachers wouldn't go through that  
25 rigamarole, so we didn't get the number of referrals we  
00027

1 wanted. So we didn't provide good service to children or  
2 much service to children.

3 79. Q. What period of time are you talking  
4 about, doctor?  
5 A. I started up there in 1971.

6 80. Q. Yes. And can you give me some  
7 approximation of how many times you would have flown into

8 communities to face this kind of problem you've  
9 described?

10 A. Well, I'd be there at least every six  
11 months. And I'd also supervise the aboriginal workers I  
12 trained and developed. And I supervised them for six  
13 hours a week by telephone.

14 81. Q. Did the aboriginal workers -- what was  
15 their role in the communities?

16 A. To provide services, to decide when  
17 somebody had -- with a mental health problem or an  
18 emotional problem -- had to leave. And when I went  
19 there, the mental health services really consisted of the  
20 OPP coming in, putting somebody in handcuffs, taking them  
21 to the Thunder Bay mental hospital and giving them  
22 anti-psychotics and returning them three months later  
23 from a hospital where nobody spoke their language. When  
24 I left, the Thunder Bay hospital had a lot of people who  
25 spoke the language and this veterinary psychiatric  
00028  
1 care had ceased.

2 82. Q. So what period are we talking about  
3 for that?

4 A. '71 to about '91, I think.

5 83. Q. Roughly a 20-year period.

6 A. Yes.

7 84. Q. So when you're going into communities  
8 in '71, are you able to give me some -- you said about  
9 every six months this would happen.

10 A. Or more frequently. I mean, what I  
11 did is I recruited and hired a number of psychiatrists  
12 and another other mental health workers, physio,  
13 occupational therapists, child care workers,  
14 psychologists. And what we did is we tried to assign  
15 each psychiatrist to a limited number of communities.  
16 There'd be a nursing station and then satellites in  
17 there. And the result was that most of them stayed on  
18 for about as long as I did. And they got to more about  
19 the community than any of the other healthcare providers.  
20 The other healthcare providers turned over quite rapidly  
21 as did the Childrens Aid people. And the nurses turned  
22 over too rapidly. You couldn't train them because they  
23 would be gone before we got them trained and issued. So  
24 we got to be the historians of the community in terms of  
25 health changes, modifications.

00029  
1 85. Q. So did you have any role in assessing  
2 whether it was appropriate for a child to be removed from  
3 their family by child care workers, Children Aid  
4 Societies?

5 A. No.

6 86. Q. And no role at all. Were you aware it  
7 was happening?

8 A. I was aware it was happening, yes.

9 87. Q. And this is in the period '71 to '91.

10 A. Yes.

11 88. Q. Did you write about it, speak about  
12 it, what did you do?

13 A. Well, I wrote a chapter in a textbook  
14 about aboriginal depression.

15 89. Q. Yes.

16 A. With depression and unusual cultures.  
17 And I wrote about it in the Canadian Psychiatric  
18 Association. What I was seeing was, children with  
19 hysterical seizures. I wrote a lot of different things  
20 in the proceedings of the Canadian Psychiatric  
21 Association, section on native mental health, which has  
22 now become the Native Mental Health Association of  
23 Canada. I've passed on all of my copies of the  
24 proceedings to aboriginal workers.

25 90. Q. When was the textbook published,

00030  
1 approximately?

2 A. I can't tell you. I have got a copy  
3 somewhere.

4 91. Q. Are we talking the 1970s or 1980s?

5 A. Probably be in the late '80s, early  
6 '90s.

7 92. Q. And the articles for the Canadian  
8 Psychiatric Association --

9 A. Back in the early '70s.

10 93. Q. Early '70s. Did those have to do with  
11 the children who were being removed from communities and  
12 adopted out?

13 A. That was not the focus. It was the  
14 treatment of hysterical seizures in young Indian women  
15 who provided -- who had a priest in and they had a  
16 shalman in and they continued. So I was brought in to  
17 help them deal with them. And we did mainly  
18 modifications in the way that the community responded to  
19 them. And they disappeared.

20 94. Q. Did there come a time when you began  
21 to write aboriginal children who were removed from  
22 families and communities that adopted out or placed out?

23 A. Well, one of the things I did is I ran  
24 an award winning maximum security mental hospital for  
25 kids with a 24 hotline, a 24 mobile crisis service and a

00031  
1 respite house. We had quite a few aboriginal kids in  
2 there. Many of them with disastrous lives. And I, also,  
3 wrote a forward in a book called, "Our Son the Stranger."  
4 It's really about a couple who adopted two very damaged  
5 kids without the support the family needed and kids  
6 didn't have the support that they needed. One of the  
7 kids I followed from the time, he was 11, to pretty well  
8 the time he died, as a prostitute, a male prostitute.

9 95. Q. These weren't all aboriginal kids,  
10 were they?

11 A. No, no, but there was a lot of  
12 aboriginal kids there. They were very much over  
13 represented. And I've got another one who is adopted  
14 into a white family, who all of the white uncles sexually  
15 assaulted.

16 96. Q. Yes.

17 A. So there was a lot of -- you know, the

18 attachment between a parent and a child is what is the  
19 most protective thing. And often when people rescue  
20 kids, the attachment has a whole different process.

21 97. Q. The hotline, the 24 hotline and the  
22 respite facility, when did they date from, approximately?

23 A. I guess we were preparing it back in  
24 '82.

25 98. Q. So this was in operation through the  
00032 1 '80s?

2 A. Still in operation.

3 99. Q. You given me that answer when I asked  
4 you the question about whether you had written about the  
5 psychiatric aspects of the experiences of children who  
6 were adopted out or placed out. And you were giving me  
7 that description. In addition to that, have you written  
8 about articles about it or published pieces about this  
9 particular phenomenon and the experiences that result?

10 A. What we published was in a symposium  
11 that took place. What was it called - I think it was the  
12 Syl Apps Centre, but I've forgotten exactly where it was.  
13 Where I presented the structure and function of the  
14 crisis service, which was a model that has been followed  
15 in many different places. I'm not sure if I focused  
16 entirely on aboriginal kids. I don't think I did. I  
17 focused on kids who had been damaged and families that  
18 were very damaged.

19 100. Q. When was that?

20 A. Near the end of the time, near '86,  
21 '87.

22 101. Q. Well, since leaving it in 1991, have  
23 you written about it other than this affidavit?

24 A. Well, I treat a lot of adult  
25 aboriginal people who come to my practice, because they  
00033

1 know it's safe. Many of them have had really horrific  
2 experience with non-sensitized colleagues.

3 102. Q. Just didn't hear the last two words.

4 A. Non-sensitized colleagues. They go  
5 and see.

6 103. Q. Yes.

7 A. And they get insulted and they get put  
8 down and they get devalued instead of people being able  
9 to diagnose actually what's wrong. I didn't have to deal  
10 with that. I think I met only one aboriginal person, in  
11 the thousands I've encountered, who wasn't traumatized  
12 severely as a child.

13 104. Q. Doctor, I presume that, as many  
14 physicians, the people who come to you are the people who  
15 are either sensing they have problems or have some  
16 pathology. You don't routinely get people coming to you  
17 who feel well and well adjusted.

18 A. Well, trauma is interesting. People  
19 very often adjust well and they function well. And if  
20 it's really trauma, when they get strong enough and they  
21 have enough support, they start having flashbacks to what  
22 goes on.

23 105. Q. Yes.  
24 A. And they're functioning well in most  
25 of their lives, but this phenomena is very disturbing.

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1 And they want help to deal with the phenomena. For  
2 example, I was working with a nurse, who is now  
3 relatively retired, also has an MBA, and she began to  
4 have flashbacks of having a penis in her mouth.

5 106. Q. Yes.

6 A. And so she came to me for help in  
7 dealing with that.

8 107. Q. But are you drawing the conclusion,  
9 because everybody you see has some pathology, that all  
10 children who went threw the adoptive placement out  
11 experience have developed some pathology; are you drawing  
12 that conclusion?

13 A. No, I was involved with many, many  
14 people I met, all sorts of people were weren't ill,  
15 didn't have serious problems, who didn't come to me for  
16 help. I trained all sorts of aboriginals. I gave  
17 workshops for them. I had tons and tons of contact  
18 outside the consulting room.

19 108. Q. But some of those people -- I'm trying  
20 to make sure that my question and answer are following --  
21 some of those people who were not coming to you for help,  
22 were well adjusted or healthy people who had gone through  
23 the adoption out, placement out experience.

24 A. Well, I haven't met any of those.

25 109. Q. Yes. You see what I'm trying to  
00035

1 understand, doctor, is whether or not you've actually  
2 done some sort of assessment of the population in terms  
3 of people who went through this experience and those who  
4 were well adapted and those who weren't. And my  
5 suggestion is, the ones that you are going to see are, of  
6 course, the ones who typically have some pathology; isn't  
7 that correct?

8 A. That's correct. There is a process of  
9 referral that funnels people who either self-label or  
10 others label. Very often with aboriginal kids it was  
11 others labelling.

12 110. Q. Yes. Is there in your profession any  
13 study that you're aware of that actually looks at a  
14 cross-section of people who went through this experience  
15 to determine what the outcomes were, whether they're all  
16 pathological or not?

17 A. I think there's been some, I haven't  
18 read most of them. I'm beyond that, I'm doing other  
19 things. My interest is mainly in adolescents who were  
20 anti-social and dealing with their parents.

21 111. Q. Yes. Would it be fair to say that  
22 those studies weren't extant when your were in this  
23 field, 1971 to 1991?

24 A. Well, there may have been some because  
25 I was at the American Academy of Child Psychiatry. And I

00036

1 joined the Inuit and Eskimo Indian community for a while.

- 2 112. Q. Yes.  
 3 A. And they had some stuff published.  
 4 113. Q. In the period 1971 to 1991?  
 5 A. Probably, yes.  
 6 114. Q. This is U.S., is that what you're  
 7 talking of?  
 8 A. U.S.  
 9 115. Q. Now you had referred, for example, to  
 10 one study that was done with the Centre for Disease  
 11 Control, I think.  
 12 A. Yes, ACE studies.  
 13 116. Q. And this would be in Atlanta, is  
 14 that...  
 15 A. Atlanta, Georgia, yes. And the  
 16 studies come from the Kaiser Permanente. 17,000 people.  
 17 They searched to see what diseases these adults have.  
 18 And they went back and surveyed them about their  
 19 childhood experiences.  
 20 117. Q. Yes. But there was no aboriginal  
 21 focus to that --  
 22 A. No, there was none.  
 23 118. Q. -- group, was there? And that's the  
 24 study that you're referring to -- just make sure I've got  
 25 the right place -- if you look at your affidavit, it's  
 00037  
 1 paragraph 7, sub VI, the Centre for Disease Control and  
 2 the Adverse Childhood Experiences Study, that's the one  
 3 you're referring to?  
 4 A. Yes. There's lots of other studies  
 5 concurring with this, just one recently from New Zealand.  
 6 119. Q. And is that focused on aboriginal  
 7 children?  
 8 A. No, it's not focused on aboriginal  
 9 children.  
 10 120. Q. So what they're demonstrating is that  
 11 trauma and other experiences of the type you've described  
 12 in childhood can have these adverse sequelae when they're  
 13 adults?  
 14 A. That's correct. And as you know,  
 15 aboriginal people are the most traumatized people in  
 16 Canada.  
 17 121. Q. And the basis for that trauma, from  
 18 your perspective, is?  
 19 A. Destruction of parenting skills. I  
 20 have been in communities where really almost every man,  
 21 woman and child has been sexually abused.  
 22 122. Q. When you say in paragraph 3 of your  
 23 affidavit, this is on the second page, you should read  
 24 the whole paragraph, so we get to the last sentence.  
 25 A. This is the first page?  
 00038  
 1 123. Q. Paragraph 3. It starts on the first  
 2 page and then flips over to the second page.  
 3 A. "In Ontario our first nations people  
 4 experienced intentional and inadvertent cultural identity  
 5 genocide. I can elaborate this based on my years of  
 6 experience and the opportunity to develop an appreciation

7 of extent to which the exercise or non-exercise of  
 8 aboriginal communities, culture and customs is related to  
 9 many psychiatric social disorders, personality disorders  
 10 or disfunction in comparison to other peoples I have  
 11 treated. Widely accepted studies support my personal and  
 12 professional observations."

13 124. Q. When you refer to the widely accepted  
 14 studies, are you talking of things like the Centre for  
 15 Disease Control and the study that you talk about in New  
 16 Zealand or are you talking about something else?

17 A. The first person that I read who  
 18 looked at this in a synchronized way was Wolfgang Jilek.

19 125. Q. Sorry, how do you spell his last name?

20 A. J-I-L-E-K. He's an anthropologist and  
 21 a psychiatrist. And his wife was also an anthropologist  
 22 and a psychiatrist, probably contributed to the book.  
 23 And it's about Indian healing. And he was going to Queen  
 24 Charlottes and working with the sailors. And what he  
 25 realized is that better results came from culturally

00039

1 syntonic treatment within the home communities that came  
 2 from psychiatric hospitals and psychotherapy.

3 126. Q. When was that book published,  
 4 approximately?

5 A. Oh, it would be back in the, maybe,  
 6 late '60s, early '70s.

7 127. Q. And was it focused on this experience  
 8 of adoption out or placement out?

9 A. Yes, it was focused on the fact that  
 10 our culture and our custom weren't as effective in  
 11 treating. Social disorders would become mental disorders  
 12 as their own cultures were.

13 128. Q. So this book is talking about  
 14 responding to existing pathologies; is that --

15 A. That's correct.

16 129. Q. So we've got that book in terms of the  
 17 paragraph 3, widely accepted studies, we've got that  
 18 book. And we've got the Centre for Disease Control. And  
 19 you did refer to some others, including New Zealand, but  
 20 I understood those were recent.

21 A. I had a huge library of books and  
 22 journals that I had read. And then I passed them on to  
 23 aboriginals who were active in dealing with their people.  
 24 One of them was a lawyer involved in the truth and  
 25 reconciliation stuff. Another one was a PhD social

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1 worker who was working with aboriginal people. I passed  
 2 them all on, because I'm not actively involved in the  
 3 field. I mean, I was -- day and night I get calls from  
 4 Big Trout Lake or Weagamow, or something like that, about  
 5 something that was happening there, almost any time of  
 6 the day or night.

7 130. Q. Is that writing about the same kind of  
 8 thing, that is native methods of treating or addressing  
 9 recognized mental health pathologies?

10 A. Well, it's certainly the material we  
 11 published in the proceedings of the Canadian Psychiatric

12 Association section on native mental health were about  
13 that, but not specifically focused on adoption.

14 131. Q. And those are the early 1970s and on,  
15 is that the ones?

16 A. Yes.

17 132. Q. Well, if I could bring you back to  
18 paragraph 7. We talked a little bit about this. And Mr.  
19 Wilson is quite correct, that it begins with an  
20 introduction of paragraph 6. That says, "I cannot say  
21 that most of these off-reserve cross-cultural placements  
22 were necessary." Now I'm not trying to glib, but I  
23 assume that the reverse, the corollary is true, that is  
24 we cannot say that they were unnecessary?

25 A. Well, can't say that either, no.

00041

1 133. Q. And the --

2 A. But the criteria for removal might  
3 have been out to lunch.

4 134. Q. Yes.

5 A. I don't know if you've been on many  
6 northern Indian reserves over the years, but we  
7 encountered people living in teepees at 50 below and  
8 raising children in one room log cabins with an air tight  
9 heater red hot, with the children hung on pegs and  
10 tikinagans, keeping them away from the fires. The  
11 poverty that existed there, compared to our society, you  
12 know, a place made of boards and the only insulation  
13 being cardboard tacked up. There were many, many things  
14 that really put southern people off about this being an  
15 adequate place to raise children. And they didn't  
16 understand that most of these children had huge extended  
17 family, huge extended family. The average one, I would  
18 say, had 50 extended family living within a few hundred  
19 yards of where they lived. And they supplemented the  
20 parenting of the parents who weren't doing too well. So  
21 there was a lack of understanding of the strength of the  
22 native culture that very often got kids out of the  
23 culture.

24 MR. YOUNG: Mr. Wilson, I hadn't  
25 understood that the criteria for removal are in issue,

00042

1 are they an issue, as well?

2 MR. WILSON: No.

3 MR. YOUNG: Okay.

4 MR. WILSON: Well, I've got to be -- the  
5 criteria for the removal, why they were removed? I just  
6 need your help, why they were removed?

7 MR. YOUNG: Yes.

8 MR. WILSON: And needs for them to be  
9 removed.

10 MR. YOUNG: Because it says, "Why they  
11 were removed. The members of the class wasn't an issue."

12 MR. WILSON: That's correct. It's just,  
13 the reason why I'm pausing in my answer is because why  
14 they were removed is tied into some extent with where  
15 they were placed.

16 MR. YOUNG: Understood. I take it

17 doctor's answer was really relating to the question of  
18 where they were placed.

19 MR. WILSON: This is not a lawsuit  
20 complaining or grieving that that's the right verse,  
21 about the fact that First Nation children were placed  
22 into care. It is a lawsuit about where they were placed  
23 and the standards to which they were exposed when placed.  
24 Does that help?

25 MR. YOUNG: Yes.

00043

1 BY MR. YOUNG:

2 135. Q. I'd asked you about paragraph 6 in  
3 part because of that point, Dr. Armstrong, but also  
4 because, as Mr. Wilson points out, it leads into  
5 paragraph 7, which says, "The effects were." And if I  
6 look at paragraph 7, I'm trying to make sure -- I'll tell  
7 you what my question is going to be before I ask it. I'm  
8 trying to make sure that I disentangled, to the extent it  
9 is possible, the relationship between placement out and  
10 adoption out and these sequelae and the circumstances in  
11 which the children found themselves. I'll tell you why.  
12 You start, "The effects were as follows: -- in paragraph  
13 1 -- "Aboriginal children who grew up in residential  
14 schools." And our case isn't directly about residential  
15 schools. So that's the reason for my question, doctor,  
16 I'm not -- I'm just trying to lay it out for you.

17 MR. WILSON: But then it says, "Who grew  
18 up in residential schools, non-native foster homes or  
19 adoptive homes."

20 MR. YOUNG: Understood, understood.

21 BY MR. YOUNG:

22 136. Q. So when I read this as saying,  
23 "Aboriginal children who grew up in non-native foster  
24 homes or adoptive homes lost their culture, their  
25 languages and their ability to be parents as aboriginal

00044

1 persons," is that what your evidence is that that's the  
2 effect?

3 A. That's one of the effects.

4 137. Q. Yes. And then you deal with the other  
5 effects in paragraph 7, which is what got us into trouble  
6 in paragraph 4 because it included cowboys and Indians.

7 A. I was just trying to give you a  
8 vignette.

9 138. Q. Fair enough. In sub paragraph  
10 (iii) --

11 MR. WILSON: Of paragraph 7.

12 MR. YOUNG: Of 7, which is 7(iii).

13 BY MR. YOUNG:

14 139. Q. When you're talking about children who  
15 are removed and then placed out, am I to understand from  
16 this that some of their circumstances, whatever the  
17 cause, did include dysfunctional parenting and other  
18 issues within the community of that type?

19 A. Are you talking about their biological  
20 families or are you talking about their adoptive  
21 families?

22 140. Q. Their biological families.  
23 A. Well, I would assume that the  
24 Childrens Aid worker who removed the child from its  
25 original home felt that there was something dysfunctional

00045

1 about the original home.

2 141. Q. Doctor, you treated patients who had  
3 came to you because, or after, they had been through the  
4 adoptive out or placement out experience.

5 A. If you read Marie Adams book, "Our Son  
6 the Stranger," I think she's got a number of people  
7 listed in the book who had similar experience to the one  
8 that she had.

9 142. Q. Right. But, doctor, you treated  
10 people who had been through that experience.

11 A. I tried to, it was hard work.

12 143. Q. They came to you for treatment, let me  
13 put it that way.

14 A. They came to me because of attempted  
15 suicide or done something else that was very dangerous.

16 144. Q. And as part of the treatment, when  
17 these people came to you who had been through this  
18 experience of adoption out or placement out, I assume you  
19 took a history?

20 A. I did. I took histories of all of  
21 them.

22 145. Q. And did the history include their  
23 biological family experience and community experience as  
24 well as their adoptive family experience?

25 A. Well, it was very hard sometimes to

00046

1 get their original family experiences because many of  
2 them were late adoptions.

3 146. Q. Yes.

4 A. And the trail of what happened to the  
5 family and what happened before the children were  
6 adoptive was not very clear to me, nobody seemed to know.  
7 They were just little, tiny snippets of information.

8 147. Q. But the people who came to you with  
9 these mental health difficulties, did you ever draw the  
10 conclusion in any one of these cases, doctor, that the  
11 sole and single cause of their pathology was the fact  
12 they've been adopted out or were there always  
13 contributing causes?

14 A. Well, for some of the worse cause was  
15 their being adopted out.

16 148. Q. Yes.

17 A. And their loss of culture, their loss  
18 of the privilege of being Indian. And many of them were  
19 very bright and could have got a university education  
20 paid for.

21 149. Q. So for some of them it was the worse  
22 cause, but there were contributing causes.

23 A. Usually there were some contributing  
24 causes of the reasons for adoption, but it's very hard to  
25 get details because the kids didn't know. The parents,

00047

1 adoptive parents didn't know them.

2 150. Q. When you talk of, in paragraph 7, if  
3 we go to sub vi --

4 MR. WILSON: Page?

5 MR. YOUNG: Page, I have 4.

6 BY MR. YOUNG: It begins, "The unfairness  
7 and injustice of their plight as they became aware of  
8 it." Are you speaking of the whole history that you've  
9 described elsewhere, including the 1500s and 1600s, or  
10 are you talking about their specific experience of  
11 adoption out or placement out?

12 A. I think both. Adoptive children do  
13 interesting things. They have two sets of families. One  
14 biological, one adoptive. And they idealize one and  
15 vilify the other. And that changes over time. And  
16 sometimes they deal with their biological family as being  
17 the villains and the adoptive parents sometimes  
18 contribute to that because in their rescue fantasies you  
19 have to rescue them from something bad rather than  
20 stealing children. And that switches back and forth.

21 And often in adolescents, for example,  
22 where there's a need for limits and power for urge on  
23 part of the child to explore and test limits, then the  
24 biological parents become saints and the adoptive parents  
25 become villains. And there's a search for valhalada(ph),

00048

1 going out and finding your biological father in Stoney  
2 Mountain prison is still worthwhile, even though doesn't  
3 contribute anywhere. You find your dad is the drunk  
4 living on Seaton Street and he's the only connection to  
5 the Rama Reserve. And he dies before you can  
6 re-establish your connection. All of these things are  
7 very, very difficult. So the switching back and forth is  
8 a problem. And the allusion that my Indian biological  
9 family are the best. And then the search for going back  
10 and finding them and finding them when you're a misfit.

11 151. Q. Are there aspects of that that are  
12 true of all adoptive children?

13 A. No, it depends how satisfactory the  
14 adoption has been. There's a few studies, one from  
15 Finland, another one from Scotland, where the records are  
16 open and they looked at people who had been adopted and  
17 they looked at who had been sent there by a government  
18 official who said you have to have your biological  
19 parents on this application or you can't get the job.  
20 Those people who went to the adoption records were much  
21 happier with their adoptive parents than those who chased  
22 them to the end of the earth to find out if they could  
23 find parents who would make them happy. And in between  
24 were a group who just wanted to connect and leave. So it  
25 was the satisfaction with the adoption that determined

00049

1 how far people pursued their biological families. And if  
2 they're miserable people, they go further.

3 152. Q. But the search is something, depending  
4 on the degree --

5 A. Well, some don't search.

6 153. Q. Some don't search at all. But the  
7 search is something that's not unique to aboriginal  
8 children who are adopted out, the need to find biological  
9 parents and identify ones biological routes.

10 A. The more different your culture has  
11 been before you were adopted and the difference of your  
12 skin colour and the difference of your language increases  
13 the need to find who you were. Because who you were  
14 isn't who you are. I mean, if you go down the street and  
15 get adopted by your grandmother, which is not an unusual  
16 thing, and your grandmother is the same language, same  
17 culture, same values as the parents who gave you up, then  
18 it's not a big deal, except a bit of resentment because  
19 why didn't my mother keep me. It's not the same big  
20 deal. But if you get adopted --

21 154. Q. Well, what's the difference between  
22 that, if you can describe it for me, between that kind of  
23 cross-cultural adoption of Chinese children coming from  
24 the mainland to Canada and being adopted by white  
25 families or Haitian children, as we're about to see,

00050

1 being adopted into white families in Canada and the  
2 aboriginal experience of being adopted into white  
3 families? Well, I assume there's some similarities and  
4 some differences; are you able to help us understand it?

5 A. Well, I think I have dealt with quite  
6 a few of both. And I think the difference is that, this  
7 is something that Canada was in control of while this was  
8 individuals who sought, I think there was a plane that  
9 went to Seoul and picked up a whole pile of kids from  
10 orphan inches in Seoul.

11 155. Q. When was that?

12 A. Oh, way back. And I saw a number of  
13 their adoptees later on because they were really acting  
14 out and they were quite miserable for the, quote,  
15 rescuers, unquote.

16 156. Q. I'm sorry, is this the '70s, '80s,  
17 '50s, '60s?

18 A. When the Korean war ended -- the  
19 Vietnamese war ended. They sent a plane over and packed  
20 it with people.

21 157. Q. To Seoul, is that what you're saying?

22 A. Seoul, yes.

23 158. Q. South Korea?

24 A. No, sorry, Saigon.

25 159. Q. Saigon?

00051

1 A. Sorry, Saigon.

2 160. Q. Okay. We don't call it Saigon  
3 anymore.

4 A. No, Ho Chi Minh.

5 161. Q. Ho Chi Minh City.

6 A. But I'm old.

7 162. Q. Join the club.

8 A. So there was many problems with that,  
9 too. These kids who were adopted out of race and out of  
10 culture. You know, and identity formation is accelerated

11 when you become a teenager, you really need to know who  
12 you are and where I come from and where I belong and  
13 where I don't. And the more barriers there are to  
14 belonging to your primary family, which teenagers  
15 sometimes this took quite awhile, the more barriers there  
16 are, the more difficulty it is to feel supported and  
17 cared about and have the support you need to move on into  
18 adulthood.

19 163. Q. Some aspects of that are universal?

20 A. Some aspects of that are universal,  
21 but the more differentiated you are in terms of your  
22 original genetic make-up, your original cultural  
23 background and the value systems of your biological  
24 family, the more difficult it is.

25 164. Q. The patients who have come to you with  
00052

1 this kind of history, is it necessary to devise a  
2 specific response to that specific treatment response? I  
3 assume it's not one size fits all. It has to be tailored  
4 to the unique needs of the individual.

5 A. Well, I'd say yes, but there are  
6 certain needs that aboriginal people have that others  
7 don't have. When -- I'll call her -- Jane tells me that  
8 she was driving home and a hawk flew over her and  
9 followed her car, that was a deceased aunt watching her  
10 and watching over her. Now, some of my colleagues  
11 ridicule that, which goes to the very core about her  
12 spirituality. So it's very, very different. The  
13 aboriginal culture is very, very different from ours.

14 165. Q. But to use that example, each of the  
15 aboriginal patients would still be unique and require a  
16 unique response to their history, their circumstances and  
17 the story they have.

18 A. But there are commonalities to  
19 aboriginal people that are very different from our  
20 culture, unless you understand them and are willing to  
21 accept them. You know, Pat goes to a shake tent and Pat  
22 goes to a shake tent and she has a guy who runs a shake  
23 tent and she goes in there and she talks to her deceased  
24 relatives and they tell her things about her deceased  
25 family that she couldn't know until she checks with other  
00053

1 relatives and then there's a confirmation that the  
2 spirits in the shake tent confirm this is somebody which  
3 is a psychotic. But you have to know the history of the  
4 shake tent.

5 166. Q. But in the example of Pat, I think you  
6 called her, her experience in the shake tent would be  
7 different from somebody else's experience in the shake  
8 tent. They may have those spiritual groundings, but  
9 their experiences, I take it, coming to you are ones that  
10 require you to respond to each and every case in its own  
11 unique way.

12 A. Well, they come to me for usually  
13 depression, anxiety, PTSD, dissociate disorders that they  
14 don't know they have and family conflict. I mean, as the  
15 cases unfold, the amount of trauma is beyond belief. You

16 don't want to know about how much and how horrible some  
17 of these people have lived. It's -- but you sometimes  
18 get a non-native with that much trauma, but most of the  
19 time it's limited.

20 167. Q. Can you bear with me one second. I  
21 just excuse myself for a second have a chat with --  
22 unless you want to take a moment's break.

23 MR. WILSON: Want to take a ten-minute  
24 break?

25 MR. YOUNG: Sure.

00054

1 --- Recess taken at 11:04 a.m.

2 --- On resuming at 11:16 a.m.

3 BY MR. YOUNG:

4 168. Q. Doctor, actually I have only one more  
5 question.

6 A. Only one.

7 169. Q. Yes.

8 MR. WILSON: That doesn't mean you have to  
9 answer it in the next 45 minutes.

10 MR. YOUNG: That's right.

11 BY MR. YOUNG:

12 170. Q. Only one question. And that is  
13 whether or not you would be kind enough to provide us  
14 with a copy of the 40 page version of your CV?

15 U/T A. Okay, I'll try and dig it up. But it  
16 ends about five years ago, because I was no longer going  
17 for a promotion or job changes.

18 171. Q. Well, understood. But if we could get  
19 a copy of it, even ending five years ago, would be great.

20 A. Okay.

21 MR. YOUNG: Thank you very much.

22 --- Whereupon proceedings adjourned at 11:16 a.m.

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I HEREBY CERTIFY THE FOREGOING  
to be a true and accurate  
transcription of my shorthand notes  
to the best of my skill and ability.

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DAYNE SNELL  
Court Reporter

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARCIA BROWN and ROBERT COMMANDA,

Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,

Defendant.

-- This is the Cross-Examination of VERNON HARPER, herein,  
on his affidavit, sworn May 15, 2009, taken at the offices  
of Atchison & Denman Court Reporting Services Limited,  
155 University Avenue, Suite 302, Toronto, Ontario,  
M5H 3B7, on Friday, the 5th day of February, 2010.

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APPEARANCES:

Shannon Kinch	For the Plaintiffs
Owen Young	For the Defendant
Michael Bader	
Julie Jai	
Morris Cooper	For Vernon Harper

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1 --- Upon commencing at 9:55 a.m.  
2 VERNON HARPER; Affirmed.  
3 CROSS-EXAMINATION BY MR. YOUNG:  
4 1. Q. Can I have your full name, please, for the  
5 record?  
6 A. Vernon Harper.  
7 2. Q. Mr. Harper, this is about you not about  
8 me, but I live by the Grand River near Six Nations, and I  
9 went to Six Nations yesterday to ask my Mohawk friends if  
10 I should bring you an appropriate gift so that I could  
11 have your permission to ask you questions about yourself,  
12 and they said of course.  
13 A. Yes.  
14 3. Q. So I went there, and they said tobacco  
15 would be right, but since he's Vernon Harper, we're going  
16 to give you something that's for nonsmokers. And so they  
17 did; they gave me Kinnikinnick.  
18 A. That's wonderful.  
19 4. Q. And they gave it to me in a little  
20 Onondaga deer-skin pouch.  
21 A. Oh, thank you.  
22 5. Q. So I would ask you to accept that.  
23 A. Thank you, thank you.  
24 6. Q. It's actually insego [ph]. They put it in  
25 a little plastic thing in an attempt to keep it fresh, so

00005

1 it doesn't look very elegant, but there you go.  
2 A. When I do my prayers in the morning, I use  
3 my prayer pipe, and I try to use traditional tobacco at  
4 all times.  
5 7. Q. Yes.  
6 A. Thank you very much. Mikwec. In Cree, we  
7 say Hihia [ph], but it's the same as mikwec.  
8 8. Q. I understand from your affidavit you were  
9 born probably in 1934.

10 A. No, '32.  
 11 9. Q. That would make you 77, correct?  
 12 A. Yes. Because I was born right in Regent  
 13 Park in an old building. That street's gone. It was  
 14 called Wilmont Street, and I was born there. But I was  
 15 registered -- they registered me on my status card is  
 16 1936, but it was actually my mother's sisters who lived on  
 17 the reserve said that they know -- they confirmed that it  
 18 was Indian Affairs and Children's Aid got everything mixed  
 19 up. It was '32. I was born in 1932.  
 20 10. Q. What is the band name on your status card?  
 21 A. Mistawasis.  
 22 11. Q. That's Plains Cree?  
 23 A. Yes. I'm having a little difficulty.  
 24 I'll do the best I can. I had surgery at 6 o'clock last  
 25 night. I've got 34 stitches in my mouth. So I'm still a  
 00006  
 1 little under the weather, but I'll be okay. I'll do the  
 2 best I can.  
 3 12. Q. We can ask nothing more.  
 4 A. Okay.  
 5 13. Q. But if you feel you need a break, say so.  
 6 Don't be shy about that, okay?  
 7 A. Okay.  
 8 14. Q. Do you have a traditional name?  
 9 A. Yes, A-sin with a hyphen, A, hyphen,  
 10 S-I-N.  
 11 15. Q. Does it have an English-language meaning?  
 12 A. Yes, it means rock or stone. In Cree, you  
 13 can say A-Sin or A-Sinee [ph]. I usually use A-Sin  
 14 meaning rock.  
 15 16. Q. How did you come to be given that  
 16 traditional name?  
 17 A. About 30 years ago, I was with a Nokum, a  
 18 grandmother in Saskatchewan who was a very powerful  
 19 medicine woman, and she thought it was time that I had  
 20 that traditional name and gave me -- after the ceremony --  
 21 it was done in ceremony.  
 22 And after the ceremony, I went to her, and I  
 23 said Nokum -- and talked to her in Cree -- and I said  
 24 Nokum, the name you gave me I'm unworthy of it. Because  
 25 to Cree people, rocks and so on are sacred. They're  
 00007  
 1 people, energy. I said I'm totally unworthy of it, and  
 2 she said of course you are unworthy of it, but you will  
 3 grow into it.  
 4 So about two years ago in my prayer lodge --  
 5 people call them sweat lodges, but it's really prayer  
 6 lodge -- I was praying, and my name reaffirmed. So I feel  
 7 now that Vernon Harper is an alias. My name is A-Sin.  
 8 17. Q. If you're from Mistawasis --  
 9 A. Mistawasis.  
 10 18. Q. Mistawasis -- does that mean Mistawasis is  
 11 among your ancestors?  
 12 A. Yes, I'm fifth generation grandson of  
 13 Mistawasis. His brother was Big Bear. So Big Bear was  
 14 well known. But Mistawasis signed a treaty, Treaty 6.

15 19. Q. And eventually, Big Bear signed an  
16 adhesion to treaty 6?  
17 A. Yes, yes.  
18 20. Q. So do you consider yourself a treaty  
19 person?  
20 A. Yes.  
21 21. Q. Treaty 6?  
22 A. Yes, Treaty 6.  
23 22. Q. Presently, you work at CAMH?  
24 A. Yes.  
25 23. Q. Can you give me a brief description of the  
00008  
1 kind of work you do at CAMH?  
2 A. I've been there about six, seven years,  
3 and they're doing something that's never done before.  
4 They put an elder with a therapist. So I work with a  
5 therapist called a trained therapist, and we work together  
6 with a client, and it's never been done before.  
7 We're doing something that's -- usually a  
8 client would see -- could see a therapist then request to  
9 see an elder or see an elder and ask for a therapist. So  
10 what CAMH has done is put the elder and the therapist  
11 together and serve the client.  
12 24. Q. I see from your affidavit or at least I  
13 read it somewhere, you also have worked with Correctional  
14 Services?  
15 A. Yes, I've been working at least 40 years.  
16 25. Q. What's the role there?  
17 A. My role is -- I'm recognized as -- they  
18 wanted me to use the word "chaplain", and they treat me  
19 and use me like a chaplain, but I prefer it as a Spiritual  
20 Elder, and I do ceremonies. I've been going into the  
21 prisons, and I'm one of the first elders that was  
22 introduced to sweats in Corrections.  
23 What they call for men, they call it the  
24 brotherhood, and the brotherhood has to have the Elders to  
25 come in, and most of the federal prisons have a sweat  
00009  
1 lodge area. And for seven years straight, twice a month,  
2 I go on a Saturday and do a sweat.  
3 But I'm not an accepted official with  
4 Corrections Canada.  
5 26. Q. And so they needed to put you in one of  
6 their boxes, so they called it "chaplain"?  
7 A. Yes, and I said no. No disrespect to the  
8 chaplains, but I'm a Spiritual Elder, and that's what I  
9 want to be referred as.  
10 27. Q. Apart from CAMH and the work in prison, do  
11 you do other work with Aboriginal people in the Toronto  
12 area or in Ontario?  
13 A. Oh, yes.  
14 28. Q. Can you give me a brief description of it?  
15 A. Well, different organizations, different  
16 Native organizations call upon me to do openings and to do  
17 workshops. But I have a kind of an open-door policy. I  
18 have people in my community -- I'm recognized as Elder for  
19 the Friendship Centre but more for the Native community.

20 So other agencies use me as an Elder. And  
 21 sometimes it's one-to-one, but a lot of times it's to do  
 22 blessings and openings. I'm in the process of trying to  
 23 -- I bury people too. I do -- funeral homes call for me  
 24 to -- if they're not Christian, if someone dies on the  
 25 street and if they know something about them and they're

00010

1 not Christian, they'll ask me to bury them, which I do.

2 And I do marriages, but I'm -- it seems to be  
 3 easier to bury people than marry people. I have to go  
 4 through -- it's about three years now I've been fighting  
 5 to be recognized like a JP -- I don't know what term they  
 6 use -- so that I can be officially marry people. But the  
 7 people take it very serious, the ones I've married. We  
 8 marry them under the prayer pipe.

9 29. Q. So of the people that you work with in the  
 10 Toronto area, I assume there's a cross-section. Some are  
 11 like yourself, registered Indians under the Indian Act?

12 A. Yes.

13 30. Q. Some would be not registered?

14 A. Some identify as Methi or non-status  
 15 Indian, and I serve all and work with all.

16 31. Q. So it covers the range of Methi,  
 17 non-status, and Indians presumably not on reserve but  
 18 people who have left the reserve?

19 A. Yes, yes, off the reserve. In fact, the  
 20 majority of the people are off-the-reserve Indians, and  
 21 like myself, that's the term we use, Urban Elder. When  
 22 that term came out, people said what the hell is that?

23 Because traditionally, our elders are on the  
 24 land base. They're on the land base, and now there's more  
 25 of us in the cities than on the land. So it's very

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1 important that -- I felt and others feel that we need to  
 2 keep our institutions alive wherever we are in the cities  
 3 and on the land base, and that term very clearly says what  
 4 I am, Urban Elder.

5 32. Q. In addition to a breakdown of some status  
 6 and non-status and so forth, are there people whom you  
 7 work with who have different ancestries, Cree like  
 8 yourself or Ojibway or Algonquin, etc?

9 A. Yes.

10 33. Q. The kind of range that you would run into  
 11 in Toronto, is it a vast cross-section in Toronto?

12 A. Yes, yes. I would say yes.

13 34. Q. It included Haudenosaunee?

14 A. Yes.

15 35. Q. Western Cree as well? Plains Cree like  
 16 yourself?

17 A. Oh, yes, yes.

18 36. Q. There are lots of Cree.

19 A. Yes. The English-speaking Crees come to  
 20 Toronto for the land of milk and honey, and the others go  
 21 to Quebec, the French-speaking Cree, and the others go to  
 22 Montreal or Quebec City. But the Crees coming from the  
 23 west, all come to Toronto.

24 37. Q. Do you know the two plaintiffs, Marcia

25 Brown and Robert Commanda?  
00012

1 A. No, I don't.  
2 38. Q. Have you ever met them even?  
3 A. I may have, but I don't recall.  
4 39. Q. Do you know anything about them?  
5 A. No, not really. I might have been told  
6 something, but I don't remember.  
7 40. Q. Understood. Even though you were born in  
8 Toronto, it sounds like you have a strong connection to  
9 Mistawasis. Have you learned the Plains Cree language?  
10 A. Yes, yes, I have. I was a victim of the  
11 foster home, and I was -- when I went to -- I was told a  
12 lot of lies about things.  
13 I was in Korea with the 82nd Airborne in 1953,  
14 and when I came back, I decided that I would go and see my  
15 relatives and see if they really -- I was told that they  
16 didn't want me, me and my other brothers. I was the only  
17 one to do something about it. I went there, and it was  
18 totally the opposite.  
19 They welcomed me with open arms. In fact, my  
20 uncles and that felt very guilty, and they spent their --  
21 before they all passed over, they kept apologizing for not  
22 doing what they were supposed to do, raise me. And my  
23 Uncle Joe Dreaver who is a hereditary chief, he had the VC  
24 cross in the first war, and when his sister died and they  
25 apprehended us, he wanted to raise us, and they said he

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1 was unfit.  
2 Even though he was farming -- it was during  
3 the depression. He was farming, and he was a decorated  
4 veteran, and he was raising his own family, but they said  
5 that he was unfit. And also they said that they couldn't  
6 put us -- we were Catholics, and we weren't. I was never  
7 a Catholic. They said we can't put Catholics on a  
8 Protestant reserve. Because they divided up the reserves.  
9 Protestant, one church, one band was Catholic, and the  
10 next church could be -- even if it's just right beside it,  
11 it would be the Protestant church.  
12 They split who would get who, and one reserve  
13 would -- I don't know about Ontario or others, but in  
14 Saskatchewan, the reserves would be when they made them on  
15 the reserves, only one church could be there. And  
16 Mistawasis was Protestant, but they said -- they told my  
17 uncles and that -- because he wanted to raise us, and they  
18 said no, they're Catholic, and my mother was never  
19 Catholic. And if I was Catholic, why wasn't I put in a  
20 Catholic church? I was put in the Protestant church.  
21 41. Q. The uncle that you're talking about was he  
22 at Mistawasis?  
23 A. Yes.  
24 42. Q. Was he your mother's brother?  
25 A. Yes.

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1 43. Q. So how did you come to learn the language  
2 of the Plains Cree?  
3 A. Well, when I came back from Korea, I went

4 to the reserve, and my uncle welcomed me. And I started  
5 living there, and they arranged a marriage for me; I was a  
6 young man. And then the woman I married, she taught me  
7 Cree, and I learned Cree from my family there.

8 44. Q. The Plains Cree have a very proud and  
9 ancient oral tradition.

10 A. Yes.

11 45. Q. And the ancient oral tradition includes --  
12 some people think of stories, but it's much more than  
13 stories. It's their history; it's the creation; it's law;  
14 it's ceremonies; it's all those things, isn't it?

15 A. Yes.

16 46. Q. And they're all included in the stories?

17 A. Yes. That's a very important point  
18 because I can't remember the exact year, but it was in --  
19 I've been living there a number of years, and when I was  
20 younger, I didn't talk very much. And we had a big  
21 gathering, and I was given the sacred honour and  
22 responsibility of being recognized by my family as an  
23 official storyteller.

24 And there was no diploma that was given or  
25 anything like that, but my uncle who was considered a top

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1 man in the community, he passed the responsibility of me  
2 being a storyteller. And my nephews and my relatives,  
3 some of them -- my cousins -- got jealous, and they said  
4 he doesn't talk. And they said that's why we're passing  
5 it to him because he's a good listener. Before you become  
6 a storyteller, you've got to be a good listener.

7 I used to take care of the -- when someone is  
8 going home to the spirit world, I would go and chop wood  
9 and stay and listen to the stories and take care of them.  
10 It's a celebration, passing over. And I would do that,  
11 and that's how I really learned the Cree and learned --  
12 and so it was my responsibility for our family to speak as  
13 our family. Even though I live in Toronto, they still  
14 recognize me. I go back as much as I can.

15 47. Q. I've heard the expression amongst the  
16 Plains Cree that there are people who are story carriers,  
17 and they carry the ancient stories.

18 A. Yes.

19 48. Q. Are you considered a carrier for some of  
20 the ancient stories?

21 A. Yes, yes, the ones that -- I had an uncle  
22 who his job was to teach me that. His name was Ernest  
23 Tootosis, and he said at times he got disappointed with  
24 me because he felt I wasn't -- and we only tell the  
25 legends in the wintertime.

00016

1 49. Q. When the snow is on the ground?

2 A. Yes, that's it. And he felt I wasn't  
3 applying myself enough.

4 50. Q. But I also understand that different  
5 people are carriers for different stories. It's not  
6 everybody has all the stories.

7 A. No, no.

8 51. Q. There's some wisdom in that.

- 9 A. Yes.
- 10 52. Q. Was Ernest Tootoosis from Poundmaker or is  
11 he from your community?
- 12 A. From Poundmaker. He was my uncle's  
13 brother.
- 14 53. Q. So the oral tradition and the ancient  
15 stories would include, as I said, law and the ways people  
16 were to live, instructions, that sort of thing?
- 17 A. Yes.
- 18 54. Q. As well as the stories of the past?
- 19 A. Yes.
- 20 55. Q. Did they include instructions about camp  
21 life and family life and that sort of thing as well? Or  
22 was it just big things that they addressed?
- 23 A. There were so many teachings and that  
24 about... I would say it was many things.
- 25 56. Q. There was a story for almost everything?
- 00017
- 1 A. Yes, yes.
- 2 57. Q. Medicines?
- 3 A. Creation story.
- 4 58. Q. That there would be medicines?
- 5 A. Yes.
- 6 59. Q. How to live your life?
- 7 A. Yes.
- 8 60. Q. How not to live your life?
- 9 A. Yes.
- 10 61. Q. That sort of thing?
- 11 A. Yes.
- 12 62. Q. How to get along with others?
- 13 A. Yes.
- 14 63. Q. How the camp worked as -- because they're  
15 Buffalo hunters by ancestor?
- 16 A. Yes.
- 17 64. Q. How the camp worked to follow the  
18 migration of the Buffalo, that sort of thing?
- 19 A. Yes, and one of the things that's stressed  
20 upon is how important that oral teachers were, since it's  
21 oral. They always stress on why they wanted me to pay  
22 attention and learn because it's oral, and we need to --  
23 if we're going to pass something on, we need to pass the  
24 truth of what we feel we understand as the truth and oral,  
25 though we don't have any signed papers are documents.
- 00018
- 1 But our oral -- and it was always -- I believe  
2 that the purpose of the stories and the things was always  
3 to -- I think the greatest teaching my uncle gave me was  
4 he said if you do not know who your ancestors are, then  
5 you don't know who you are. And by being taught and  
6 everything, I know who my ancestors are.
- 7 65. Q. Did you have opportunities -- let me ask a  
8 slightly different question, Mr. Harper. Were you at  
9 Mistawasis for a continuous period, a certain number of  
10 years, and then you left to come back to Toronto or was it  
11 back and forth?
- 12 A. Yes, yes. I lived, I would say, two  
13 decades probably all together, and some of the time I was

14 away, I would say it was two decades.  
 15 66. Q. At Mistawasis?  
 16 A. At Mistawasis, yes.  
 17 67. Q. Did you have opportunities to the learn  
 18 languages of other Aboriginal speakers, other than words  
 19 like mikwec and things like that?  
 20 A. Yes, I lived with Lakota people, and some  
 21 of my teachers are Lakota.  
 22 68. Q. Where are they?  
 23 A. Pine Ridge, South Dakota.  
 24 69. Q. Did you learn some of their oral tradition  
 25 as well?

00019

1 A. Yes, yes. It's funny how cultures look at  
 2 things differently and understand things differently. I  
 3 have been recognized as a great honour, a great blessing  
 4 as a heyoka. And heyoka is humour and... Well, humour is  
 5 one of them. And heyoka's were contraries, and I've been  
 6 recognized by other medicine people as a contrary. They  
 7 said about me being a contrary -- and these are medicine  
 8 people who say it. They said he's a true, a real true  
 9 heyoka. He's so backwards, he's forwards.  
 10 70. Q. Is that from the Lakota that gave you that  
 11 honour?  
 12 A. Yes, and the Cree after I got that honour,  
 13 my people said yes, they're right. And in Cree, we say --  
 14 we recognize this as a sacred clown.  
 15 71. Q. Like the jokester?  
 16 A. Yes, yes.  
 17 72. Q. I take it you don't run into many Lakota  
 18 people in Toronto in your work?  
 19 A. No, just sometimes when what I consider  
 20 the holy man comes this way, when they come to Toronto, I  
 21 see them.  
 22 73. Q. There are no Lakota communities in  
 23 Ontario?  
 24 A. No, not as far as I know.  
 25 74. Q. Other than the Lakota language, have you

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1 had an opportunity to learn languages of some of the  
 2 people and cultures of Ontario. I picked the Ojibway as  
 3 an example. But others?  
 4 A. I've tried to. My brother-in-law was  
 5 married to a Mohawk. In fact, I have a cousin who is --  
 6 she is around the same age as me, and was brought up as --  
 7 she's married to someone of Six Nations. She is Cree.  
 8 So over the years, I've gone, and I try to  
 9 pick up the languages, but the languages are so different,  
 10 and that's why the sign language was developed for trading  
 11 purposes. And like Lakota and Cree, there's only two  
 12 words that are the same. It's totally a different  
 13 language. And when I was in the American army, the  
 14 Apaches their language is totally, totally different.  
 15 So the sign language, the original sign  
 16 language was developed, and what they call American sign  
 17 language was taken from our language, from our sign  
 18 language. That was for trading purposes, and they just

19 kind of updated it and called it American sign language.  
20 But originally, it was Native sign language. I don't know  
21 the English word for it, but I just call it sign language.  
22 75. Q. But that's used for basic communication  
23 between different people?  
24 A. Yes, for trading purposes. And the reason  
25 they stopped using it is because Indians learned that  
00021  
1 southwest ones will learn Spanish; the Quebec ones will  
2 learn French, and me, I learned English. But the sign  
3 language was a very important part for trading in the  
4 community.  
5 76. Q. It wasn't part of the traditional teaching  
6 in terms of passing on stories. It was for communication  
7 between peoples?  
8 A. Yes, for trading purpose.  
9 77. Q. Now, the Apache have such a unique  
10 language. They use it for decoding in the Korean war --  
11 A. Yes, yes.  
12 78. Q. -- the secret code?  
13 A. Yes. If you see some of the old movies,  
14 that Battle Cry it's -- natives don't know the difference  
15 when they hear the Indian language. So what they have in  
16 the old movie is they'll have a Navaho talking Navaho, and  
17 they'll have a Cree talking Cree, and of course there's no  
18 way they can understand each other, but in the movie, no  
19 one would know the difference.  
20 79. Q. Well, having some exposure to Six Nations,  
21 did that give you any opportunity to learn from elders as  
22 to the teachings of Haudenosaunee law, ways of life, those  
23 kinds of principles?  
24 A. Yes, there's a man that I have very much  
25 respect for. He's well respected. Tommy... His last  
00022  
1 name is... I think it's... He's well respected. I think  
2 it's Tommy --  
3 80. Q. Is he still living?  
4 A. Yes, but he's probably the most respected  
5 storyteller, and I used to go and help him in the spring  
6 with his gardens, and...  
7 81. Q. Is he from Six Nations?  
8 A. No, he's from a Native settlement in New  
9 York.  
10 82. Q. Which one of the nations? Do you know?  
11 A. No, I can't remember.  
12 83. Q. Is he Mohawk or Onondaga?  
13 A. Onondaga.  
14 84. Q. That's where the bag is from.  
15 A. Mm-hmm...wonderful.  
16 85. Q. Well, their teachings from New York,  
17 that's their traditional territory?  
18 A. Yes.  
19 86. Q. Near the Finger Lakes?  
20 A. Yes.  
21 87. Q. And their teachings must have been quite  
22 different from those of the Plains Cree in terms of how to  
23 live one's life in that surrounding?

24 A. Yes, yes, quite certainly. Porter is the  
25 name, Tom Porter.

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1 88. Q. Thank you.

2 A. Over the years, off and on, I spent time  
3 with him. Because he is recognized as their storyteller.  
4 So when I spend time with him, he would try to share his  
5 teachings with me because he thought it was important if  
6 I'm an Elder in this area, I should know the customs of  
7 the people here.

8 89. Q. You must have known him well to call him  
9 Tommy. The rest of us can only call him Tom.

10 A. Yes, that's right, yes, yes.

11 90. Q. But as you were introduced to those ways,  
12 even their family structure is a little different, isn't  
13 it, from the Cree?

14 A. Yes, I would say.

15 91. Q. It's built around the mothers much more.

16 A. Yes, and the Cree is too, the mother.

17 92. Q. One traces one's lineage by one's mother  
18 not by one's father?

19 A. Yes.

20 93. Q. Is that true of the Cree --

21 A. Yes.

22 94. Q. -- or do you trace lineage by father?

23 A. They're starting to do it the other way,  
24 but up until recently, it was always by the mother. That  
25 was the traditional way.

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1 95. Q. And in the Haudenosaunee culture, many  
2 children were closer to their uncles even than to their  
3 fathers?

4 A. Yes.

5 96. Q. Is that true of the Cree, or were they  
6 closer to their fathers?

7 A. That's very true, yes, yes.

8 97. Q. Were you able to find out if that kind of  
9 thing was also true of other peoples that you deal with,  
10 the Ojibway, Algonquin, Huron, others?

11 A. No, I don't remember.

12 98. Q. Let's stick with the teachings of Tom  
13 Porter for a minute.

14 A. What I wanted to mention about the uncle  
15 is very important because I've learned to -- I have a lot  
16 of nephews, bloodline and adopted nephews, and they always  
17 say I'm the best uncle. And I said, Why do you say that?  
18 Because you are.

19 But the reason I am a good uncle is because  
20 I'm a good role model, and that's how a lot of teachings  
21 are done. Role models are very important, and my uncles  
22 became my role models because I felt I was deprived of my  
23 uncles. So I had to catch up when I went to live on the  
24 reserve. And my uncles and that became -- Ernest  
25 Tootoosis who is a well-respected medical man and my Uncle

00025

1 Joe Dreaver, they became my main teachers.

2 99. Q. People don't often think so in modern

3 times or present times, but the law of the Cree was very  
4 sophisticated.

5 A. Yes.

6 100. Q. And so was the law of the Haudenosaunee.

7 A. Yes.

8 101. Q. And of the others too.

9 A. Yes.

10 102. Q. And they had ways of explaining how one  
11 dealt with the good times of life and the bad times of  
12 life.

13 A. Yes.

14 103. Q. And they both had sophisticated ways of  
15 dealing with issues that might arise in families whether  
16 there was dispute or discord or problems that arose. They  
17 both had ways of addressing those, didn't they?

18 A. Yes.

19 104. Q. And the ways that Haudenosaunee addressed  
20 them, as you've learned them, were there differences  
21 between those and the ways that the Cree addressed them,  
22 as a matter of tradition and custom?

23 A. Yes, I would say. I couldn't go into  
24 detail what, but I know that there were times where --  
25 yes, there was a difference.

00026

1 105. Q. One of the things about the law -- let me  
2 just speak about the Haudenosaunee for a second -- is they  
3 have very strict principles, I think, about who may speak  
4 for them?

5 A. Yes.

6 106. Q. That it's a great honour and a great  
7 responsibility if the Mohawks tell you you may speak for  
8 them, for example?

9 A. Yes.

10 107. Q. And one dare not speak for the Mohawks  
11 without having that authority?

12 A. Yes.

13 108. Q. The same is probably true of the Cree,  
14 isn't it?

15 A. Yes, yes. In the Lakota, for example, I'm  
16 the only Cree that was accepted into the Heyoka society.  
17 I'm the only Cree. The others they're all Lakota.

18 109. Q. We could say that of all Aboriginal  
19 people, that they don't -- they're very careful about who  
20 should speak on their behalf.

21 A. It's a great honour and a great privilege.

22 110. Q. And a great responsibility?

23 A. A great responsibility.

24 111. Q. And as I said, one dare not do it without  
25 being sure they had the authority.

00027

1 A. Yes.

2 112. Q. Okay.

3 A. And how you get this sort of arrangement  
4 would always be through ceremony.

5 MR. YOUNG: Well, it's wonderful to meet you.

6 Thank you for coming out to let me ask you these

7 questions.

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THE DEPONENT: Thank you.  
--- Whereupon the proceedings adjourned at 10:33 a.m.

I HEREBY CERTIFY THE FOREGOING  
to be a true and accurate  
transcription of my shorthand notes  
to the best of my skill and ability.

---

Kimberly Barker, CSR(A)  
Computer-Aided Transcription

Court File No. ~~09-CV-382025~~ CPCV-09-00372025-00CP

**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*

**FRESH AS AMENDED AMENDED 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.

AK  
MODIFIÉ CE  
 RULE/LA RÉGLE 26.02 (1, B)  
 THE ORDER OF  
L'ORDONNANCE DU  
DATED / FAIT LE  
REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GREFFIER  
COUR SUPERIEURE DE JUSTICE  
PURSUANT TO  
CONFORMEMENT A

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.

*February 9/09*  
Date ~~July 29, 2015 February 9,~~  
~~2009~~

Issued by "A Vasconcelos"  
Local registrar

(Fresh as Amended Amended  
Statement of Claim pursuant to  
the September 27, 2014 Order of  
the Honourable Justice  
Belobaba ~~May 26, 2010 Order of~~  
~~the Honourable Justice Perell.~~)

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

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

## CLAIM

1. The Plaintiffs claims:
    - (a) An Order certifying this proceeding as a Class Proceeding pursuant to the Class Proceedings Act and appointing ~~her~~ ~~them~~ as Representative Plaintiffs;
    - (b) A Declaration that, by reason of the events described in this action, the Defendant did breach its fiduciary obligation and duty of care to the Class Members;
    - (c) Damages to include:
      - i. Non-pecuniary and general damages in the amount of at least \$50,000.00 for each Class Member;
      - ii. Pecuniary ~~and special~~ damages in the amount of at least \$25,000.00 for each Class Member;
      - iii. Special damages of \$15,000 for each Class Member; and
      - iv. Punitive, exemplary and aggravated damages in the amount of at least \$10,000.00 for each Class Member,
- caused by the Defendant's breach of fiduciary duty and duty of care;
- (d) 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.);
  - (e) Substantial indemnity costs of this action;
  - (f) HST, as applicable, and
  - (g) Such further and other relief as this Honourable Court deems just.

**Definitions**

## 2. In this Claim:

- (a) "aboriginal" when used in reference to "aboriginal persons" or "aboriginal children" refers to Indian or native or First Nations' persons;
- (b) "Agreement", "the Agreement" refers 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, the federal Crown, ("the Crown") as represented by the Attorney General of Canada;
- (d) "child welfare services" refers to the provision of state services to children following removal from their indigenous or birth homes and includes wardship and adoption placements;
- (e) "Class" or "Class Members" refer to Indian children who were taken from their homes on reserves ~~aboriginal persons~~ 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;
- (f) "Class Period" refers to the period of time from December 1, 1965 to December 31, 1984 in which the "Sixties Scoop", as described below, is alleged to have occurred;
- (g) "constitutional obligation" refers to the obligation of Canada pursuant to section 91(24) of the *Constitution Act, 1867*;
- (h) "cognizable aboriginal interests" include:
  - i) An indigenous language;
  - ii) The exercise of a spiritual meaning of life and holistic view of the environment that is profoundly different than that of the European or the Eurocentric model and which enables a kinship with the environment, all animate and inanimate objects. In contrast to Eurocentric thought, aboriginal people believe and rear their children to respect that the totality of relationships between individuals govern the well-being of the universe, and that no one element exists in the absence of a relationship with all others;
  - iii) The privilege and expectation of a sense of community, community rights, community inter-dependence that is different than that of the Eurocentric

model, communalism in distinction to individualism as an expression of aboriginal identity in contrast to Eurocentric values;

- iv) The use of one's family name, the name passed on from generation to generation;
  - v) The benefit and expectation of a large extended family or clan system, a collective of resources of great numbers and strengths where the ultimate panacea for a family under crisis is not the displacement of the child to another culture or stranger via crown wardship or property transfer *qua* adoption with one nuclear family replacing another; customary care being instead a communal responsibility for the care and rearing of the child within the extended family and clan;
  - vi) Being raised by one's family and community and in one's indigenous culture;
  - vii) Child rearing that is premised upon the child as the gift from the creator, and thus no child would be an orphan, or experience life in an orphanage, foster home or as a society or crown ward. There is no word for society ward or crown ward in any indigenous language of the members of the Class;
  - viii) Child rearing that involves a series of rites of passage within childhood from early on, with the child involved in the routines and management of the community's chores and preservation, and enjoying a sense of freedom within the community uniquely different from that of the Eurocentric concept of childhood where the child is excluded from adult activities and childhood is a period of containment and control;
  - ix) The exercise of one's indigenous culture, traditions and customs; and,
  - x) The respect for oral histories, respect for elders and the passing of beliefs from one generation to the next through such oral histories.
- (i) "cultural identity" includes the cognizable aboriginal interests, as defined above, and refers to the language, customs, traditions, and culture that an aboriginal child enjoys and

necessarily exercises as a member of a family, extended family and aboriginal community;

(j) "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;~~

(k) "Indian Act" means the Indian Act, R.S.C. 1985, c.1-5

(l) "Ontario" refers to the Province and Government of Ontario;

### **Parties**

3. The Plaintiffs, Marcia Brown ~~and Robert Commanda~~, ~~are is an~~ aboriginal persons, and is ~~are~~ proper Representative Plaintiffs on behalf of the Class. ~~Both~~ She resides in Ontario. ~~Both~~ She resided in Ontario at all relevant times. ~~Both, She~~, as a ~~children~~, suffered the consequence of the Defendant's breach of fiduciary obligation and duty of care.

4. The proposed Class is made up of more than 16,000 aboriginal persons known within aboriginal communities and Bands in Ontario as those who, as children, experienced the "Sixties Scoop". During the Class Period they, as children, were placed in the care of non-aboriginal foster or adoptive parents who did not raise them in accordance with their aboriginal customs, traditions, and practices. This event, with its consequences, occurred because the Defendant breached a fiduciary duty and duty of care owed to the Class.

5. The Defendant, The Attorney General of Canada, represents the Crown.

### **Marcia Brown**

6. 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.

7. 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 and a mother and father, as well as extended maternal and paternal relatives, and an indigenous Indian community.

8. 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 at age 9 years. Her child rearing was as a non-native, non-Indian person with no reference at all to her identity as an Indian.

9. 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.

10. At the event of being sent away, the only other personal items she had, besides the clothing she wore, were the clothes she had when years earlier she arrived at the non-Indian adoptive home.

11. 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.

12. 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 of an Indian family and community and she formed an ambivalent, awkward and angry connection to mainstream non-native society. As a result, Brown floundered and struggled.

13. As a child, the authorities or persons in charge or care of her gave Brown no information as to her birth name, or information enabling her to make contact with her identity and her Indian family, extended family and community. When she turned 18, the Crown took no steps to provide her with any information or documentation that would enable her to have access to her adoption records or 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.

14. With the help of others, Brown searched for her records as an Indian person. She discovered that Sally Susan Mathias was dead, according to the Registrar-General in charge of such records. She was not prepared in any way for the process of re-claiming her status.

### **Robert Commanda**

~~15. Robert Commanda ("Commanda") was born Bruce Edward Robert Joseph Commanda on March 28, 1959 in Haileybury, Ontario.~~

~~16. A children's aid society removed him and three brothers from their home in or about 1961, when he was two years old.~~

~~17. Commanda was not adopted. He lived in foster homes in Ontario throughout his childhood. The child rearing to which he was exposed was by non native non Indian persons with no reference ever made to his native or Indian culture or identity.~~

~~18. Commanda was denied any reasonable opportunity to maintain contact with his Indian family, relatives and community. Commanda was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of his family of birth family and community. Commanda entered adulthood with no knowledge of what it meant to be an Indian.~~

~~19. 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.~~

~~20. At all relevant times 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, and although the numbers of his family and his extended family exceeded 3,000 persons and both side of his parents' families continued to practice their culture and to speak their native language.~~

~~21. 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 provided it to him before.~~

~~22. In these circumstances, Commanda was unable to successfully re-integrate into the Indian community.~~

~~23. In these circumstances, 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 no or little connection in respect of traditions, language, customs, heritage and culture. He could not settle into ordinary relationships with Indian and non-Indian persons. He experienced depression and suicidal ideation.~~

#### **Negligence — Canada owes a duty of care**

24. Canada has a duty of care to its vulnerable aboriginal children by virtue of:

- (a) its constitutional obligations;
- (b) jurisprudence of high and binding authority;
- (c) its special relationship with aboriginal persons referred to in jurisprudence as a "duty of honour";
- (d) the incorporation into common law of the traditions and customs of aboriginal societies, giving them legal force as part of the Canadian legal system, and as incorporated into the *Constitution Act, 1982*.
- (e) the existence of an Indian Act as a statutory acknowledgment of Canada's duty of care to aboriginal people; and
- (f) the formal acknowledgement of responsibility by Canada and apology for past policies of assimilation of vulnerable aboriginal children which caused harm.

**Negligence — Canada breached its duty to vulnerable aboriginal children**

25. The Plaintiffs states that cultural identity is a fundamental element in respect of which Canada owes vulnerable aboriginal children a duty of care.

26. In Ontario, between December 1, 1965 and December 31, 1984, Canada breached its duty of care by omitting or failing to take reasonable steps to prevent the Plaintiffs and the Class Members from losing their cultural identity.

27. The Plaintiffs states that her ~~their~~ personal circumstances as described above are representative of the Class.

28. When the Agreement was made, it was not sufficient for Canada to provide funding only. Canada's duty of care to the Class required more than the application of funding. The constitutional duty owed by Canada to vulnerable aboriginal children requires reasonable steps for the protection and exercise of aboriginal cultural identity. Canada took no reasonable steps in fulfilment of its duty of care.

29. More specifically, during the Class Period:

- a) Canada did nothing to stop Ontario from providing child welfare services in consequence of which Canada knew or ought to have known would result in the Class Members losing their cultural identity;
- b) Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services;
- c) Canada did nothing to ensure ~~assure~~ that vulnerable aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes;
- d) Canada did nothing to ensure ~~assure~~ that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes;

- e) Canada did nothing to ensure ~~assure~~ that aboriginal children were made aware of their status as aboriginal persons when they left their non-aboriginal homes or entered their age of majority;
- f) Canada did nothing to ensure ~~assure~~ that aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural identity; and
- g) Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial *Child and Family Services Act*, S.O. 1984, c. 55.

30. By failing to take any such steps, Canada turned a blind eye to the Class who it knew, or reasonably should have known would thereby individually and collectively lose their cultural identity, and suffer the psychological and other harm described herein.

#### **Negligence — Causation**

31. Canada's conduct, as pleaded herein, caused damages to the Plaintiffs and the Class, as particularized below, which harm and damages were foreseeable.

32. The provision of funding through the Agreement did not absolve Canada from the duty to take reasonable steps to prevent vulnerable aboriginal children from losing their aboriginal cultural identity as a by-product of Ontario child welfare policies.

33. Canada cannot rely upon a delegation of authority to Ontario when Canada failed to take any reasonable steps to monitor and safeguard the protection of the vulnerable aboriginal child's cultural identity.

#### **Negligence — Damages**

34. The Plaintiffs states that she ~~they~~ and members of the Class suffered damages by reason of the loss of their cultural identity. The Plaintiffs ~~rely~~ relies upon the description of damages set out below at paragraphs 52-55.

### **Fiduciary Duty**

#### **Canada has a fiduciary relationship with vulnerable aboriginal children**

35. The Plaintiffs state that Canada stands in a fiduciary relationship to its aboriginal peoples.

36. Canada has exclusive jurisdiction in respect of aboriginal persons pursuant to section 91(24) of the *Constitution Act, 1867*, section 35(1) of the *Constitution Act, 1982*, the common law, and court rulings of high and binding authority.

#### **The fiduciary duties arising from the fiduciary relationship**

37. By virtue of its constitutional obligation, Canada's duty of honour in the treatment of aboriginal persons, including an ongoing obligation of consultation on matters relevant to aboriginal interests, and well-accepted jurisprudence of high and binding authority, there is an expressed and implied undertaking by Canada to protect the interests of vulnerable aboriginal children.

38. Canada's constitutional obligation, the Indian Act, and the common law, including the duty of honour, bestow a discretionary control requiring Canada to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of vulnerable aboriginal children, and, in particular, their cultural identity.

39. The nature and importance of the aboriginal cultural identity is fundamental to the security, welfare and survival of aboriginal persons.

40. Aboriginal cultural identity is entrenched within the Constitution Act, 1867 and the Constitution Act, 1982, and is at the core of being an "Indian" under Canadian law.

#### **Canada's Breach of its Fiduciary Duties**

41. During the Class Period, Canada had a fiduciary duty to the Plaintiffs and the Class when they were removed from their homes and placed in non-aboriginal homes.

42. Canada's fiduciary duty continued by virtue of its constitutional obligation notwithstanding the Agreement and Ontario's responsibility for providing child welfare services.

43. Cultural identity is critical to the healthy development of vulnerable aboriginal children which, as a fiduciary, Canada must take into account and take reasonable steps to protect.

44. Canada breached its fiduciary duty to the Plaintiffs and the Class by failing to take reasonable steps to protect the cultural identity of the Plaintiffs and the Class Members and, therefore, failed to prevent the Plaintiffs and the Class Members from losing their cultural identity.

45. More specifically, during the Class Period:

- a) Canada did nothing to stop Ontario from providing child welfare services in consequence of which the Class Members lost their cultural identity;
- b) Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services;
- c) Canada did nothing to ensure ~~assure~~ that aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes;
- d) Canada did nothing to ensure ~~assure~~ that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes;
- e) Canada did nothing to ensure ~~assure~~ that aboriginal children were made aware of their status as aboriginal persons or the benefits available to them when they left their non-aboriginal homes or entered their age of majority;
- f) Canada did nothing to ensure ~~assure~~ that aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural identity; and

g) Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial *Child and Family Services Act*, S.O. 1984, c. 55.

46. At all relevant times, Canada had authority and an obligation to intervene. It did not. Instead, Canada merely provided funding to Ontario to ensure that the province's child welfare legislation would extend to on-reserve Indian children. As Canada knew, the Agreement did not provide protection for the cultural identity of vulnerable aboriginal children within Ontario's child welfare system.

47. As Canada knew, adoption and permanent foster care in non-aboriginal homes were events in apparent and actual conflict with the protection of aboriginal cultural identity.

48. Canada failed to consult with the Ontario Indian Bands in respect of the provision of funding for child welfare practices and policies to on-reserve Indian children that it knew were clearly in conflict with its duty to protect the cultural identity of on-reserve Indian children.

49. By failing to take any such steps to protect the aboriginal cultural identity of the Plaintiffs and the Class, Canada, in breach of its fiduciary duty, was careless, reckless, wilfully blind, or deliberately accepting or promoting a policy of cultural assimilation.

50. Canada knew or reasonably should have known that vulnerable aboriginal children, in these circumstances, would assimilate with the culture of their non-aboriginal caregivers.

51. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiffs and the Class Members.

**Fiduciary duty— Damages**

52. As a result of Canada's actions and omissions, the Plaintiffs and the Class were subject to emotional, psychological and spiritual suffering by reason of the unnecessary and destructive loss of an aboriginal cultural identity. They were left fundamentally disoriented, with a reduced

ability to lead healthy, functional and fulfilling lives, and their ability to pass on to succeeding generations the spiritual, cultural and behavioural bases of their peoples was significantly compromised.

53. The Plaintiffs and the Class became unwilling participants in what is now known in the aboriginal community as the "Sixties Scoop". This description refers to the survivors of the Class Period that were robbed of their culture, customs, traditions, language and spirituality, in consequence of which they experienced loss of self-esteem, identity crisis, trauma in trying to re-claim the culture, traditions and spirituality that comprises the identity, and they became socially dysfunctional, requiring therapy and counselling.

54. The Plaintiffs pleads that ~~she they~~ and the Class members experienced, and continue to experience the impact of the Sixties Scoop as Canada's attempt to intentionally implement a cultural assimilation and loss of their aboriginal identity. The Plaintiffs seeks punitive, aggravated and exemplary damages by reason of Canada's egregious conduct in violating the fundamental rights of children.

55. Pecuniary damages include the loss occasioned by the deprivation of various entitlements and benefits to which the class of aboriginal persons would have been entitled to receive by virtue of their Indian status but which they did not receive because they were unaware of these entitlements and benefits. These entitlements and benefits include: education grants; extended health care benefits (including but not limited to prescription and non-prescription drugs, medical transportation, and dental care); treaty annuities; entitlement to reserve land (including 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); trapping, fishing, and hunting rights; and tax benefits (including the GST exemption). The Plaintiff states that the Defendant had an obligation to notify the class members of these entitlements and benefits which were available to them notwithstanding their adoption or wardship.

56. Special damages include the costs for rehabilitative and therapeutic services responsive to the harm experienced by the Class. ~~For some of the Class Members, special damages includes 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 of the Class Members to be so distanced or estranged from their culture that they would not reasonably choose to live within the Band, or exercise their statutory rights under the Indian Act.~~

57. The Plaintiffs pleads and relies ~~rely~~ upon the *Class Proceedings Act, 1992*, S.O. 1992, c.

**Place of Trial**

58. The Plaintiffs proposes that this action be heard in Toronto, Ontario.

*Feb. 9/09*  
Date: ~~July 28, 2015~~ February 9, 2009

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**BROWN ET AL.**  
Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**  
Defendant

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

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**FRESH AS AMENDED AMENDED STATEMENT OF CLAIM**

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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

Proceedings commenced under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF DEFENCE**

1. This statement of defence is delivered in response to:
  - ~~the statement of claim issued February 9, 2009;~~
  - ~~the plaintiffs' response to request for particulars dated August 7, 2009; and~~
  - ~~the plaintiffs' further particulars provided by letter dated August 10, 2009.~~
  - The plaintiff's Fresh as Amended Amended Statement of Claim dated July 25, 2015 (the "amended statement of claim").
2. The defendant, the Attorney General of Canada, admits the allegations contained in Paragraph 5 of the amended statement of claim.
3. The Attorney General denies the allegations contained in Paragraphs 1 to 4 and 24 to 56 of the amended statement of claim.
4. [Paragraph deleted].
5. [Paragraph deleted].
6. The Attorney General has no knowledge in respect of the allegations contained in

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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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

**REPLY**

1. The Plaintiffs admit the allegations contained in the opening phrasing prior to the semicolon in paragraph 41 up to and including the word "one" and the allegations in paragraphs 50 and 51.
2. The Plaintiffs deny all other allegations in the Statement of Defence.
3. In response to the Defendant's pleaded historical recital of a purported delegation to Ontario, paragraphs 9-39 of the Statement of Defence, the plaintiffs state that any delegation was unlawful, and state further that by delegating to provincial authorities, Canada derogated from its exclusive jurisdiction over the care of First Nations' children during the period identified. The instrument for the improper delegation was that of the 1965 Canada-Ontario Welfare Services Agreement apparently referred to in the Statement of Defence at paragraph 35 as the "1965 Indian Welfare Agreement".
4. In response to the Defendant's pleaded reliance upon "Limitations issues", paragraph 68 of the Statement of Defence, the Plaintiffs state:

- (a) The effective ultimate 15-year limitation period runs from January 1, 2004 and the expiration date is January 1, 2019.
- (b) The Plaintiffs and the proposed class members were children when the acts or omissions upon which their claim is based occurred. Furthermore, by reason of the Defendant's conduct, they have been in no condition until recently to form the capacity to commence a proceeding.
- (c) Each of the Plaintiffs and the proposed members of the class are those who have suffered long-term trauma. As a result of the long-term trauma and the required lengthy period of time for recovery and constructive affirmation of their Indian identity, the plaintiffs are representative of a class who would only recently be in a position to appreciate the injury, loss or damage that had occurred and its nexus with the actions of the Defendant.
- (d) Furthermore, the alleged wrongdoings were targeted at certain constituency within Canadian society; the actions or omissions that caused the harm were permitted by the social mores of the time. Only recently, and as a result of a slowly emerging empirical recognition of the harm of such acts would the plaintiffs be in the position to appreciate that a legal proceeding would be an appropriate means to remedy it.
- (e) The principles of discoverability apply as codified in the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, ss. 5 and 7.
- (f) The Plaintiffs commenced this action when they knew of the above, and the class they proposed to represent will be in the same position.
- (g) The Plaintiffs cannot be penalized for lack of legal action when not taking action is a result of the historical and well-executed harm carried out by the Defendant and about which they now seek damages.

- (h) To the extent Ontario's *Public Authorities Act*, R.S.O. 1990, c.P.38 may be applicable, which the Plaintiffs dispute, it was repealed upon proclamation into force of the *Limitations Act*.
- (i) To the extent a claim for breach of fiduciary duty may be subject to a general two-year limitation period, which the Plaintiffs deny because it a claim in equity, they acted promptly upon discovering their capacity to appreciate the harm that was done. The Plaintiffs dispute the Defendant's reliance upon the doctrine of laches.
- (j) The Plaintiffs state that the Defendant's reliance upon the doctrine of acquiescence is offensive; they were children when the acts of harm were carried out and then psychologically and emotionally traumatized adults as a result. Furthermore, in contravention of the pleaded 1965 Agreement, the Defendant did not consult with the Plaintiffs' Indian communities as they carried out the harm.

5. The Plaintiffs expressly deny that paragraph 39 of the Statement of Defence to the effect that the Defendant was, and remained in step during the 20-year period in question and that it did anything to help, rather than hurt the proposed class of children who were vulnerable to its acts and omissions, and the Plaintiffs put the Defendant to the strict proof thereof.

Date: November 20, 2009

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Court File No. ~~09-CV-382025~~ CPCV-09-00372025-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MARCIA BROWN and ~~ROBERT COMMANDA~~**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY**

The Plaintiff, Marcia Brown, has chosen to examine the Defendant, the Attorney General of Canada, for discovery by written questions and requires that the following questions be answered by affidavit in form 35B prescribed by the *Rules of Civil Procedure*, served on or before February 15, 2016 pursuant to the October 16, 2015 Order of the Honourable Justice Belobaba.

*[In these questions, "pleading" refers to the Defendant's September 25, 2015 Amended Statement of Defence". The terms "Class Members", "Class Period", "cultural identity", "cognizable aboriginal interests" are those, as defined in the Plaintiff's July 28, 2015 "Fresh As Amended Amended Statement of Claim"]*

1. What efforts, if any, did the Defendant take to pursue information pertaining to paragraphs 6-14 of the Plaintiff's amended statement of claim?
2. If the Defendant did take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiff's amended statement of claim, who did the Defendant contact?
3. If the Defendant did not take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiff's amended statement of claim, why did it not?
4. If the Defendant did not take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiff's amended statement of claim, who would it now contact to obtain such information?
5. What are the facts upon which the Defendant relies in support of paragraph 7 of their pleading?
6. Who are the witnesses the Defendant will be calling in support of paragraph 7 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?

7. Who are the witnesses the Defendant will be calling in support of paragraph 8 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?
8. Who are the witnesses the Defendant will be calling in support of paragraph 9 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?
9. Was this alleged historical *parens patriae* jurisdiction in effect during the "Class Period" as defined in the Amended Statement of Claim?
10. How many of the "Class Members", as defined in the Amended Statement of Claim had any exposure to a court of such historical *parens patriae* jurisdiction?
11. How did Class Members access this *parens patriae* jurisdiction?
12. How would Class Members reasonably access this *parens patriae* jurisdiction?
13. How would Class Members know of this *parens patriae* jurisdiction?
14. Did it cost anything financially to access this *parens patriae* jurisdiction during the Class Period?
15. Did the Defendant make know, or cause to be made known the fact and nature of the *parens patriae* jurisdiction during the Class Period?
16. What efforts, if any, did the Defendant take to familiarize itself with the answer to question 10, above, before pleading paragraph 9 of the Amended Statement of Defence?
17. If any such efforts were taken, what resources, documents, contacts did the Defendant make to locate such information?
18. To which legislation does the Defendant point, as exemplifying the application of the those principles to children needing protection, support and care, referred to in paragraph 10, in reference to the "Class Members" in the within action?
19. How many of the Class Members were the subject of the application of the principles referred to in paragraph 10 of the Pleading during the Class Period, as so defined?
20. Who are the witnesses the Defendant will be calling in support of paragraph 10 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?

21. What are the facts upon which the Defendant relies in support of paragraph 11 of their pleading?
22. Who are the witnesses the Defendant will be calling in support of paragraph 11 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?
23. What is the written documentation upon which the Defendant will be relying in support of paragraph 11 of its Pleading?
24. What is the legislation, if any, upon which the Defendant is relying in support of paragraph 11, as applied to the Class Members during the Class Period, as each term is defined in the Amended Statement of Claim?
25. What are the facts upon which the Defendant relies in support of paragraph 12 of their pleading?
26. What is the written documentation upon which the Defendant will be relying in support of paragraph 12 of its Pleading?
27. If there is documentation, or if there are facts, what consultation if any, took place between the Defendant and Class Members or Ontario Chiefs of the Class Members, during the Class Period?
28. If any such consultation is in written form, please produce it.
29. If there are any witnesses to the fact of such consultation, please provide their names, municipal and email addresses and telephone numbers, and a will-say statement for each such witness.
30. What are the facts upon which the Defendant relies in support of paragraph 13 of their pleading?
31. What is the written documentation upon which the Defendant will be relying in support of paragraph 13 of its Pleading?
32. In particular, and without limiting the generality of the questions posed above at items 25 & 26, what are the material facts in support of this assertion in the Defendant's pleading:

*There is no cause of action for failure to legislate*

33. What are the facts upon which the Defendant relies in support of paragraph 14 of their pleading?
34. What is the written documentation upon which the Defendant will be relying in support of paragraph 14 of its Pleading?

35. How much money did the Defendant approve for the administration of child welfare services to the Class Members during the Class Period?
36. Of the amount of money, if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for after-care or after placement services for Class Members placed in homes for adoption?
37. Of the amount of money, if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for after-care or after placement services for Class Members placed in homes for long term crown wardship?
38. Of the amount if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for monitoring and the objective of the preservation of "cognizable aboriginal interests" and, or "cultural identity", as those terms are defined in the Amended Claim?
39. Provide the number of cases where any such funding in respect of item 36 occurred.
40. Provide the number of cases where any such funding in respect of item 37 occurred.
41. Provide the number of cases where any such funding in respect of item 38 occurred.
42. Provide any written documentation in support of the answers to questions 35-41.
43. Provide, specifically, the names of any and all witnesses to give evidence pertaining to items 35-41, their municipal and email addresses and phone numbers.
44. What are the facts upon which the Defendant relies in support of paragraph 15 of their pleading?
45. What is the written documentation upon which the Defendant will be relying in support of paragraph 15 of its Pleading?
46. Provide the names of the witnesses and all witnesses to give evidence pertaining to item 14 and 15 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.
47. Identity the names of any Chiefs of Ontario with whom the Defendant consulted during the Class Period concerning the matters pleaded in paragraph 15 of the Amended Statement of Defence.
48. If there is a name, or there are such names, provide the written documentation in respect of the fact and nature of such consultation(s).

49. What are the facts upon which the Defendant relies in support of paragraph 17 of their pleading?
50. What is the written documentation upon which the Defendant will be relying in support of paragraph 17 of its Pleading?
51. Provide the names of the witnesses and all witnesses to give evidence pertaining to item 17 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.
52. Referring to paragraph 17 of the Pleading, how much money did the Defendant, in its use of the federal spending power, approve for the administration of child welfare services to the Class Members during the Class Period?
53. Referring to paragraph 17 of the Pleading, of the amount of money, if any, the Defendant approved, in its use of the federal spending power, how much was allocated, in absolute dollars, for after-care or after placement services for Class Members placed in homes for adoption?
54. Referring to paragraph 17 of the Pleading, of the amount of money, if any, the Defendant approved, in its use of the federal spending power, how much was allocated, in absolute dollars, for after-care or after placement services for Class Members placed in homes for long term crown wardship?
55. Referring to paragraph 17 of the Pleading, of the amount if any, the Defendant approved, in its use of the federal spending power, how much was allocated for monitoring and the objective of the preservation of "cognizable aboriginal interests" and, or "cultural identity", as those terms are defined in the Amended Claim?
56. Provide the number of cases where any such funding in respect of item 53 occurred.
57. Provide the number of cases where any such funding in respect of item 54 occurred.
58. Provide the number of cases where any such funding in respect of item 55 occurred.
59. Provide any written documentation in support of the answers to questions 50-59.
60. Provide, specifically, the names of any and all witnesses to give evidence pertaining to items 50-59, their municipal and email addresses and phone numbers.
61. Provide the names of the witnesses and all witnesses to give evidence pertaining to item 18 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.

62. Concerning item 18 of the Pleading, provide any and all material facts upon which the Defendant relies for the assertion that this Act had any bearing at all upon the Class Members during the Class Period.
63. Concerning item 18 of the Pleading, provide the names of the of the witnesses and all witnesses to give evidence pertaining to any evidence that this Act had any bearing at all upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.
64. Provide the names of the witnesses and all witnesses to give evidence pertaining to item 19 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.
65. Concerning item 19 of the Pleading, provide any and all material facts upon which the Defendant relies for the assertion that this Act had any bearing at all upon the Class Members during the Class Period.
66. Concerning item 19 of the Pleading, provide the names of the of the witnesses and all witnesses to give evidence pertaining to any evidence that this Act had any bearing at all upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.
67. Concerning paragraphs 20-34 of the Pleading, provide the names of the witnesses to give evidence pertaining to the assertions in those paragraphs, their municipal and email addresses and phone numbers, and will-say statements as to their evidence.
68. Concerning paragraphs 20-34 of the Pleading, provide the names of the witnesses and all witnesses to give evidence that that pleaded in paragraphs 20-34 has any bearing upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.
69. Concerning paragraphs 20-34 of the Pleading, if there are witnesses to give the evidence referred to in item 68, immediately above, provide any and all written documentation upon which the Defendant relies.
70. Concerning paragraphs 20-34, if there are witnesses to give the evidence referred to in item 68, above, please provide any and all facts as , to what, if any, consultations occurred between the Defendant and the Chiefs of Ontario, and, if so, the names of the witnesses, their municipal and email addresses, and telephone numbers, and will-say statements who will be giving evidence of such consultations, and if so, any and all written documentation upon which the Defendant will be relying.
71. Concerning paragraph 35 of the Pleading, identify the part of the "1965 Federal-Provincial Indian Welfare Agreement" that speaks to the issues of "cultural identity", Cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".

72. Concerning paragraph 35 of the Pleading, identify the amount of money, in absolute dollars, committed to the issues of "cultural identity", "cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".
73. Concerning paragraph 35 of the Pleading, identify the number of Class Members who, during the Class Period, received funding for the monitoring or preservation or access to their "cultural identity" or "cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".
74. Concerning paragraph 35 of the Pleading, identify the names of Chiefs of Bands in Ontario with whom the Defendant consulted either as to the creation and, or implementation of the "1965 Federal-Provincial Indian Welfare Agreement".
75. Concerning paragraph 35 of the Pleading, provide any written documentation pertaining to any and all consultation with Chiefs of Bands in Ontario with whom the Defendant consulted either as to the creation and, or implementation of the "1965 Federal-Provincial Indian Welfare Agreement".
76. Concerning paragraph 35 of the Pleading, provide the names of any and all witnesses who will be called to give evidence concerning the facts pleaded therein, their names, municipal and email addresses and telephone numbers and will-say statements.
77. Concerning the first line of paragraph 36 of the Pleading, provide the names of any and witnesses who will be called to give evidence concerning the facts pleaded therein, their names, municipal and email addresses and telephone numbers and will-say statements.
78. Concerning the first line of paragraph 36 of the Pleading, provide the names of the witnesses, email and municipal addresses and phone numbers, who be speaking to the "lengthy period of continuing and active political and legal debate about the place of aboriginal people in the Canadian constitutional family".
79. Concerning paragraph 37 of the Pleading, provide the material facts, if any, as to how that pleaded has any bearing on the Class Members in the Class Period and the matter of their cultural identity and cognizable aboriginal interests.
80. If there are such facts, provide any and all written documentation upon which the Defendant relies to assert those facts.
81. If there are such facts, provide the names of any and witnesses who will be called to give evidence concerning those facts.

82. Concerning paragraph 38 of the Pleading, provide the material facts, if any, as to how that pleaded has any bearing on the Class Members in the Class Period and the matter of their cultural identity and cognizable aboriginal interests.
83. If there are such facts, provide any and all written documentation upon which the Defendant relies to assert those facts.
84. If there are such facts, provide the names of any and witnesses who will be called to give evidence concerning those facts.
85. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the amount of money, in absolute dollars, committed to the issues of preserving, monitoring or accessing "cultural identity" or "cognizable aboriginal interests" for the Class Members during the Class Period.
86. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the number of Class Members who, during the Class Period, received funding for the monitoring or preservation or access to their "cultural identity" or "cognizable aboriginal interests".
87. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the names of Chiefs of Bands in Ontario with whom the Defendant consulted about remaining in step.
88. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", provided any written documentation pertaining to any and all consultation with Chiefs of Bands in Ontario with whom the Defendant consulted about remaining in step.
89. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the number of Class Members during the Class Period whose access to, or preservation or monitoring of "cultural identity" or "cognizable aboriginal interests" were affected; specifically the number of children placed for adoption or placed in long-term care as crown wards who had access to their cultural identity or cognizable aboriginal interests by reason of Canada allegedly remaining in step, as so described.
90. Provide any and all written documentation to support any answer to item 89, and the names of any and witnesses who will give evidence concerning the answer to item 89, their email and municipal addresses, phone numbers and will-say statements.

91. Concerning paragraph 41 of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.
92. Concerning paragraph 41 of the Pleading, provide any and all written documentation upon which the Defendant will rely.
93. Concerning paragraph 41a of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.
94. Concerning paragraph 41a of the Pleading, provide any and all written documentation upon which the Defendant will rely.
95. Concerning paragraph 41a of the Pleading, provide the names of any and all Chiefs of Bands in Ontario with whom the Defendant consulted and advised of the fact that the "1965 Indian Welfare Agreement" was not intended to be, and did not constitute an undertaking.
96. If there are names of Chiefs, provide any and all written documentation upon which the Defendant will rely.
97. If there are names of Chiefs, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.
98. Concerning paragraph 42 of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.
99. Concerning paragraph 42 of the Pleading, provide any and all written documentation upon which the Defendant will rely.
100. Concerning paragraph 42 of the Pleading, identify the names of any and all Chiefs with whom the Defendant consulted as to the creation or implementation of the 1965 Indian Welfare Agreement, written documentation that attests to same, if there were such consultation, and the names of witnesses, email and municipal addresses, telephone numbers and will-say statements to attest to same.
101. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the doctrine of "best interests of the child".
102. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the Class Members during the Class Period.

103. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the preservation or monitoring of, or access to the cultural identity and cognizable aboriginal interests of the Class Members during the Class Period.
104. Concerning paragraph 43 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements pertaining to that so pleaded.
105. Concerning paragraph 43d, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements pertaining to that so pleaded.
106. Concerning paragraph 43d, produce any and all written documentation upon which the Defendant relies for this paragraph in the Pleading.
107. Concerning paragraph 43e, advise as to what follow-up investigation, assessment, inquiry, or comparative analysis with other indigenous peoples the Defendant has done, or caused to be done, with respect to the identification of cognizable aboriginal interests, cultural identity and the impact, if any, as to the loss of same for the Class Members during and after the Class Period.
108. Concerning paragraph 43e, if such follow-up investigation, assessment, inquiry, or comparative analysis with other indigenous peoples was done, produce the written documentation and the names of witnesses, email and municipal addresses, telephone numbers and will-say statements.
109. Concerning paragraph 43f, identify the policy considerations, the particulars of same, the written documentation, if any, to support these considerations, and names of witnesses, email and municipal addresses, telephone numbers and will-say statements
110. Concerning paragraph 43f, produce the documentation, or names of witnesses, email and municipal addresses, telephone numbers and will-say statements, that link any and all policies, as referred to in the last line of paragraph 43, to the identification of cognizable aboriginal interests or cultural identity and the opportunity for Class Members to have access to their cognizable aboriginal interests during and after the Class Period.
111. Concerning paragraph 43g, upon what documentation, if any, does the Defendant rely as to the evolving standard of care associated with the principle of "best interests of child".
112. Concerning paragraph 43g, what investigation, inquiry, comparative analysis did the Defendant carry out or cause to be carried out in respect of the Class Members during the Class Period or thereafter in order to plead an evolving standard of care associated with the principle of "best interests of the child".

113. If any such investigation, inquiry, comparative analysis was carried out, or caused to be carried out, produce the written documentations and names of witnesses, email and municipal addresses, telephone numbers and will-say statements.
114. Produce documentation, if any, the links the intentional or unintentional loss of cultural identity with the "best interests of the child" principle. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements which the Defendant will be putting forward at trial.
115. Produce the material facts from the international Convention upon which the Defendant pleads in paragraph 50 to support its case.
116. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements to speak to the international conventions.
117. Produce what comparative analysis with other countries in respect of indigenous peoples and their cultural identity or cognizable aboriginal interests the Defendant carried out or caused to be carried out prior to relying upon the fact that it is a party to international human rights conventions.
118. Produce what assessment, investigations, inquiries, if any, the Defendant has carried out or caused to be carried out pertaining to the loss of cultural identity and recognized cognizable aboriginal interests in respect of its reporting duty pursuant to Article 44 of the Convention on the Rights of the Child. Produce what steps, if any, the Defendant has taken in response to the recommendations of the Committee on the Rights of the Child pursuant to the Convention on the Rights of the Child, as related to the status and condition of First Nations' children in Canada.
119. Produce any and all documentation in answering item 118.
120. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements, who will be speaking to that pleaded in paragraph 50 of the Pleading.
121. Concerning paragraph 57 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements, who will be giving evidence on this aspect of that pleaded.
122. Concerning paragraph 57 of the Pleading, produce any and written documentation upon which the Defendant relies to say the harm was:
  - (a) Unintended; or
  - (b) Not reasonably foreseeable.

123. Concerning paragraph 57 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant during the time of the Class Period on the matter of cultural identity for Canada's First Nations people, or on the matter of the loss or non-exercise of cognizable aboriginal interests.
124. Concerning paragraph 57 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant following the time of the Class Period on the matter of cultural identity for Canada's First Nations people, or on the matter of the loss or non-exercise of cognizable aboriginal interests.
125. Concerning paragraph 63 of the Pleading, produce any and written documentation upon which the Defendant relies to say that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common..."
126. Concerning paragraph 63 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence as to the assertion that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common..."
127. Concerning paragraph 63 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant or caused to be carried out by the Defendant for the assertion that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common..."
128. Concerning paragraph 64, identify the equitable principles responsive to the loss of cultural identity or non-exercise of cognizable aboriginal interests during the Class Period.
129. Concerning paragraph 64, identify the statutory principles responsive to the loss of cultural identity or non-exercise of cognizable aboriginal interests during the Class Period.
130. Concerning paragraph 64, list the dispositions to which reference is made that addressed the Class Members' cultural identity or cognizable aboriginal interests.
131. Concerning paragraph 64, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence supporting that as pleaded.
132. Concerning paragraph 64, advise as to the extent, if at all, the Defendant read the Kimelman Report, *No Quiet Place*, Final Report of the Review Committee on Indian and Métis Adoptions and Placements to the Minister of Community Services, Manitoba Community Services, Winnipeg (1995) prior to pleading paragraph 64.

133. Concerning paragraph 64, advise as to what studies, investigations, assessments, comparative analyses the Defendant intends to rely upon in support of that pleaded.
134. Concerning paragraph 66, identify the material facts upon which the Defendant relies to assert that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.
135. Concerning paragraph 64, produce all written documentation upon which the Defendant intends to rely to assert that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.
136. Concerning paragraph 64, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.

Date: November 30, 2015

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**BROWN**  
Plaintiff

- and -

**THE ATTORNEY GENERAL OF CANADA**  
Defendant

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

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY**

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Court File No. CV-09-0037202500-CP

BETWEEN:

ONTARIO  
SUPERIOR COURT OF JUSTICE

MARCIA BROWN

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

**THE DEFENDANT'S ANSWERS TO  
THE PLAINTIFF'S WRITTEN EXAMINATION FOR DISCOVERY**

The following are the Defendant's answers to the Plaintiff's written examination for discovery by written questions pursuant to the October 16, 2015 Order of the Honourable Justice Belobaba.

Where paragraphs from the Amended Statement of Defence are reproduced, any strike-outs and underlining have been removed.

- 1. **What efforts, if any, did the Defendant take to pursue information pertaining to paragraphs 6-14 of the Plaintiffs amended statement of claim?**

Answer: Paragraphs 6 to 14 of the Plaintiff's Fresh As Amended Amended Statement of Claim plead particulars of the life of the representative plaintiff. In accordance with the Defendant's production obligation, the Defendant engaged researchers to conduct searches of its records and the records of the Registrar of Indian Records relating to the plaintiff Marcia Brown, born Sally Susan Mathias on June 7, 1963, as pleaded. Relevant records were provided to Plaintiff's counsel as part of the Defendant's productions on December 22, 2009. As Plaintiff's counsel and the court have been advised, steps are being taken to conduct further searches for records and documents within Indigenous and Northern Affairs Canada and other departments of the federal government, including Health Canada. Any relevant documents that are obtained will be provided as further productions in accordance with the Defendant's continuing production obligation.

- 2. **If the Defendant did take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiff's amended statement of claim, who did the Defendant contact?**

Answer: See answer to question 1.

- 3. **If the Defendant did not take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiffs amended statement of claim, why did it not?**

Answer: Not applicable. See answer to question 1.

4. **If the Defendant did not take efforts to pursue information pertaining to paragraphs 6-14 of the Plaintiffs amended statement of claim, who would it now contact to obtain such information?**

Answer: Not applicable. See answer to question 1.

5. **What are the facts upon which the Defendant relies in support of paragraph 7 of their pleading?**

Answer: In paragraph 7 of the Amended Statement of Defence, the Defendant pleads:

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." The plaintiffs and the members of the 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.

The first sentence of paragraph 7 is based on paragraph 2 of the certification order of Justice Belobaba dated September 27, 2013.

The second sentence of paragraph 7 is an uncontested fact in these proceedings. Please see the decision of the Divisional Court, dated December 2, 2014, which states at paragraph 24: "...Each member of the proposed class was, at the relevant time, a child who was in need of protection. No issue was taken with the 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."

Further references can be found in other decisions of the courts in these proceedings. For example, the decision of Justice Perell dated May 26, 2010, states at paragraph 51: "It may be noted that Ms. Brown and Mr. Commanda, do not challenge the appropriateness or legality of their removal from their original families or the subsequent court orders placing them in the care of foster or adoptive parents."

6. **Who are the witnesses the Defendant will be calling in support of paragraph 7 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?**

Answer: It is a matter of court record.

7. **Who are the witnesses the Defendant will be calling in support of paragraph 8 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?**

**Answer:** In paragraph 8 of the Amended Statement of Defence, the Defendant pleads:

The claim alleges that Canada has variously breached a fiduciary duty owed to the plaintiff and to the members of the class, and breached a duty of care in negligence. The Attorney General denies the allegations and defends Canada on all of the claims.

**Undertaking.** The Defendant is reviewing the evidence required to defend the action and undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules. It is anticipated that the witnesses' evidence will address the following areas:

- (1) the history of and continuing evolution in the law and in judicial and social attitudes and thought concerning the role of the state and the values to be considered and applied in the welfare of children, with particular reference to Canada and Ontario;
- (2) the historical and political context of the continuing evolution of Crown and aboriginal relations as it relates to the issues in the action;
- (3) welfare standards of the day;
- (4) the historical facts, background, purpose and operation of the 1965 Agreement; and
- (5) losses attributable to the making and operation of the 1965 Agreement and other breaches of duty as alleged in the plaintiff's claim.

Should witnesses with respect to other areas be identified, the Defendant shall advise the Plaintiff of same, reasonably in advance of trial. Reports of witnesses who are experts will be delivered prior to trial.

Please see also the answers to questions 8, 20- 22, 25, 26, 30, 33, 34, 43, 44, 46, 49, 51, 60-67, 76-84, 89 -91, 93, 104, 107, 108, 112, and 121.

8. **Who are the witnesses the Defendant will be calling in support of paragraph 9 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?**

**Answer:** In paragraph 9 of the Amended Statement of Defence, the Defendant pleads:

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.

Please see the answer to question 7. The Defendant anticipates calling one or more witnesses in respect of the history and evolution in respect of the role of the state and in the values associated with the welfare of children. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time prescribed by the Rules.

9. **Was this alleged historical *parens patriae* jurisdiction in effect during the "Class Period" as defined in the Amended Statement of Claim?**

Answer: *Parens patriae* jurisdiction was in effect before and during the Class Period and continues to be in effect to present day.

10. **How many of the "Class Members", as defined in the Amended Amended Statement of Claim had any exposure to a court of such historical *parens patriae* jurisdiction?**

Answer: The existing principle of *parens patriae* jurisdiction is exercised by superior court judges. All class members would have been subject to the principles of the "welfare of the child" and the "best interest of the child", as those principles existed during the class period.

11. **How did Class Members access this *parens patriae* jurisdiction?**

Answer: As stated in the answer to question 10, *parens patriae* jurisdiction is exercised by superior court judges.

12. **How would Class Members reasonably access this *parens patriae* jurisdiction?**

Answer: As stated in the answer to question 10, *parens patriae* jurisdiction is exercised by superior court judges.

13. **How would Class Members know of this *parens patriae* jurisdiction?**

Answer: As stated in the answer to question 10, *parens patriae* jurisdiction is exercised by superior court judges.

14. **Did it cost anything financially to access this *parens patriae* jurisdiction during the Class Period?**

Answer: As stated in the answer to question 10, *parens patriae* jurisdiction is exercised by superior court judges.

15. **Did the Defendant make know, or cause to be made known the fact and nature of the *parens patriae* jurisdiction during the Class Period?**

Answer: As stated in the answer to question 10, *parens patriae* jurisdiction is exercised by superior court judges.

16. **What efforts, if any, did the Defendant take to familiarize itself with the answer to question 10, above, before pleading paragraph 9 of the Amended Statement of Defence?**

Answer: Paragraph 9 of the Amended Statement of Defence pleads a proposition of law. The answer to question 10 is based on the application of that proposition of law.

17. **If any such efforts were taken, what resources, documents, contacts did the Defendant make to locate such information?**

Answer: Legal research was carried out. Beyond that, the question asks for privileged information.

18. **To which legislation does the Defendant point, as exemplifying the application of the those principles to children needing protection, support and care, referred to in paragraph 10, in reference to the "Class Members" in the within action?**

Answer: In paragraph 10 of the Amended Statement of Defence, the Defendant pleads:

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."

The question invites legal argument and, therefore, is not a proper question for examination for discovery. However, the material facts of the legislation and federal-provincial agreements are pleaded at paragraphs 17 to 39 of the Amended Statement of Defence.

19. **How many of the Class Members were the subject of the application of the principles referred to in paragraph 10 of the Pleading during the Class Period, as so defined?**

Answer: All of the class members who were the subject of judicial proceedings.

20. **Who are the witnesses the Defendant will be calling in support of paragraph 10 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?**

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children, including the evolution of the principle of "the best interests of the child", the *parens patriae* jurisdiction of the court, the state

of knowledge of the relevant social sciences during the class period and the evolution of the relevant legislation leading up to the 1985 amendments which brought an end to the class period. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

21. **What are the facts upon which the Defendant relies in support of paragraph 11 of their pleading?**

Answer: In paragraph 11 of its Amended Statement of Defence, the Defendant pleads:

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.

Please see the answer to question 7. The development of the law and judicial and social attitudes and thought evolved over the class period from a point where the "best interests of the child" did not include the obligation to consider the "importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity" as a factor to be considered together with all the other factors relevant to a child's best interest, to the point in 1984 when the relevant provincial legislation was amended to include that recognition and provide procedures, such as, the involvement of the aboriginal community in the placement decision-making process. The Defendant anticipates calling one or more witnesses with respect to this evolution over the class period and undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time prescribed by the Rules.

22. **Who are the witnesses the Defendant will be calling in support of paragraph 11 of their pleading? What are their names, their municipal and email addresses and phone numbers? And, what will each be saying?**

Answer: Please see the answer to questions 7 and 21. The Defendant anticipates calling one or more witnesses with respect to this evolution over the class period and undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time prescribed by the Rules.

23. **What is the written documentation upon which the Defendant will be relying in support of paragraph 11 of its Pleading?**

Answer: The Defendant anticipates relying on the reports of the expert witnesses referred to in the answers to questions 7, 21 and 22.

24. **What is the legislation if any, upon which the Defendant is relying in support of paragraph 11, as applied to the Class Members during the Class Period, as each term is defined in the Amended Statement of Claim?**

Answer: Paragraph 11 is a proposition of law. However, material facts of the legislation and federal-provincial agreements are found at paragraphs 17 to 39 of the Amended Statement of Defence.

25. **What are the facts upon which the Defendant relies in support of paragraph 12 of their pleading?**

Answer: In paragraph 12 of the Amended Statement of Defence, the Defendant pleads:

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.

Paragraph 12 is a proposition of law. For evidence of context, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

26. **What is the written documentation upon which the Defendant will be relying in support of paragraph 12 of its Pleading?**

Answer: The Defendant will be relying on constitutional instruments, legislation and case law. For additional contextual evidence, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses is finalized and, in any event, within the time contemplated by the Rules. Reports of expert witnesses who are experts will be delivered prior to trial.

27. **If there is documentation, or if there are facts, what consultation if any, took place between the Defendant and Class Members or Ontario Chiefs of the Class Members, during the Class Period?**

Answer: The question is not clear. The Defendant has interpreted it as asking whether consultation took place with respect to the legislative jurisdiction of Ontario, as the question flows from paragraph 12 of the Amended Statement of Defence. Aboriginal rights, treaty rights and their prospective infringement are not alleged in this lawsuit. Accordingly, the duty to consult is not in issue.

28. **If any such consultation is in written form, please produce it.**

Answer: Please see the answer to question 27.

29. **If there are any witnesses to the fact of such consultation, please provides their names, municipal and email addresses and telephone numbers, and a will-say statement for each such witness.**

Answer: Please see the answer to question 27.

30. **What are the facts upon which the Defendant relies in support of paragraph 13 of their pleading?**

Answer: In paragraph 13 of the Amended Statement of Defence, the Defendant pleads:

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.

Paragraph 30 is a proposition of law. For evidence of context, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

31. **What is the written documentation upon which the Defendant will be relying in support of paragraph 13 of its Pleading?**

Answer: The Defendant will be relying on constitutional instruments, legislation and case law. For additional contextual evidence, please see the answers to questions 7 and 30.

32. **In particular, and without limiting the generality of the questions posed above at items 25 & 26, what are the material facts in support of this assertion in the Defendant's pleading: *There is no cause of action for failure to legislate.***

Answer: The statement is a proposition of law.

33. **What are the facts upon which the Defendant relies in support of paragraph 14 of their pleading?**

Answer: In paragraph 14 of the Amended Statement of Defence, the Defendant pleads:

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 finding support of Ontario's child welfare regime, Canada has promoted principles consistent with the established doctrine of 'best interests of the child'.

Paragraph 14 is a legal proposition. Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children as well as the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

- 34. What is the written documentation upon which the Defendant will be relying in support of paragraph 14 of its Pleading?**

Answer: It is anticipated that the reports of the witnesses referenced in the answer to question 33 will be the source of documents which will be produced. In addition, the Defendant relies upon the Report of the 1946 Federal Joint Committee (as described in paragraphs 20-22 of the Amended Statement of Defence), and the Report of the 1953 Ontario Select Committee (as described in paragraphs 23- 26 of the Amended Statement of Defence), as well as the 1965 Agreement itself. Please also see the answer to question 7.

- 35. How much money did the Defendant approve for the administration of child welfare services to the Class Members during the Class Period?**

Answer: Under the 1965 Agreement, the province was reimbursed for the cost of its program, as delivered, pursuant to a formula. The Defendant is in the process of obtaining the information related to the question and will provide the information once it is available together with any additional relevant documents that may be identified.

- 36. Of the amount of money, if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for after-care or after placement services for Class Members placed in homes for adoption?**

Answer: Under the 1965 Agreement, the province was reimbursed for the cost of its program, as delivered, pursuant to a formula. The Defendant is in the process of obtaining the information related to the question and will provide the information once it is available together with any additional relevant documents that may be identified. In the interim, please see for example, the Defendant's production 0002.0492, "Indian Child and Family Services in Canada, Draft Report, Appendix 1 "Ontario Region", which provides a breakdown of reimbursement in the years 1981/2 to 1983/4 into the categories of "Service", "Administration" and "Care".

- 37. Of the amount of money, if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for after-care or after placement services for Class Members placed in homes for long term crown wardship?**

Answer: The Defendant repeats the undertaking given in answer to question 36.

38. **Of the amount if any, the Defendant approved for the administration of child welfare services to the Class Members during the Class Period, how much of it, in absolute dollars, was allocated for monitoring and the objective of the preservation of "cognizable aboriginal interests" and, or "cultural identity", as those terms are defined in the Amended Claim?**

Answer: The Defendant repeats the undertaking given in answer to question 36.

39. **Provide the number of cases where any such funding in respect of item 36 occurred.**

Answer: The Defendant repeats the undertaking given in answer to question 36.

40. **Provide the number of cases where any such funding in respect of item 37 occurred.**

Answer: The Defendant repeats the undertaking given in answer to question 36.

41. **Provide the number of cases where any such funding in respect of item 38 occurred.**

Answer: The Defendant repeats the undertaking given in answer to question 36.

42. **Provide any written documentation in support of the answers to questions 35-41.**

Answer: Please see the answers to questions 35 and 36.

43. **Provide, specifically, the names of any and all witnesses to give evidence pertaining to items 35-41, their municipal and email addresses and phone numbers.**

Answer: Please see the answer to question 7. The Defendant anticipates calling one or more witness with respect to the operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

44. **What are the facts upon which the Defendant relies in support of paragraph 15 of their pleading?**

Answer: In paragraph 15 of the Amended Statement of Defence, the Defendant pleads:

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*.

Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

45. **What is the written documentation upon which the Defendant will be relying in support of paragraph 15 of its Pleading?**

Answer: The Defendant will be relying on constitutional instruments, legislation and case law. For additional contextual evidence, please see the answers to questions 7 and 44.

46. **Provide the names of the witnesses and all witnesses to give evidence pertaining to item 14 and 15 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.**

Answer: Please see answers to questions 7, 43 and 44. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

47. **Identify the names of any Chiefs of Ontario with whom the Defendant consulted during the Class Period concerning the matters pleaded in paragraph 15 of the Amended Statement of Defence.**

Answer: Aboriginal rights, treaty rights and their prospective infringement are not alleged in this lawsuit. Accordingly, the duty to consult is not in issue.

48. **If there is a name, or there are such names, provide the written documentation in respect of the fact and nature of such consultation(s).**

Answer: Not applicable. Please see the answer to question 47.

49. **What are the facts upon which the Defendant relies in support of paragraph 17 of their pleading?**

Answer: In paragraph 17 of the Amended Statement of Defence, the Defendant pleads:

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.

Please see answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses in respect of the continuing evolution in the judicial, and legislative thought concerning the values to be considered and applied and the place and role of the state in the welfare of children; the continuing evolution of Crown and aboriginal relations; welfare standards of the day; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

50. **What is the written documentation upon which the Defendant will be relying in support of paragraph 17 of its Pleading?**

Answer: The Defendant will be relying on the legislative history, as pleaded in paragraphs 17 to 39 of the Amended Statement of Defence, and expert reports referenced in the answers to questions 7 and 49.

51. **Provide the names of the witnesses and all witnesses to give evidence pertaining to item 17 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.**

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses in respect of the continuing evolution in the judicial, and legislative thought concerning the values to be considered and applied and the place and role of the state in the welfare of children. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

52. **Referring to paragraph 17 of the Pleading, how much money did the Defendant, in its use of the federal spending power, approve for the administration of child welfare services to the Class Members during the Class Period?**

Answer: Please see the answers to questions 35 and 36.

53. **Referring to paragraph 17 of the Pleading, of the amount of money, if any, the Defendant approved, in its use of the federal spending power, how much was allocated, in absolute dollars, for after-care or after placement services for Class Members placed in homes for adoption?**

Answer: Please see the answers to questions 35 and 36.

54. Referring to paragraph 17 of the Pleading, of the amount of money, if any, the Defendant approved, in its use of the federal spending power, how much was allocated, in absolute dollars, for after-care or after placement services for Class Members placed in homes for long term crown wardship?

Answer: Please see the answers to questions 35 and 36.

55. Referring to paragraph 17 of the Pleading, of the amount if any, the Defendant approved, in its use of the federal spending power, how much was allocated for monitoring and the objective of the preservation of "cognizable aboriginal interests" and, or "cultural identity", as those terms are defined in the Amended Claim?

Answer: Please see the answers to questions 35 and 36.

56. Provide the number of cases where any such funding in respect of item 53 occurred.

Answer: Please see the answers to questions 35 and 36.

57. Provide the number of cases where any such funding in respect of item 54 occurred.

Answer: Please see the answers to questions 35 and 36.

58. Provide the number of cases where any such funding in respect of item 55 occurred.

Answer: Please see the answers to questions 35 and 36.

59. Provide any written documentation in support of the answers to questions 50-59.

Answer: Please see the answers to questions 35 and 36.

60. Provide, specifically, the names of any and all witnesses to give evidence pertaining to items 50-59, their municipal and email addresses and phone numbers.

Answer: Please see the answer to question 7. The Defendant anticipates calling one or more witnesses with respect to the operation of the 1965 agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

61. Provide the names of the witnesses and all witnesses to give evidence pertaining to item 18 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.

Answer: In paragraph 18 of the Amended Statement of Defence, the Defendant pleads:

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.

Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

62. **Concerning item 18 of the Pleading, provide any and all material facts upon which the Defendant relies for the assertion that this Act had any bearing at all upon the Class Members during the Class Period.**

Answer: The state of the law and the manner in which it is applied is informed by its history. Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

63. **Concerning item 18 of the Pleading, provide the names of the of the witnesses and all witnesses to give evidence pertaining to any evidence that this Act had any bearing at all upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.**

Answer: Please see the answers to questions 7 and 62. The Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

64. **Provide the names of the witnesses and all witnesses to give evidence pertaining to item 19 of the Amended Statement of Defence, their municipal and email addresses and phone numbers.**

Answer: In paragraph 19 of the Amended Statement of Defence, the Defendant pleads:

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.

Please see the answers to questions 7 and 62. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

65. **Concerning item 19 of the Pleading, provide any and all material facts upon which the Defendant relies for the assertion that this Act had any bearing at all upon the Class Members during the Class Period.**

Answer: The question is not clear since no Act is referenced in paragraph 19 of the Amended Statement of Defence. The Defendant interprets this question to intend to refer to the *Child Protection Act* referenced in paragraph 18 of the Amended Statement of Defence. Please see the answers to questions 7, 61 and 62. The state of the law and the manner in which it is applied is informed by its history. The Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

66. **Concerning item 19 of the Pleading, provide the names of the of the witnesses and all witnesses to give evidence pertaining to any evidence that this Act had any bearing at all upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.**

Answer: Please see the answers to questions 7, 62 and 65. The state of the law and the manner in which it is applied is informed by its history. The Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

67. **Concerning paragraphs 20-34 of the Pleading, provide the names of the witnesses to give evidence pertaining to the assertions in those paragraphs, their municipal and email addresses and phone numbers, and will-say statements as to their evidence.**

Answer: Please see answers to questions 7 and 62. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of

the state and in the values associated with the welfare of children; the continuing evolution of Crown and aboriginal relations; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

68. **Concerning paragraphs 20-34 of the Pleading, provide the names of the witnesses and all witnesses to give evidence that that pleaded in paragraphs 20-34 has any bearing upon the Class Members during the Class Period, their municipal and email addresses and phone numbers.**

Answer: Please see the answers to questions 7, 62 and 67.

69. **Concerning paragraphs 20-34 of the Pleading, if there are witnesses to give the evidence referred to in item 68, immediately above, provide any and all written documentation upon which the Defendant relies.**

Answer: The Defendant relies upon those documents referenced in paragraphs 20 through 34 of the Amended Statement of Defence and expert reports referenced in paragraph 7. If other documentation becomes available, the Defendant will advise.

70. **Concerning paragraphs 20-34, if there are witnesses to give the evidence referred to in item 68, above, please provide any and all facts as, to what, if any, consultations occurred between the Defendant and the Chiefs of Ontario, and, if so, the names of the witnesses, their municipal and email addresses, and telephone numbers, and will-say statements who will be giving evidence of such consultations, and if so, any and all written documentation upon which the Defendant will be relying.**

Answer: Research is continuing on this issue. Should relevant documents become available they will be produced and where they respond to a question posed herein, a supplementary answer will be provided.

71. **Concerning paragraph 35 of the Pleading, identify the part of the "1965 Federal-Provincial Indian Welfare Agreement" that speaks to the issues of "cultural identity", Cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".**

Answer: In paragraph 35 of the Amended Statement of Defence, the Defendant pleads:

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.

The answer is provided in the pleading. The Agreement enhanced the fiscal capacity of the province to deliver its program and is to be interpreted accordingly.

72. **Concerning paragraph 35 of the Pleading, identify the amount of money, in absolute dollars, committed to the issues of "cultural identity", "cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".**

Answer: Please see the answers to questions 35 and 36.

73. **Concerning paragraph 35 of the Pleading, identify the number of Class Members who, during the Class Period, received funding for the monitoring or preservation or access to their "cultural identity" or "cognizable aboriginal interests", as defined in the Fresh as Amended Amended Statement of Claim".**

Answer: Please see the answers to questions 35 and 36.

74. **Concerning paragraph 35 of the Pleading, identify the names of Chiefs of Bands in Ontario with whom the Defendant consulted either as to the creation and, or implementation of the "1965 Federal-Provincial Indian Welfare Agreement".**

Answer: Research is continuing on this issue. Should relevant documents become available they will be produced and where they respond to a question posed herein, a supplementary answer will be provided.

75. **Concerning paragraph 35 of the Pleading, provide any written documentation pertaining to any and all consultation with Chiefs of Bands in Ontario with whom the Defendant consulted either as to the creation and, or implementation of the "1965 Federal-Provincial Indian Welfare Agreement".**

Answer: Please see the answer to question 74. Research is continuing on this issue. Should relevant documents become available they will be produced and where they respond to a question posed herein, a supplementary answer will be provided.

76. **Concerning paragraph 35 of the Pleading, provide the names of any and all witnesses who will be called to give evidence concerning the facts pleaded therein, their names, municipal and email addresses and telephone numbers and will-say statements.**

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates calling one more witnesses with respect to the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

77. Concerning the first line of paragraph 36 of the Pleading, provide the names of any and witnesses who will be called to give evidence concerning the facts pleaded therein, their names, municipal and email addresses and telephone numbers and will-say statements.

Answer: In paragraph 36 of the Amended Statement of Defence, the Defendant pleads:

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.

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

78. Concerning the first line of paragraph 36 of the Pleading, provide the names of the witnesses, email and municipal addresses and phone numbers, who be speaking to the "lengthy period of continuing and active political and legal debate about the place of aboriginal people in the Canadian constitutional family".

Answer: Please see the answers to questions 7 and 77. More specifically, the Defendant anticipates calling one or more witnesses with respect to the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

79. Concerning paragraph 37 of the Pleading, provide the material facts, if any, as to how that pleaded has any bearing on the Class Members in the Class Period and the matter of their cultural identity and cognizable aboriginal interests.

Answer: In paragraph 37 of the Amended Statement of Defence, the Defendant pleads:

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.

The present state of the law and the manner in which it is applied is informed by its history. Please see answer to question 7. The Defendant anticipates calling one or more witnesses with the history and evolution in respect of the role of the state and in the values associated with the welfare of children as well as the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

80. **If there are such facts, provide any and all written documentation upon which the Defendant relies to assert those facts.**

Answer: Please see the answers to questions 7 and 79. The Defendant anticipates calling one or more witnesses with the history and evolution in respect of the role of the state and in the values associated with the welfare of children as well as the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

81. **If there are such facts, provide the names of any and witnesses who will be called to give evidence concerning those facts.**

Answer: Please see the answers to questions 7 and 79. The Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children as well as the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

82. **Concerning paragraph 38 of the Pleading, provide the material facts, if any, as to how that pleaded has any bearing on the Class Members in the Class Period and the matter of their cultural identity and cognizable aboriginal interests.**

Answer: In paragraph 38 of the Statement of Defence, the Defendant pleads:

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 plaintiff has pleaded that the inclusion of these principles in Ontario's child welfare legislation brought to an end Canada's alleged breaches of duty.

The second sentence refers to the Plaintiff's position in these proceedings.

The first sentence sets out the history and continuing evolution in the law and judicial 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 as well as the continuing evolution of Crown and aboriginal relations. The Defendant anticipates calling experts in respect of this evolution. Please see the answer to question 7. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

- 83. If there are such facts, provide any and all written documentation upon which the Defendant relies to assert those facts.**

Answer: Please see the answer to question 7.

- 84. If there are such facts, provide the names of any and witnesses who will be called to give evidence concerning those facts.**

Answer: Please see the answer to question 7. The Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children as well as the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

- 85. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the amount of money, in absolute dollars, committed to the issues of preserving, monitoring or accessing "cultural identity" or "cognizable aboriginal interests" for the Class Members during the Class Period.**

Answer: In paragraph 39 of the Amended Statement of Defence, the Defendant pleads:

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.

Please see the answers to questions 35 and 36.

- 86. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...",**

**identify the number of Class Members who, during the Class Period, received funding for the monitoring or preservation or access to their "cultural identity" or "cognizable aboriginal interests".**

Answer: Please see the answers to questions 35 and 36.

- 87. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the names of Chiefs of Bands in Ontario with whom the Defendant consulted about remaining in step.**

Answer: Aboriginal rights, treaty rights and their prospective infringement are not alleged in this lawsuit. Accordingly, the duty to consult is not in issue.

- 88. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", provided any written documentation pertaining to any and all consultation with Chiefs of Bands in Ontario with whom the Defendant consulted about remaining in step.**

Answer: Please see the answer to question 87.

- 89. Concerning paragraph 39 of the Pleading and the assertion of Canada remaining in step with "this continuing process of change through its use of the federal spending power...", identify the number of Class Members during the Class Period whose access to, or preservation or monitoring of "cultural identity" or "cognizable aboriginal interests" were affected; specifically the number of children placed for adoption or placed in long-term care as crown wards who had access to their cultural identity or cognizable aboriginal interests by reason of Canada allegedly remaining in step, as so described.**

Answer: Please see the answers to questions 7, 35 and 36. Under the 1965 Agreement, the province was reimbursed for its program costs, as delivered, pursuant to a formula. The program delivered was pursuant to the provisions of the provincial child welfare regime as it was amended from time to time. As the program developed by the province evolved over the class period, Canada remained in step with this continuing process of change through its reimbursement of its program costs.

- 90. Provide any and all written documentation to support any answer to item 89, and the names of any and witnesses who will give evidence concerning the answer to item 89, their email and municipal addresses, phone numbers and will-say statements.**

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; and, the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise

the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

91. **Concerning paragraph 41 of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.**

Answer: In paragraph 41 of the Amended Statement of Defence, the Defendant pleads:

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 plaintiff or to the class. No specific fiduciary duty is triggered or exists in respect of the circumstances pleaded by the plaintiff.

Paragraph 41 pleads a legal conclusion. For evidence of context, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the continuing evolution of Crown and aboriginal relations. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

92. **Concerning paragraph 41 of the Pleading, provide any and all written documentation upon which the Defendant will rely.**

Answer: Please see the answer to question 91.

93. **Concerning paragraph 41a, of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.**

Answer: In paragraph 41a of the Statement of Defence, the Defendant pleads:

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.

Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the making and operation of the 1965 Agreement. The Defendant undertakes to provide the information requested once it is finalized and, in any event, within the time contemplated by the Rules.

94. **Concerning paragraph 41a, of the Pleading, provide any and all written documentation upon which the Defendant will rely.**

Answer: Please see the answer to question 93.

95. Concerning paragraph 41a, of the Pleading, provide the names of any and all Chiefs of Bands in Ontario with whom the Defendant consulted and advised of the fact that the "1965 Indian Welfare Agreement" was not intended to be, and did not constitute an undertaking.

Answer: No undertaking was given. To the extent that paragraph 2(2) of the 1965 Agreement refers to consultation, as indicated in the answer to question 70, research on this issue is ongoing and may be the subject of further productions and supplementary answers.

96. If there are names of Chiefs, provide any and all written documentation upon which the Defendant will rely.

Answer: Please see the answers to questions 70 and 95. No undertaking was given. To the extent that paragraph 2(2) of the 1965 Agreement refers to consultation, as indicated in the answer to question 70, research on this issue is ongoing and may be the subject of further productions and supplementary answers.

97. If there are names of Chiefs, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.

Answer: Please see the answers to questions 70 and 95. No undertaking was given. To the extent that paragraph 2(2) of the 1965 Agreement refers to consultation, as indicated in the answer to question 70, research on this issue is ongoing and may be the subject of further productions and supplementary answers.

98. Concerning paragraph 42 of the Pleading, provide the names of witnesses, their email and municipal addresses, phone numbers and will-say statements.

Answer: At paragraph 42 of the Amended Statement of Defence, the Defendant pleads:

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 plaintiff or of the members of the class. Nor has the Crown taken advantage of relationships of trust with the plaintiff or members of the class for its own benefit.

Paragraph 42 pleads a legal conclusion. The Defendant has put the Plaintiff to the proof of any contrary facts.

99. Concerning paragraph 42 of the Pleading, provide any and all written documentation upon which the Defendant will rely.

Answer: Please see the answer to question 98.

100. Concerning paragraph 42 of the Pleading, identify the names of any and all Chiefs with whom the Defendant consulted as to the creation or implementation of the 1965 Indian Welfare Agreement, written documentation that attests to same, if there were such consultation, and the names of witnesses, email and municipal addresses, telephone numbers and will-say statements to attest to same.

Answer: To the extent that paragraph 2(2) of the 1965 Agreement refers to consultation, as set out in the answers to questions 70 and 95, research on this issue is ongoing and may be the subject of further productions and supplementary answers.

101. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the doctrine of "best interests of the child".

Answer: In paragraph 43 of the Amended Statement of Defence, the Defendant pleads:

Alternatively, to the extent that specific duties to the plaintiff or members of the 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 has made no allegation against Ontario that its child welfare regime was not in the "best interests of the child". Canada provided reimbursement in respect of aspects of Ontario's child welfare regime, as delivered and as it evolved over the class period.

102. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the Class Members during the Class Period.

Answer: Reimbursement to Ontario under the 1965 Agreement for services provided under its child welfare regime would logically have been connected to the Class Members during the class period.

103. Concerning paragraph 43 of the Pleading, identify the written documentation that supports that any funding provided by the defendant to Ontario was connected to the preservation or monitoring of, or access to the cultural identity and cognizable aboriginal interests of the Class Members during the Class Period.

Answer: Please see the answers to questions 35, 36 and 102.

104. Concerning paragraph 43 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements pertaining to that so pleaded.

Answer: Please see the answers to questions 7, 35, 36 and 102. More specifically, the Defendant

105. Concerning paragraph 43d, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements pertaining to that so pleaded.

Answer: In paragraph 43d of the Amended Statement of Defence, the Defendant pleads:

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.

The pleading with respect to the *Indian Act* represents a legal conclusion. The Defendant has put the Plaintiff to the proof of contrary facts. As for paragraphs 14 and 15 of the Amended Statement of Defence, please see the answers to questions 33 through 48.

106. Concerning paragraph 43d, produce any and all written documentation upon which the Defendant relies for this paragraph in the Pleading.

Answer: See answer to question 105.

107. Concerning paragraph 43e, advise as to what follow-up investigation, assessment, inquiry, or comparative analysis with other indigenous peoples the Defendant has done, or caused to be done, with respect to the identification of cognizable aboriginal interests, cultural identity and the impact, if any, as to the loss of same for the Class Members during and after the Class Period.

Answer: In paragraph 43e of the Amended Statement of Defence, the Defendant pleads:

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.*

Paragraph 43e is a proposition or conclusion of law. To the extent it is not, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses to address the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

108. Concerning paragraph 43e if such follow-up investigation, assessment, inquiry, or comparative analysis with other indigenous peoples was done, produce the written documentation and the names of witnesses, email and municipal addresses, telephone numbers and will-say statements.

Answer: Please see the answer to question 107. Paragraph 43e is a proposition or conclusion of law. To the extent it is not, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses to address the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

109. Concerning paragraph 43f, identify the policy considerations, the particulars of same, the written documentation, if any, to support these considerations, and names of witnesses, email and municipal addresses, telephone numbers and will-say statements.

Answer: In paragraph 43f of the Statement of Defence, the Defendant pleads:

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.

The pleading is of a legal conclusion. To the extent it is not a legal conclusion, please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; the making and operation of the 1965 Agreement; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules. See answer to question 7.

- 110. Concerning paragraph 43f produce the documentation or names of witnesses, email and municipal addresses, telephone numbers and will-say statements, that link any and all policies, as referred to in the last line of paragraph 43, to the identification of cognizable aboriginal interests or cultural identity and the opportunity for Class Members to have access to their cognizable aboriginal interests during and after the Class Period.**

Question 110 is not clear as no policies are referred to in the last line of paragraph 43. It is assumed that the question intended to refer to paragraph 43f. Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses to address the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; the making and operation of the 1965 Agreement; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

- 111. Concerning paragraph 43g, upon what documentation, if any, does the Defendant rely as to the evolving standard of care associated with the principle of "best interests of child".**

Answer: In paragraph 43g of the Amended Statement of Defence, the Defendant pleads:

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".

Please see the answers to questions 7 and 110.

- 112. Concerning paragraph 43g, what investigation, inquiry, comparative analysis did the Defendant carry out or cause to be carried out in respect of the Class Members during the Class Period or thereafter in order to plead an evolving standard of care associated with the principle of "best interests of the child".**

Answer: Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses to address the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; the making and operation of the 1965 Agreement; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested is finalized and, in any event, within the time contemplated by the Rules.

- 113. If any such investigation, inquiry, comparative analysis was carried out, or caused to be carried out, produce the written documentations and names of witnesses, email and municipal addresses, telephone numbers and will-say statements.**

Answer: Please see the answer to question 112.

114. Produce documentation, if any, the links the intentional or unintentional loss of cultural identity with the "best interests of the child" principle. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements which the Defendant will be putting forward at trial.

Answer: Please see the answer to question 112.

115. Produce the material facts from the international Convention upon which the Defendant pleads in paragraph 50 to support its case.

Answer: In paragraph 50 of the Amended Statement of Defence, the Defendant pleads:

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).

The pleading is a point of law. The conventions are pleaded as an interpretative aid only.

116. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements to speak to the international conventions.

Answer: Not applicable. Please see the answer to question 115. The pleading is a point of law. The conventions are pleaded as an interpretative aid only.

117. Produce what comparative analysis with other countries in respect of indigenous peoples and their cultural identity or cognizable aboriginal interests the Defendant carried out or caused to be carried out prior to relying upon the fact that it is a party to international human rights conventions.

Answer: Not applicable. Please see the answer to question 115. The pleading is a point of law. The conventions are pleaded as an interpretative aid only.

118. Produce what assessment, investigations, inquiries, if any, the Defendant has carried out or caused to be carried out pertaining to the loss of cultural identity and recognized cognizable aboriginal interests in respect of its reporting duty pursuant to Article 44 of the Convention on the Rights of the Child. Produce what steps, if any, the Defendant has taken in Answer to the recommendations of the Committee on the Rights of the Child pursuant to the Convention on the Rights of the Child, as related to the status and condition of First Nations' children in Canada.

Answer: Compliance with international conventions is not a matter in issue in this litigation.

**119. Produce any and all documentation in answering item 118.**

Answer: Not applicable. Please see the answer to question 118. Compliance with international conventions is not a matter in issue in this litigation.

**120. Produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements, who will be speaking to that pleaded in paragraph 50 of the Pleading.**

Answer: Not applicable. Please see the answer to question 118. Compliance with international conventions is not a matter in issue in this litigation.

**121. Concerning paragraph 57 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements, who will be giving evidence on this aspect of that pleaded.**

Answer: In paragraph 57 of the Amended Statement of Defence, the Defendant pleads:

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 plaintiff or of members of the class. If as a consequence of the making of federal-provincial agreements the plaintiff or members of the class suffered harm in respect of their aboriginal identity, which is denied, such harm was unintended and was not reasonably foreseeable.

Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; and, the making and operation of the 1965 Agreement. The Defendant undertakes to advise the Plaintiff once the information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

**122. Concerning paragraph 57 of the Pleading, produce any and written documentation upon which the Defendant relies to say the harm was:**

- (a) Unintended; or
- (b) Not reasonably foreseeable.

Answer: To the extent that the question appears to go beyond the 1965 Agreement, the Defendant refuses to respond, as the question is too broad and not relevant. The Defendant does not admit that the harm claimed was a consequence of its reimbursement for program costs under the 1965 Agreement. Please see the answer to question 7. More specifically, the Defendant anticipates calling one or more witnesses with respect to the history and evolution in respect of the role of the state and in the values associated with the welfare of children; welfare standards of the day; the making and operation of the 1965 Agreement; and, losses attributable to the alleged breaches of duty. The Defendant undertakes to advise the Plaintiff once the

information relating to witnesses as requested herein is finalized and, in any event, within the time contemplated by the Rules.

123. **Concerning paragraph 57 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant during the time of the Class Period on the matter of cultural identity for Canada's First Nations people, or on the matter of the loss or non-exercise of cognizable aboriginal interests.**

Answer: Research is continuing on this issue. Should relevant documents become available they will be produced and where they respond to a question posed herein, a supplementary answer will be provided.

124. **Concerning paragraph 57 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant following the time of the Class Period on the matter of cultural identity for Canada's First Nations people, or on the matter of the loss or non-exercise of cognizable aboriginal interests.**

Answer: The question is not relevant on the basis that it is beyond the class period of this lawsuit; however, to the extent that it may be relevant, see the answer to question 7.

125. **Concerning paragraph 63 of the Pleading, produce any and written documentation upon which the Defendant relies to say that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common..."**

Answer: In paragraph 63 of the Amended Statement of Defence, the Defendant pleads:

The claim makes allegations of Crown infringement of different rights and breaches of different duties prospectively owed to different members of the 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.

The Defendant has not pleaded that "loss of cultural identity...could not be ... suffered by [class members] uniformly or in common". The pleading in paragraph 63 of the Amended Statement of Defence is a conclusion based on the Plaintiff's pleading and the concession in her litigation plan which calls for individual assessments of damages.

126. **Concerning paragraph 63 of the Pleading, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence as to the assertion that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common..."**

Answer: Please see the answer to question 125.

127. Concerning paragraph 63 of the Pleading, produce any written studies, investigations, assessment, comparative analysis carried out by the Defendant or caused to be carried out by the Defendant for the assertion that the loss of cultural identity "...could not be...suffered by all of them uniformly or in common...".

Answer: Please see the answer to question 125.

128. Concerning paragraph 64, identify the equitable principles responsive to the loss of cultural identity or non-exercise of cognizable aboriginal interests during the Class Period.

Answer: In paragraph 64 of the Amended Statement of Defence, the Defendant pleads:

The 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 plaintiff and of the members of the class, are, and were, necessarily informed by individual, rather than common, considerations.

The equitable principles in question are those found in the doctrine of the "best interests of the child".

129. Concerning paragraph 64, identify the statutory principles responsive to the loss of cultural identity or non-exercise of cognizable aboriginal interests during the Class Period.

Answer: The statutory principles in question are those found in the doctrines of the "welfare of the child" and the "best interests of the child".

130. Concerning paragraph 64, list the dispositions to which reference is made that addressed the Class Members' cultural identity or cognizable aboriginal interests.

Answer: Judicial or child welfare agencies dispositions.

131. Concerning paragraph 64, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence supporting that as pleaded.

Answer: It is the Defendant's understanding that this is not in dispute and, accordingly, the Defendant does not anticipate calling witnesses on this point.

132. Concerning paragraph 64, advise as to the extent, if at all, the Defendant read the Kimelman Report, *No Quiet Place*, Final Report of the Review Committee on Indian and Metis Adoptions and Placements to the Minister of Community Services, Manitoba Community Services, Winnipeg (1995) prior to pleading paragraph 64.

Answer: The question seeks privileged information.

133. Concerning paragraph 64, advise as to what studies, investigations, assessments, comparative analyses the Defendant intends to rely upon in support of that pleaded.

Answer: See the answer to question 131. The Defendant does not anticipate presenting evidence of studies, investigations, assessment, and comparative analyses on this point.

134. Concerning paragraph 66, identify the material facts upon which the Defendant relies to assert that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.

Answer: In paragraph 66 of the Amended Statement of Defence, the Defendant pleads:

If the plaintiff or the members of the 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.

In paragraph 66 of its Amended Statement of Defence, the Defendant has not asked the court to try the issue of the existence of a duty or responsibility of Children's Aid Societies or Ontario, in respect of, specifically, "access to cultural identity and cognizable aboriginal interests".

135. Concerning paragraph 64, produce all written documentation upon which the Defendant intends to rely to assert that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.

Answer: It is assumed that reference to paragraph 66 of the Amended Statement of Claim (rather than paragraph 64) was intended. See answer to question 134.

136. Concerning paragraph 64, produce the names of witnesses, email and municipal addresses, telephone numbers and will-say statements that the Defendant will be presenting at trial to give evidence that access to cultural identity and cognizable aboriginal interests was the duty and responsibility of the Children's Aid Societies, or Ontario during the Class Period.

**Answer:** It is assumed that reference to paragraph 66 of the Amended Statement of Claim (rather than paragraph 64) was intended. See answer to question 134.

TORONTO, February 18, 2016

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

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARCIA BROWN

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceedings commenced under the *Class Proceedings Act, 1992*

QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY  
OF THE ATTORNEY GENERAL OF CANADA

December 7, 2015

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**QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY**

THE Attorney General of Canada has chosen to examine the Plaintiff, Marcia Brown for discovery by written questions and requires that the following questions be answered by affidavit in Form 35B prescribed by the Rules of Civil Procedure, served on or before February 22, 2016.

The Attorney General of Canada reserves her right to ask further interrogatories of the plaintiff with respect to answers and documents that may be provided in response to these interrogatories.

**Name(s)**

1. Please set forth your full legal name.
2. Please set forth any other names which you have been given or used and the inclusive dates during which each name was used.

**Address(es)**

3. Please set forth your current address.
4. Please set forth any other addresses you have had or used.
5. As to each address identified in your answer to question no. 4, please state whether the address also constituted your mailing address during the period in which you occupied that address.
6. If your answer to question no. 5 was no, please set forth the mailing address you utilized during each period of occupancy.

**Birth Information**

7. Please set forth your date of birth.
8. Please set forth the place of your birth.
9. Please set forth the names of your biological parents.
10. Please set forth the dates of birth of your biological parents.
11. Please set forth the places of birth of your biological parents.
12. Please set forth whether of each of your biological parents were registered at the time of your birth.

13. Please set forth the band or First Nation to which each of your biological parents was a member at the time of your birth.
14. Please set forth the treaty affiliation, if any, of the band or First Nation of each of your biological parents.
15. When you were cross-examined on February 23, 2010 on your affidavit sworn May 14, 2009, filed in support of the certification of these proceedings, ("the February 23, 2010 cross-examination") you stated that you did not recall when you received your status through your father (Q. 69-75). Have you since determined when you were registered?
16. If the answer to question 15 is yes, please set forth the relevant date.
17. Please set forth your Indian status prior to your adoption.
18. Please set forth the band or First Nation of which you were a member prior to your adoption.
19. Please set forth the treaty affiliation, if any, of the band or First Nation of which you were a member prior to your adoption.

**Damage Claim**

20. With respect to paragraph 52 of your Claim, please particularize, including the nature and period suffered, including date of onset, as well as particulars of any diagnoses and prognoses received:
  - (a) Emotional suffering alleged;
  - (b) Psychological suffering alleged;
  - (c) Spiritual suffering alleged;
  - (d) Disorientation alleged;
  - (e) Reduced ability to lead a healthy life;
  - (f) Reduced ability to lead a functional life;
  - (g) Reduced ability to lead a fulfilling life; and
  - (h) Reduced ability to pass on spiritual, cultural and behavioural bases of your people.
21. With respect to paragraph 55 of your Claim, please particularize the nature and amount of pecuniary damages claimed, with respect to the following categories itemized in the claim:
  - (a) Education grants;
  - (b) Extended health care benefits for each of the following:
    - (i) prescription and non-prescription drugs,
    - (ii) medical transportation,
    - (iii) dental care; and

- (iv) any other benefit which you claim;
  - (c) Treaty annuities;
  - (d) Entitlement to reserve land, including any loss of enjoyment of a parcel of band land upon which to build a house and any other loss related thereto;
  - (e) Trapping rights;
  - (f) Fishing rights;
  - (g) Hunting rights;
  - (h) Tax benefits, including but not limited to the GST exemption.
22. With respect to paragraph 55 of your Claim, please particularize the nature and amount of pecuniary damages claimed in respect of any other entitlements and benefits not itemized in paragraph 55.
23. With respect to paragraph 55 of your Claim, please particularize the nature and amount of any other pecuniary damages claimed in respect of categories not itemized in the Claim.

**Family of origin**

24. With respect to paragraphs 6 to 8 of your Claim and as they relate to the home of your biological family, prior to the first apprehension and on return between foster care placements:
- (a) In what locations did you live?
  - (b) If you lived on a reserve, please identify it.
  - (c) Whom did you live with?
  - (d) Provide the number and age of any siblings or other children you lived with.
  - (e) Provide the number and age of any other siblings with whom you did not live.
  - (f) With respect to question no. (e) above, state why other siblings were not living in the home.
  - (g) Describe your relationship with each of your parents and any other adults with who you lived.
  - (h) Describe your relationship with each of your siblings.
  - (i) Which languages were spoken in the home?
  - (j) Which languages were spoken to you?
  - (k) Which languages did you speak?
  - (l) What customs and traditions were practiced in your home?
  - (m) On the February 23, 2010 cross-examination, you stated that you occasionally returned to your family after your initial apprehension from your home (Question no.

131 of the transcript). Do you have any knowledge or information as to why you were once again removed from your family home?

### Foster Care

25. With respect to paragraph 8 of your Claim, as it relates to the period of foster care, for each of the homes in which you were placed:
- (a) At what ages were you apprehended?
  - (b) In what locations did you live?
  - (c) If you lived on a reserve, please identify it.
  - (d) Whom did you live with?
  - (e) Provide the names of the foster care parents.
  - (f) Provide the number and age of any children you lived with.
  - (g) Describe your relationship with each of your foster parents and any other adults with whom you lived.
  - (h) Describe your relationship with each of the children of your foster parents.
  - (i) Which languages were spoken in the home?
  - (j) Which languages were spoken to you?
  - (k) Which languages did you speak?
  - (l) On the February 23, 2010, cross-examination, you state that there was a period of foster care prior to you being adopted into a non-aboriginal family. In response to the question (no. 136 of the transcript) whether you were ever placed in care in an aboriginal foster care home, you responded "If they were aboriginal, they weren't my people". Do you recall if some of these homes were aboriginal?
  - (m) If the answer to this question was yes, please state how many of the homes during this period were aboriginal.

### Adoption

26. With respect to paragraph 8 of your Claim and as it relates to the period of adoption:
- (a) In what locations did you live?
  - (b) Whom did you live with?
  - (c) Please provide the full names of your adoptive parents.
  - (d) Provide the number, names and age of any children you lived with.
  - (e) Describe your relationship with each of your adoptive parents and any other adults with whom you lived.

- (f) Describe your relationship with each of the children of your adoptive parents.
- (g) Which languages were spoken in the home?
- (h) Which languages were spoken to you?
- (i) Which languages did you speak?

**Marital/common-law status**

- 27. Please state whether you are presently married or in a common-law relationship.
- 28. If you are presently married or in a common-law relationship, please identify your spouse.
- 29. If you are presently married or in a common-law relationship, please set forth the date that you were married or entered into the common-law relationship.
- 30. If you are presently married or in a common-law relationship, please state whether you are separated from your spouse.
- 31. If you were formerly married or in a common-law relationship, please identify the person or persons to who you were formerly married or in a common-law relationship.
- 32. If you were formerly married or in a common-law relationship, please set forth the date or dates you were married or entered into the common-law relationship.
- 33. If you were formerly married or in a common-law relationship, please set forth the date that your marriage(s) or common-law relationship(s) terminated.
- 34. If you were formerly married or in a common-law relationship, please set forth the reason that the marriage(s) or common-law relationship(s) terminated.

**Children**

- 35. Please state whether you have given birth to any children other than the child who was placed in adoption (as referenced in question 85 below)?
- 36. If your answer to question no. 35 was yes, please set forth the full legal name and date of birth of each of your children.
- 37. If your answer to question no. 35 was yes, please set forth the present address of each of your children.
- 38. If your answer to question no. 35 was yes, please state whether you contribute financially to the support of any of your children.
- 39. Please state whether you have any stepchildren or adoptive children.

40. If the answer to question no. 39 was yes, please set forth the full legal name and date of birth of each child.
41. If your answer to question no. 39 was yes, please set forth the present address of each child.
42. If your answer to question no. 39 was yes, please set forth whether you contribute financially to the support of any child.
43. Which languages are spoken in your home?
44. Which languages did you speak?
45. Which languages do you speak with your children or step-children?
46. What customs and traditions have you practiced in your home?

#### Impacts

In paragraphs 52 to 54 of your Claim, you allege continuing emotional, physical and spiritual suffering; accordingly, with respect to other impacts on your emotional, psychological and spiritual wellbeing in your childhood and adult life,

47. In an article in the *Toronto Star*, dated March 16, 2009 (attached) ("*Toronto Star* article), you are reported to have felt "worthless" and unwanted as a result of the apprehension by child welfare authorities.
  - (a) Is the report accurate? If not, how is it inaccurate?
  - (b) Please provide particulars of how the apprehension affected you.
48. In the *Toronto Star* article, you are reported to have suffered "physical and emotional abuse" while in foster care.
  - (a) Is the report accurate? If not, how is it inaccurate?
  - (b) Provide particulars of the physical abuse suffered, the identity of the perpetrator(s), the nature of the abuse, its duration and frequency, and whether you required and received medical treatment.
  - (c) If you received medical treatment, please provide particulars of the treatment received, by whom and when.
  - (d) Please provide particulars of how the abuse affected you.
  - (e) Provide particulars of the emotional abuse suffered, the identity of the perpetrator(s), the nature of the abuse, its duration and frequency and whether you required and received medical treatment.
  - (f) If you received medical treatment, please provide particulars of the treatment received, by whom and when.

(g) Please provide particulars of how the abuse affected you.

49. In the *Toronto Star* article, you are reported to have complained to a police officer about the abuse you suffered in foster care but he replied "Aw, it can't be that bad".

- (a) Is the report accurate? If not, how is it inaccurate?
- (b) When and where was the report made?
- (c) What information was provided to the police officer?
- (d) How did the police officer's response affect you?
- (e) Did you report the abuse to anyone else? If so, to whom, when and what was the outcome of the report?

50. In the *Toronto Star* article, you are reported to have been physically and emotionally abused by your adoptive mother, specifically: "I got beat until I was black and blue with everything – spoons, hangers, the vacuum cleaner tubing. But she never touched my face"; you were told to "eat of the floor like the savage [she said you] were; she "rubbed [your skin] raw to wash off [what she said was] 'dirty' brown colour"; and she destroyed your stuffed tiger toy in your presence, saying that it was full of "Indian bugs".

- (a) Is the report accurate? If not, how is it inaccurate?
- (b) Did you require or received medical treatment?
- (c) If you received medical treatment, please provide particulars of the treatment received, by whom and when.
- (d) Were you physically or emotionally abused in any other way in adoptive care?
- (e) If the answer to question (d) was yes, provide particulars of the physical and emotional abuse, the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.
- (f) If the answer to question (d) was yes, did you require or receive medical treatment?
- (g) If you received medical treatment, please provide particulars of the treatment received, by whom and when.
- (h) Did you report the abuse to police or anyone else? If so, to whom, when and what was the outcome of the report?
- (i) How did the physical and emotional abuse in adoptive care affect you?

51. Aside from the emotional abuse referenced in questions no. 48 and 50 (above), did you suffer emotional abuse at any other time in your life, including your childhood with your biological family and your adult life?

52. If your answer to question no. 51 was yes, please provide the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.

53. If your answer to question no. 51 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.
54. If your answer to question no. 51 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.
55. If you answer to question no. 51 was yes, how did the abuse affect you?
56. Apart from the physical abuse referenced in questions 48 and 50 (above), did you suffer physical abuse at any other time in your life, including your childhood with your biological family and your adult life?
57. If your answer to question no. 56 was yes, please provide the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.
58. If your answer to question no. 56 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.
59. If your answer to question no. 56 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.
60. If you answer to question no. 56 was yes, how did the abuse affect you?
61. At any time in your life, did you suffer sexual abuse?
62. If your answer to question no. 61 was yes, please provide the identity of the perpetrator(s), the nature of the sexual abuse, when it occurred, and its duration and frequency.
63. If your answer to question no. 61 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.
64. If your answer to question no. 61 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.
65. If you answer to question no. 61 was yes, how did the abuse affect you?
66. At any time in your life, did you witness or experience any events that were unpleasant or frightening to you (other than any incidents already addressed in your responses to the questions above)?
67. If you answer to question 66 was yes, please provide particulars of the nature of the event(s), when it occurred and its duration and frequency.

68. If you answer to question 66 was yes, please state whether you required and received medical treatment and, if so, what treatment was provided, by whom and when.
69. If your answer to question 66 was yes, please provide particulars of the impact on you.
70. At any time in your life, did you experience bedwetting, nightmares or sleepwalking?
71. If the answer to question 70 was yes, please provide particulars of the nature of the experience, when it occurred and its duration and frequency.
72. At any time in your life, did you witness or experience any family violence?
73. If the answer to question 72 was yes, identify the relevant family or families and provide particulars of the nature of the violence, when it occurred, its duration and frequency and the how it affected you.
74. If your answer to question 72 was yes, please state whether you required and received medical treatment and, if so, what treatment was provided, by whom and when.
75. If your answer to question 72 was yes, please state whether this violence was reported to police or anyone else and, if so, to whom, when and what was the outcome of the report.
76. At any time in your life, did you witness or suffer any drug or alcohol abuse?
77. If the answer to question 76 was yes, identify the abuser, provide particulars of the nature of the abuse you witnessed or experienced, when it occurred, the extent and frequency and the impact on you.
78. If you answer to question 76 was yes, please state whether you required and received medical treatment and, if so, what treatment was provided, by whom and when.
79. Aside from any injuries that may have resulted from physical abuse referenced in questions 48, 50 and 56, at any time in your life, have you suffered any injuries that required medical treatment?
80. If the answer to question 79 was yes, please provide particulars of the nature, of the injury or injuries, whether you received medical or other treatment, what treatment was provided, by whom and when.
81. If the answer to question 79 was yes, please provide particulars of the impact of the injuries on you.
82. Have you suffered any illnesses that required medical treatment?
83. If the answer to question 82 was yes, provide particulars of the nature of each illness, its frequency and duration, whether you received medical, what treatment was provided, by whom and when.

84. If the answer to question 82 was yes, please provide particulars of the impact on you.
85. In the *Toronto Star* article, you are reported to have, "had a child at age 16 which you placed in adoption. You are reported to have described this as "...one of the hardest things I've ever done".
- (a) Is the report accurate? If not, how is it inaccurate?
  - (b) What were the circumstances leading to the decision to place the child in adoption?
  - (c) How did it affect you?
86. In an article in the *Wawatay News* dated December 1, 2015, (attached) ("*Wawatay News* article"), you are quoted as saying, during the period of adoption, "what I learned about my culture I learned from books".
- (a) Is the report accurate? If not, how is it inaccurate?
  - (b) What books were available to you?
  - (c) Who provided them?
  - (d) What did you learn?
87. In the *Wawatay News* article, it is reported that prior to your apprehension by child welfare authorities, a young lady whom you later identified as your sister Nancy, told you to repeat a line over and over. The line was "My name is Sally Susan Mathias and I'm from Kirkland Lake, Ontario. I'm from Beaverhouse".
- (a) Is the report accurate? If not, how is it inaccurate?
  - (b) Did you always recall that the name given to you by your biological parents was Sally Susan Mathias?
  - (c) Did you always recall that you were from Kirkland Lake?
  - (d) Did you always recall that you are from Beaverhouse First Nation?
88. In the *Toronto Star* article, it is reported that you saw a children's aid file, describing yourself as "slow" and not likely to "progress beyond the mental capacity of a 10-year-old".
- (a) Is the report accurate? If not, how is it inaccurate?
  - (b) When did you review the Children's Aid file?
  - (c) Where did you review the file?
  - (d) What other information did you obtain from the Children's Aid file?
  - (e) How did receipt of this information affect you?

89. On the February 23, 2010 cross-examination, you stated that you sought information about your apprehension from community services, such as the Native and Child Family Services (Q124 of the transcript).
- (a) What other organizations did you contact?
  - (b) What information did you receive?
  - (c) If you received information, how did receipt of this information affect you?

**Registered Indian Record**

90. With respect to paragraph 14 of your Claim,
- (a) Did anyone assist you in searching for your records as an Indian person? If so, please identify who assisted you.
  - (b) Please produce any documents you obtained as a result of your search.
  - (c) When did you make a request to be registered as an Indian person?
  - (d) When did you receive confirmation of your registration?
  - (e) Please produce a copy of all correspondence and applications with respect to your request to be registered as an Indian person?
  - (f) Did anyone assist you in making your request for registration? If so, please identify who assisted you?
  - (g) Why did you make the request for registration?
  - (h) Your Registered Indian Record, being Registration #2220020701 (previously produced) states that your registration was recorded on November 23, 1981. Did you make the request for registration prior to this date?
  - (i) When did you become aware of your entitlements and benefits as an Indian person?
  - (j) How did you become aware of your entitlements and benefits as an Indian person?

**Claim of damages for loss of benefits and entitlements**

91. At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to medication expenses (whether prescription or non-prescription),
- (a) Have you ever required medication (whether prescription or non-prescription)?
  - (b) If the answer to question (a) was yes, did you receive extended health care benefits for the medication (whether prescription or non-prescription)?
  - (c) If answer to question (b) was no, please identify the medication, whether it was covered by extended health care benefits at the relevant time and the costs to you.

92. At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to medical transportation,
- (a) Have you ever required medical transportation?
  - (b) If the answer to question (a) was yes, did you receive extended health care benefits for the medical transportation?
  - (c) If the answer to question (b) was no, please provide particulars of the transportation required, whether it was covered by extended health care benefits at the relevant time and the costs to you.
93. At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to dental care,
- (a) Have you ever required dental care?
  - (b) If the answer to question (a) was yes, did you receive extended health care benefits for the dental costs?
  - (c) If the answer to question (b) was no, please provide particulars of the dental care, whether it was covered by extended health care benefits at the relevant time and the costs to you.
94. At paragraph 55 of your Claim, you allege a loss of treaty annuities,
- (a) Under which treaty do you base your claim? Please identify the provisions upon which you rely?
  - (b) Have you received treaty annuities?
  - (c) If the answer to question (b) is yes, when did you first seek an annuity?
  - (d) How many annuity payments have you received and in which years?
  - (e) What is the total amount of annuities you have received?
  - (f) What annuities do you claim you were entitled to but did not receive?
  - (g) If the annuities in question (d) were paid during a time that a band or First Nation administered payment, please provide copies of the records of payment in the relevant time period.
95. At paragraph 55 of your Claim, you allege a loss of entitlement to reserve land,
- (a) With respect to your claim for land on reserve:
    - (i) Do you base your claim to reserve land on a treaty? If so, under which treaty do you base your claim?
    - (ii) Or is there another basis on which you claim an entitlement to reserve land? If so, what is the basis?
  - (b) Since returning to Canada in 1981, have you resided on reserve? If so, on what reserve did you reside?

(c) Did you ever request land on reserve on which to reside? If so, when, to whom and what was the result of the request?

96. At paragraph 55 of your Claim, you allege a loss of trapping rights,

(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to trapping rights?

(b) Have you trapped? If so, when and where?

(c) Have you ever been prevented from trapping? If so, for what reason(s)?

(d) Have you purchased a trapping license? If so, when and where?

97. At paragraph 55 of your Claim, you allege a loss of fishing rights,

(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to fishing rights?

(b) Have you fished? If so, when and where?

(c) Have you ever been prevented from fishing? If so, for what reason(s)?

(d) Have you ever been purchased a fishing license? If so, when and where?

98. At paragraph 55 of your Claim, you allege a loss of hunting rights,

(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to hunting rights?

(b) Have you hunted? If so, when and where?

(c) Have you ever been prevented from hunting? If so, for what reason(s)?

(d) Have you purchased a hunting license? If so, when and where?

99. At paragraph 55 of your Claim, you allege a loss of tax benefits,

(a) Have you incurred any taxes (including the GST exemption) which would have been otherwise covered by tax benefits associated with Indian status?

(b) If the answer to question (a) is yes, please provide particulars of your payments of taxes, including date and amount, and the exemption or benefit available to those with Indian status at the relevant time.

### Education

At paragraph 55 of your Claim, you allege a loss of education grants and at paragraphs 52 and 54 of your Claim, you allege having been "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives",

100. Please set forth the highest degree, diploma or certificate you have received from an educational institute.

101. Please identify any educational institute you attended, including address(es).
102. As to any educational institute you attended, please set forth the period during which you attended.
103. As to any educational institute you attended, please set forth any major area of study.
104. As to any educational institute you attended, please set forth whether you graduated.
105. If you did not graduate from an educational institute, indicate why you did not graduate.
106. As to any educational institute you attended, please describe any degree, diploma or certificate you received as a result of your course of study.
107. As to any education institute you attended, please provide a breakdown of the cost of each institute.
108. As to the costs in question no. 107, please indicate if the cost was paid by you.
109. Please state whether you applied for any education grants in respect of the education costs of each educational institute.
110. If the answer to question no. 109 is yes, provide the amount of the grant.
111. If you did not apply for an education grant in respect of an educational institute, please state:
  - (a) Why you did not apply;
  - (b) How you would have qualified for the grant; and
  - (c) The costs that would have been covered by the grant.
112. Please identify any course, seminar or professional program you attended.
113. Please set forth the dates that you attended any course, seminar or professional program.
114. Please set forth the subject matter of each course, seminar or professional program you attended.
115. Please state whether that course, seminar, or professional program offered a certificate of completion or similar acknowledgement.
116. Please state whether you received a certificate of completion or similar acknowledgement.
117. As to any course, seminar or professional program you attended, please provide a breakdown of the cost of each of them.

118. As to the costs in question no. 117, please indicate if the cost was paid by you.
119. Please indicate whether you applied for any education grants in respect of the costs of each course, seminar or professional program.
120. If the answer to question no. 119 was yes, provide the amount of any grant received.
121. If you did not apply for an education grant in respect of a course, seminar or professional program please state:
- (a) Why you did not apply;
  - (b) How you would have qualified for the grant; and
  - (c) The costs that would have been covered by the grant.
122. As to any high school you attended, please set forth:
- (a) The name and address of the high school;
  - (b) The dates that you attended;
  - (c) Whether you completed the prescribed requirements for graduation from that high school;
  - (d) If you graduated, the date that you graduated from high school; and
  - (e) If you did not graduate, please state why you did not graduate.
123. As to any primary school you attended, please set forth:
- (a) The name and address of the primary school;
  - (b) Whether you completed the prescribed requirements for completion of primary school;
  - (c) If you completed the requirements, the date that you completed primary school; and
  - (d) If you did not complete requirements, please indicate why you did not do so.

### **Employment**

At paragraphs 52 and 54 of your Claim, you allege that you were "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".

124. Please state whether you are currently employed.
125. If your answer to question no. 124 was yes, please state:
- (a) Where you are employed;
  - (b) The duties and title(s) of your position (s); and

(c) Your rate of pay.

126. Please identify any other employer for whom you have worked.
127. As to each employer for who you have worked, please set forth the title and duties of your position during the course of the employment.
128. As to each employer for who you have worked, please set forth your rate of pay.
129. As to each employer, please set forth the reason for which employment terminated.

#### **Financial Support**

In paragraphs 52 and 54 of your Claim, you allege being "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".

130. Have you ever received financial support from a government?
131. If the answer to question no. 130 was yes, what type of assistance did you receive, when, why and in what amount
132. Have you received financial support for any other institution, agency or person?
133. If the answer to question no. 132 was yes, from whom, when, why and in what amount.

#### **Criminal Record**

In paragraphs 52 and 54 of your Claim, you alleged being "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".

134. Have you ever been found guilty or convicted of a criminal offence?
135. If your answer to question no. 134 was yes, for any finding or conviction, please identify:
  - (a) The jurisdiction in which you were found guilty or convicted;
  - (b) The criminal offence for which you were found guilty or convicted;
  - (c) The date of the finding or conviction and the name of the presiding Judge;
  - (d) Whether this resulted from a verdict of guilt or a plea of guilty;
  - (e) The nature of any disposition or sentence imposed;
  - (f) Any dates you were incarcerated;
  - (g) Any facility in which you were incarcerated;
  - (h) Whether you received a pardon from any government authority; and
  - (i) If you received a pardon from any government authority, please identify the public authority that granted that pardon.

**Witnesses**

136. Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of the allegations in paragraphs 6 to 14 and 52, 54 and 55 of your Claim, and please provide a summary of each of the witness' evidence.

**Legal proceedings**

137. In the *Wawatay News* article, it is reported that "years" after returning to your community, you were learning about the residential school legacy through a local Aboriginal family agency. "It was then [you] first heard of the term, 'Sixties Scoop'. "And I said, I think I'm part of that".
- (a) Is the report accurate? If not, how is it inaccurate?
  - (b) When did this event occur?
  - (c) When did you first seek legal advice with respect to a claim against the federal government?
138. Please state whether you have ever initiated or been involved in any other legal proceedings in relation to the apprehension from your home on the reserve and subsequent placement in foster or adoptive care, other than your adoption itself.
139. If your answer to question no. 138 was yes, please identify the court or administrative body in which the proceedings were taken.
140. If your answer to question no. 138 was yes, please set forth the file number of the proceedings and the parties to that proceeding.
141. If your answer to question no. 138 was yes, please set forth the current status of the proceedings.
142. Please state whether you have ever initiated or been involved in any other legal proceedings in relation to alleged loss of customs, traditions, and practices.
143. If your answer to question no. 142 was yes, please identify the court or administrative body in which the proceedings were taken.
144. If your answer to question no. 142 was yes, please set forth the file number of the proceedings and the parties to that proceeding.
145. If your answer to question no. 142 was yes, please set forth the current status of the proceedings.
146. Please state whether you have ever initiated or been involved in any other legal proceedings in relation to aboriginal rights, benefits or entitlements.

147. If your answer to question no. 146 was yes, please identify the court or administrative body in which the proceedings were taken.
148. If your answer to question no. 146 was yes, please set forth the file number of the proceedings and the parties to that proceeding.
149. If your answer to question no. 146 was yes, please set forth the current status of the proceedings.

**Allegation that a fiduciary obligation was owed**

At paragraph 1(b) of your Claim, you seek a declaration that the Defendant breached its fiduciary obligation and duty of care to the Class Members "by reason of the events described in this action".

150. What facts, information or belief do you rely on in support of the allegations made in paragraphs 37 to 40, or elsewhere, in your Claim that a fiduciary duty or obligation was owed to you and other class members by the Defendant?
151. Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.
152. Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a fiduciary duty or obligation was owed to you and the class members by the Defendant, and please provide a summary of each of the witness' evidence.
153. At paragraph 37 of your Claim, you allege that a duty of honour arises by virtue of the Defendant's constitutional obligation. Please identify the duty to which you refer and the provisions of the Constitution upon which you rely.
154. At paragraph 38 of your Claim, you allege that "Canada's constitutional obligation, the Indian Act, and the common law, including the duty of honour, bestow a discretionary control requiring Canada to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of vulnerable aboriginal children and, in particular, their cultural identity". Please provide particulars as to the source and nature of the alleged discretionary control over yourself and other members of the class.
155. Further with regard to paragraph 38:
  - (a) Please describe what you assert would have constituted adequate monitoring.
  - (b) Please describe the steps required to accomplish this adequate monitoring.
  - (c) How would those steps have been implemented?
  - (d) Please describe what you assert would have constituted an adequate exercise of influence.

- (e) Please describe the steps required to accomplish such adequate influence.
  - (f) How would those steps have been implemented?
  - (g) Please describe what you assert would have constituted adequate safeguarding.
  - (h) Please describe the steps required to accomplish such adequate safeguarding.
  - (i) How would those steps have been implemented?
  - (j) Please describe what you assert would have constituted adequate measures to secure the vital interests of vulnerable aboriginal children.
  - (k) Please describe the steps required to accomplish such adequate security.
  - (l) How would those steps have been implemented?
  - (m) Please describe what you assert would have constituted adequate protection.
  - (n) Please describe the steps required to accomplish adequate protection.
  - (o) How would those steps have been implemented?
156. Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support the allegation that a fiduciary duty or obligation was owed by the Defendant? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.

**Allegation that a fiduciary duty was breached**

157. What facts, information or belief do you rely in support of the allegations made in paragraphs 41 to 51, or elsewhere, in your Claim that a fiduciary duty or obligation was owed to you and other class members by the Defendant?
158. Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.
159. Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a fiduciary duty was breached by the Defendant, and please provide a summary of each of the witness' evidence.
160. At paragraph 44 of your Claim, you allege that the Defendant breached its fiduciary duty "by failing to prevent the Plaintiff and the Class Members from losing their cultural identity".
- (a) Is your position that, because of your apprehension from your home on the reserve and subsequent placement in a non-aboriginal home:
    - (i) You feel that never had a cultural identity?
    - (ii) Or that, for a period of your life, namely while in adoptive care, you had no cultural identity?

- (b) If your answer to both (i) and (ii) was "No", please explain the periods in your life when you felt you had no cultural identity?
  - (c) What steps did you take to reclaim your cultural identity?
  - (d) When were those steps taken?
161. At subparagraph 45(a) of your Claim, you allege that "Canada did nothing to stop Ontario from providing child welfare services in consequence of which the Class Members lost their cultural identity". Please set out the steps that the Defendant should have taken to stop Ontario, and how each of these steps should have been implemented.
162. At subparagraph 45(b) of your Claim, you allege that "Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services". Please set out the steps that the Defendant should have taken to ameliorate the alleged harmful effects of Ontario's services, and how each of these steps should have been implemented.
163. At subparagraph 45(c) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes".
- (a) Please explain what you mean in this context by the term "status".
  - (b) In your own case, you were quite young when you were placed in a non-aboriginal home. How should the Defendant have communicated your status to you at that age?
  - (c) At what point in time in your childhood do you assert that the Defendant should have made you aware of this status?
  - (d) Do you assert that this point in time be the same for all Class Members?
  - (e) Please set out what steps should have been taken by the Defendant to make you and the Class Members aware of your status and how each step should have been implemented.
164. At subparagraph 45(d) of your Claim, you allege that "Canada did nothing to ensure that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes".
- (a) Please explain or particularize what is meant by 'services' in this subparagraph.
  - (b) Please set out what steps should have been taken by the Defendant to provide these services, and how each step should have been implemented.
165. At subparagraph 45(e) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal persons or the benefits available to them when they left their non-aboriginal homes or entered their age of majority". Please describe what monitoring or other measures you assert the Defendant

should have taken determine when an aboriginal child left his or her non-aboriginal home prior to reaching their age of majority?

166. At subparagraph 45(f) of your Claim, you allege that "Canada did nothing to ensure the aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural identity".
- (a) By using the term 'reclaim' is it your allegation that the aboriginal children referred to did at one time have their cultural identity? Please identify that period of time.
  - (b) Please describe the steps that the Defendant should have taken to ensure services were available upon the child leaving the non-aboriginal home and how those steps should have been implemented?
  - (c) How do you assert that the Defendant would have known when a Class Member was leaving his or her non-aboriginal home?
167. At subparagraph 45(g) of your Claim, you allege that "Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial *Child and Family Services Act*". Please describe the protections that are the subject of this allegation with relevant provisions from the provincial statute?
168. At paragraph 46 of your Claim, you allege that the Defendant "had authority and an obligation to intervene" and the Defendant "knew the Agreement did not provide protection for the cultural identity of vulnerable aboriginal children within Ontario's child welfare system".
- (a) Please provide the source of the asserted 'authority' to intervene.
  - (b) Please provide the source of the asserted 'obligation' to intervene.
  - (c) What facts, information or belief do you rely to support the knowledge attributed to the Defendant in this paragraph?
  - (d) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.
169. At paragraph 47 of your Claim, you allege that the Defendant "knew" that "adoption and permanent foster care in non-aboriginal homes were events in apparent and actual conflict with the protection of aboriginal cultural identity".
- (a) What facts, information or belief do you rely on to support the knowledge attributed to the Defendant?
  - (b) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.
170. At paragraph 48 of your Claim, you allege that the Defendant "failed to consult with the Ontario Indian Bands in respect of the provision of funding for child welfare practices and

policies to on-reserve Indian children that it knew were clearly in conflict with its duty to protect the cultural identity of on-reserve Indian children”.

- (a) What is the position of the plaintiff as to the source and nature of the alleged obligation to consult?
  - (b) What facts, information or belief do you rely on in support of the allegation that the Defendant failed to consult as alleged?
  - (c) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.
171. At paragraph 49 of your Claim, you allege that the Defendant, among other things, deliberately accepted or promoted a policy of cultural assimilation.
- (a) What facts, information or belief do you rely on in support of that allegation?
  - (b) Is there a document or series of documents that you rely on in support of this allegation? If your answer to this question was yes, please produce these documents.
172. At paragraph 51 of your Claim, you allege that actions and omissions on the part of the Defendant were, among other things, dishonest. Provide examples of where, in your assertion, the Defendant acted dishonestly.
- (a) What facts, information or belief do you rely on in support of that allegation?
  - (b) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.
173. At paragraph 53 of your Claim, you describe the entire class as “unwilling participants in what is now known in the aboriginal community as the ‘Sixties Scoop’”. What facts, information or belief do you rely on to support the contention that the entire class was ‘unwilling’? Please provide all documents and evidence that establish that the entire class was ‘unwilling’.
174. At paragraph 54 of your Claim, you allege that “Canada’s egregious conduct in violating the fundamental rights of children”. Please describe the source(s) and nature of the rights to which you refer?
175. Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support this allegation that a fiduciary duty or obligation was breached? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.

**Allegation of duty of care**

176. What facts, information or belief do you rely on in support of the allegations made in paragraph 24, or elsewhere, in your Claim to assert a duty of care was owed by the Defendant to you or to the members of the class?

177. Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.
178. Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegations that a duty of care was owed by the Defendant to you or to the other members of the class. Please provide a summary of each of the witness' evidence.
179. At subparagraphs 24(a) to (f) of your Claim, you provide the grounds upon which you assert a duty of care was owed to you or to the other members of the class by the Defendant.
- (a) Please identify the 'constitutional obligations' to which you refer at subparagraph (a).
  - (b) Please identify the 'jurisprudence of high and binding authority' to which you refer at subparagraph (b).
  - (c) Please identify the jurisprudence to which you refer in relation to the "special relationship with aboriginal persons referred to in jurisprudence as a 'duty of honour'" at subparagraph (c).
  - (d) Please identify the 'traditions and customs of aboriginal societies', which you plead at subparagraph (d) have been incorporated into the common law, giving them legal force as part of the Canadian legal system, and as incorporated into the *Constitution Act 1982*, and please provide your authority for stating that these traditions and customs have been incorporated into the common law.
  - (e) Please identify what provisions of the Indian Act you rely on for the assertion at subparagraph (e) that there is a statutory acknowledgement of Canada's duty of care to aboriginal people.
  - (f) Please identify the sources and provide all documents which you rely on for the allegation at subparagraph (f) of "the formal acknowledgement of responsibility by Canada and apology for past policies of assimilation of vulnerable aboriginal children which caused harm."
180. Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support your allegation that a duty of care was owed to you or to the other members of the class? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.

**Allegation of breach of duty of care**

181. What facts, information or belief do you rely on in support of the allegations made Paragraph 25 to 30, or elsewhere, in your Claim to assert that the Defendant breached a duty of care owed to you or to the members of the class?

182. Is there a document or series of documents that support each of these allegations? If your answer to this question was yes, please produce these documents.
183. Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a duty of care was breached by the Defendant, and please provide a summary of each of the witness' evidence.
184. At paragraph 25 of your Claim, you allege that cultural identity is a fundamental element in respect of which the Defendant owes vulnerable aboriginal children a duty of care.
- (a) What facts, information or belief do you rely on in support of the assertion that 'cultural identity is a fundamental element' in the context of this allegation?
- (b) Is there a document or series of documents that support this pleading? If your answer to this question was yes, please produce these documents.
185. At paragraph 26 of your Claim, you state that the Defendant breached its duty of care by "omitting or failing to take reasonable steps to prevent the Plaintiff and the Class Members from losing cultural identity". Please set forth the reasonable steps that should have been taken and how they should have been implemented?
186. At paragraph 28 of your Claim, you allege that "when the Agreement was made, it was not sufficient for Canada to provide funding only" and that "reasonable steps for the protection and exercise of aboriginal cultural identity" were required. Please set forth the reasonable steps that should have been taken and how those steps should have been implemented.
187. At paragraph 29(a) of your Claim, you allege that "Canada did nothing to stop Ontario from providing child welfare services in consequence of which Canada knew or ought to have known would result in the Class Members losing their cultural identity".
- (a) Please identify under what authority you assert the Defendant could have stopped or controlled Ontario's administration of child welfare services.
- (b) Please set forth the steps that should have been taken by the Defendant and how those steps should have been implemented.
188. At paragraph 29(b) of your Claim, you allege that "Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services". Please set forth the steps that should have been taken by the Defendant, and how those steps should have been implemented.
189. At paragraph 29(c) of your Claim, you allege that "Canada did nothing to ensure that vulnerable aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes".
- (a) Is it the plaintiff's assertion that, as a term of adoption or foster care, new parents should have been required to provide an undertaking to educate the child concerning their status as aboriginal children? If so, to whom do you assert should have required the undertaking, and to whom should it have been given?

- (b) What do you assert that education should have entailed?
  - (c) Who should have provided that education?
  - (d) By what means does the plaintiff assert that adoptive and foster parents should have been supervised to ensure compliance that such an education was provided?
  - (e) Please set forth the steps that you assert should have been taken by the Defendant and how those steps should have been implemented to ensure you and Class Members were made aware of their status.
190. At paragraph 29(d) of your Claim, you allege that "Canada did nothing to ensure that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes".
- (a) Please identify the 'services' to which you refer.
  - (b) Please explain who, according to the plaintiffs, should have managed these services.
  - (c) Do the plaintiffs assert that adoptive and foster-care parents would have to be ordered to facilitate these services? If so, whom do you assert should have made the orders? What is the source and basis of the authority for making such orders?
191. At paragraph 29(e) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal persons when they left their non-aboriginal homes or entered their age of majority". Please set forth the steps that should have been taken by the Defendant and how those steps should have been implemented.
192. At paragraph 29(f) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural identity". Please set forth the steps that should have been taken by the Defendant to ensure children would be provided with services that could enable them to reclaim their cultural identity and how those steps should have been implemented.
193. At paragraph 29(g) of your Claim, you allege that "Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial Child and Family Services Act" ("CFSA").
- (a) Please set forth the protections to which you refer and the provisions of the CFSA which you rely on as providing those protections.
  - (b) Is the plaintiff asserting that the Defendant should have enacted federal legislation prior to 1984?
194. At paragraph 30 of your Claim, you allege that the Defendant "turned a blind eye to the Class who it knew or reasonably should have known would thereby individually and

collectively lose their cultural identity, and suffer the psychological and other harm described herein”.

- (a) What facts, information or belief do you rely on in support of this allegation?
  - (b) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.
195. Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support this allegation that a duty of care owed to the plaintiff or to the members of the class was breached? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.

**Further questions on the Claim**

196. Throughout your Claim you use the term “vulnerable aboriginal children”.
- (a) What is the basis for asserting that the plaintiff was a vulnerable aboriginal child?
  - (b) What is the basis for asserting that the members of the class were vulnerable aboriginal children?
  - (c) Does the use of the term ‘vulnerable’ refer to the high-risk environments in which the plaintiff lived prior to being removed from her home?
  - (d) With respect to the members of the class, does the use of the term ‘vulnerable’ refer to the high-risk environments in which these children lived prior to being removed from their homes?
  - (e) If your answer to either (c) or (d) the question was no, is it the assertion of the plaintiff that the children who were removed from their homes were not at risk or in need of protection?
197. When did you first learn of the existence of the Canada-Ontario Welfare Services Agreement of 1965 (the “1965 Agreement)? Please provide as precise a date as possible.
198. What was the context in which you learned about the 1965 Agreement?
199. Did you read the 1965 Agreement at the time you learned of its existence?
200. If the answer to question no. 199 was yes, please describe your understanding of what the 1965 Agreement states?
201. If the answer to question no. 199 was yes, has your understanding of the 1965 Agreement changed since you first read it? If so, how?
202. If the answer to question no. 199 was no, have you ever read the 1965 Agreement? If your answer was yes, please provide as precise a date as possible of when you read it.

203. Do you know who the parties were to the 1965 Agreement?
204. If your answer to question no. 203 was yes, please identify the parties.
205. In the course of these proceedings you have taken the position, and Justice Belobaba in his certification decision repeats your contention, that the 1965 Agreement "gave rise to these claims" [paragraph 70 of the reasons, [2013] O.J. No. 4381]
- (a) Is it your position that the 1965 Agreement created the alleged fiduciary duty or obligation, whether explicitly or by implication?
  - (b) If your answer to this question was no, what created the alleged fiduciary duty or obligation?
  - (c) Is it your position that the alleged breach of fiduciary duty or obligation was caused by the 1965 Agreement?
  - (d) If your answer to this question was no, what was the cause of the alleged breach of fiduciary duty or obligation?
  - (e) Is it your position that the 1965 Agreement was the source of the alleged duty of care, whether explicitly or by implication? If your answer to this question was no, what was the source of the alleged duty of care?
  - (f) Is it your position that the breach of duty of care was caused by by the 1965 Agreement, whether explicitly or implication?
  - (g) If your answer to this question was no, what was the cause of the alleged breach of duty of care?
206. On the February 23, 2010 cross-examination, you recalled that community members were present when you were apprehended from your home (Q120-123 of the transcript).
- (a) By this reference to community members, do you mean people living on the reserve?
  - (b) In this lawsuit, are you challenging actions taken by band members at the time of your apprehension?
207. At paragraph 1(c) of your Claim, you state that damages sought include the following: non-pecuniary, general, pecuniary, special, punitive exemplary and aggravated damages.
- (a) What additional damages do you seek?
  - (b) What facts, information or belief do you rely on in support of a claim for non-pecuniary and general damages? Please provide all documentation to support this claim.
  - (c) What facts, information or belief do you rely on in support of a claim for pecuniary damages? Please provide all documentation to support this claim.
  - (d) What facts, information or belief do you rely on in support of a claim for special damages? Please provide all documentation to support this claim.

- (e) What facts, information or belief do you rely on in support of a claim for punitive damages? Please provide all documentation to support this claim.
  - (f) What facts, information or belief do you rely on in support of a claim for exemplary damages? Please provide all documentation to support this claim.
  - (g) What facts, information or belief do you rely on in support of a claim for aggravated damages? Please provide all documentation to support this claim.
208. At paragraph 55 of your Claim, you further particularize your claim for pecuniary damages by referring to "deprivation of various entitlements and benefits" to which you and the class would have been entitled to.
- (a) Which of the entitlements and benefits listed in this paragraph do you assert that you were deprived of?
  - (b) Which of the entitlements and benefits do you know other Class Members to have been deprived of? What is the basis of your knowledge?
  - (c) You also state that the Defendant had a duty to notify class members of these entitlements and benefits? When should you and Class Members have been notified of these entitlements and benefits?
  - (d) By what means should you and Class Members have been notified?
209. At paragraph 2(d) of your Claim, you define "child welfare services" as referring to the provision of state services to children. Does this definition refer exclusively to the province of Ontario?
210. If the answer to question no. 209 was no, please define what is meant by "state services".
211. Do you have any knowledge of how the adoption process worked in Ontario during the class period, including any legislation that governed it?
212. If your answer to question no. 211 was yes, please describe your understanding of the process.
213. Do you have any knowledge as to whether the adoption process in Ontario treated you and the Class Members any differently from other children apprehended from homes considered a risk to a child?
214. If your answer to question no. 213 was yes, please set forth the differences and any facts, information or belief you rely on in support of such differences.
215. If your answer to question no. 213 was yes, is there a document or series of documents that you rely on to support of such differences.
216. At paragraph 4 of your Claim you state that the class is "made up of more than 16,000 aboriginal persons". At this time, do you have any further information on the size of the class?

**Expert Witness Identification**

217. Have you consulted with any person whom you consider to have qualifications as an expert concerning any aspect of this litigation?
218. If your answer to question no. 217 was yes, please identify each expert.
219. If your answer to question no. 217 was yes, please set forth the discipline in which that person has expertise.
220. If your answer to question no. 217 was yes, please set forth the nature and extent of the expert's training and experience.
221. If your answer to question no. 217 was yes, please state the subject matter on which the expert is expected to opine.
222. If your answer to question no. 217 was yes, please state the substance of all facts and opinions to which the expert is expected to testify.
223. If your answer to question no. 217 was yes, please provide a summary of the grounds for each such opinion of the expert.

**Documents**

224. In addition to documents requested in the questions above, please produce the following documents that pertain to you. If the documents are not within your possession, control or power, please provide an explanation as to why this is the case:
- (a) Copies of Children's Aid Society files and documentation;
  - (b) Copies of court files relating to child welfare proceedings and adoption, including the records of any organization identified by you in question 91;
  - (c) Records relating to your childhood and adult illnesses and hospitalizations;
  - (d) School records from schools you attended (primary school, high school, college, university, technical school, up-grading courses, etc.);
  - (e) Copies of your certificates, apprenticeship papers, diplomas, degrees, or other credentials;
  - (f) Criminal record, namely, Canadian Police Information Centre ("CPIC") print-out or documents relating to any criminal charges, convictions and/or time spent in jail or prison;
  - (g) Clinical notes and records from all medical doctors, including specialists and physiotherapists, chiropractors, etc.;
  - (h) Decoded OHIP summaries or similar reports from state, provincial or federal health insurance programmes;

- (i) List of medications taken by you;
- (j) Copies of any therapy and/or counselling notes and records (including psychologists' and psychiatrists' notes records);
- (k) Copies of any marital or family counselling records;
- (l) Records and documentation relating to any drug and alcohol treatment programs;
- (m) Employment or personnel files from all past and present employers (including performance appraisals, any information regarding disciplinary action, salary details, attendances and terminations);
- (n) All documentation relating to any UI, EI, General Welfare, Family Benefits, Disability;
- (o) Copies of any private insurers' disability files;
- (p) Income Tax Returns (with supporting documentation) and income information re: any unreported income;
- (q) Any documentation regarding financial support received from other people or sources (i.e. child support, spousal support, property settlements in matrimonial actions, etc.);
- (r) Curriculum Vitae (or plaintiff's work history/list of positions held);
- (s) Any vocational assessments;
- (t) Documentation relating to any Criminal Injuries Compensation Board Claims (including application form);
- (u) Copies of any police reports or notes relating to disclosure to police of any incidents in which the plaintiff was victim or witness;
- (v) Copies of any court files relating to family/divorce proceedings, along with details of any restraining orders, criminal proceedings, etc.; and
- (w) Any journal or diaries kept by you.

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CV-09-00372025-00CP

MARCIA BROWN AND  
Moving Party/Plaintiffs

THE ATTORNEY GENERAL OF CANADA  
Respondent/Defendant

12/07/2015 16:22

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**WRITTEN EXAMINATION FOR DISCOVERY OF THE  
ATTORNEY GENERAL OF CANADA**

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P.035/038

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CANADA

News, Canada

## Nation of lost souls

Marcia Martel was torn from her aboriginal home as a child and is part of a massive lawsuit that accuses the federal government of 'cultural genocide'.



TONY BOCK / TORONTO STAR  
Marcia Martel calms herself as she tells her story to the Star in Timmins.

By: Linda Diebel Canada, Published on Mon Mar 16

Martel lived in foster homes until being adopted at 9. She thought her family didn't want her. In an exclusive interview with the *Toronto Star*, she said of her childhood, "I felt like an (abandoned) puppy."

She battled thoughts of suicide. She says her adoptive mother told her to eat off the floor like the "savage" she was and rubbed her raw to wash off her "dirty" brown colour.

Most Canadians think children are no longer being forcibly taken from aboriginal communities. They've heard about the "kill the Indian in the child" regime over the 150 years children were carted off to residential schools under the auspices of Canadian churches. That sordid story of abuse of tens of thousands of children has come to public attention through a \$2 billion class-action settlement, a parliamentary apology to survivors by Prime Minister Stephen Harper and the creation of the Indian Residential Schools Truth and Reconciliation Commission.

But it's not over, far from it.

The removal of aboriginal children from their communities dragged on with the "Sixties Scoop" described in Martel's lawsuit and named for the practice of taking newborns from their mothers on B.C. reserves. It continues today.

**TIMMINS** - The last time Marcia Martel saw her mother at home, it was late summer and she was a chubby little Indian kid of 4. She doesn't remember much because she was crying and clutching the tall grass as strange people pulled her away. She was scared of the police and didn't understand why she was being taken from Beaverhouse First Nation on Lake Misema in northeastern Ontario.

Forced into a waiting boat, she sat down. She'd been taught "little children rules" for the water. She fixed her gaze on her mother standing alone against the house until the image was only a speck and then, nothing.

She couldn't stop crying. She felt so worthless, she says, "I knew God Himself didn't want me."

Martel, now 45, is part of a multi-million-dollar class-action lawsuit filed recently in Ontario Superior Court against the Attorney General of Canada over the treatment of thousands of aboriginal children from 1965 to 1986. The claim alleges the federal government - with constitutional responsibility for aboriginal people, principally through Indian and Northern Affairs Canada - committed "cultural genocide" by delegating child welfare services to Ontario. As a result, it says, children (there are no precise numbers) were stripped of their aboriginal identity by being placed in non-native foster/adoptive homes.

A Justice Canada official referred questions to Indian and Northern Affairs, while an Indian Affairs spokesperson said officials are conducting "preliminary research" for a statement of defence. Meetings with a class-action judge are expected as early as next month.

Federal Auditor General Sheila Fraser reported in 2008 that 8,300 First Nations children, ordinarily resident on reserves, were in care nationally at the end of March 2007. That's more than five per cent of all kids living on reserves and eight times the proportion of children in the general population.

Fraser's report chastises Indian Affairs for, among other shortcomings, failing to monitor the "cultural appropriateness" of child care services for a aboriginal children.

"We are still struggling with (child welfare) workers who come into our communities and take our children without consultation," says Arthur Moore, chief of the Constance Lake First Nation, himself a church school survivor. "They have too much power and think we're not capable of looking after our own children."

Adds Chief Keeter Corston, of the Chapleau Cree First Nation: "Marcia's story isn't an isolated incident. They didn't think of her as a person. It's genocide in terms of breaking down a people morally and hoping they will just disappear."

**IT'S A LATE** winter morning and we're gathered in a Timmins conference room, chiefs, welfare workers and educators, to hear Martel recount her experiences to the *Star*. Regional aboriginal child services are based in this town, about 800 kilometres north of Toronto, and many of the 49 chiefs from

Martel, born Sally Susan Mathias, has a strong face, with high cheekbones, an aquiline nose and shiny black hair cut in choppy layers. She places sacred symbols on a table before her - eagle feathers, pouches of tobacco and herbs, a turtle rattle, rocks and carvings. She occasionally flashes a n infectious grin. Mostly though, she fights back tears, her lips pursed and eyes squeezed shut behind wire-rimmed glasses.

She massages her temples or the bridge of her nose, pausing often. Elisabeth Babia, education director for Wahgoshig First Nation, fans her with an eagle feather to calm her; the air smells of burning sage, tobacco and cedar.

Martel speaks slowly in a flat monotone, as if describing a trip to the grocery store.

She wasn't alone in the boat that day. Authorities also took her sister, Doris Lynn, about 6, keeping them together until Marcia went to another foster home. She wrongly believed her sister wanted her gone. (Five other siblings were left with their family in Beaverhouse.)

Martel thought her mother didn't want her either, discovering only years later it wasn't true. She describes a happy early childhood and never found out why she was taken. But her mother, when in her late 70s, said she was afraid if she had fought for her children, police would have shot her dead.

"That's a normal reaction. Indian people are trained to listen to authority," says Corston. "You're not a real person and only a real person can question authority."

Always, Martel wanted to go home. Instead, she bounced around foster homes suffering, she alleges, physical and emotional abuse. She once ran away and told her story to a police officer but he apparently replied: "Aw, it can't be that bad."

By 9 when she was adopted, she'd lost her Algonquin language and felt she belonged nowhere. Suicide wasn't an option because: "God doesn't like it if you kill yourself."

She liked school but later saw a children's aid file describing her as "slow" and not likely to progress beyond the mental capacity of a 10-year-old. Authorities apparently told her family she was mentally handicapped.

Over her protests, an Ontario family with four children adopted her. She says her adoptive father was kindly, if distant. When he died some 15 years ago, he left her a small inheritance. Her adoptive mother, she claims, was cruel.

Martel had been carting around a beloved stuffed tiger. One day, her adoptive mother told her to bring Tigger outside, where she'd lit a bonfire. The woman apparently claimed Tigger was full of bugs - Indian bugs - and made her throw him into the fire. She says she was forced to watch him burn.

"Your people loved you but they didn't know how to look after you," the woman apparently said, as she incessantly went about her nightly scrubbing. In her adoptive father's absence, Martel alleges: "I got beat until I was black and blue with everything - spoons, hangers, the vacuum cleaner tubing. ... But she never touched my face."

When the couple divorced, she stayed with her adoptive father. Then, the worst. "Okay, um ... I would have been in Grade 9, I think ... I was 16 and, uh ... I got pregnant" by an unnamed boy. Martel went to live with her adoptive mother in Los Angeles, then moved with her to Texas. The woman wanted to keep the baby.

"I would not allow that. I knew enough about human beings that if you know bad stuff is happening and you're not able to protect yourself, there's no possible way you can protect a baby," says Martel. "So, I, uh ... it was probably one of the hardest things I've ever done ... I gave him up."

Pause. She's sobbing quietly. "He was a beautiful boy." A nurse let her hold him briefly after birth and, "I never saw him after that."

She has one photo. "Nobody in my family ever saw him ... not even my Granny and my Granny loved me."

A few months later, her adoptive mother took her to the Houston airport, handed her a ticket to North Bay, Ont., and put her on a plane. She was 17. All she had was the suitcase she'd arrived with at age 9, filled with little girl's clothes.

An older sister met her in North Bay. Martel doesn't know how her adoptive mother found her sister Nancy; by then, they were alienated and she's forever lost other precious family connections. She tried to regain her Indian status but was told Sally Susan Mathias was deceased. She eventually won it back.

TORONTO lawyer Jeffery Wilson, who's handling the case with colleague Morris Cooper, stresses only Ottawa is named in the lawsuit, even though provincial Children's Aid Society (CAS) agencies were the ones removing aboriginal children from their communities and placing them in care. They did so under the 1985 Canada-Ontario Welfare Agreement.

Provincial legislation in 1985 recognized all services to Indian and native people should be provided "in a manner that recognizes their culture, heritage and traditions and the concept of the extended family."

However, Wilson argues: "That change (in provincial law) doesn't correct what happened before: ... It's shameful. You think you can raise a child and that it's in the best interest of the child to dispense with that child's culture?"

He argues the federal government was "improper and unlawful" in handing responsibility for child services to Ontario in the first place, thereby ignoring its duty to act in the best interest of Indian children "who are particularly vulnerable."

There's a buzz around the lawsuit. Aboriginal leaders see it as potentially precedent-setting and a step toward their goal of ensuring autonomous child care services. Aboriginal child and family services already exist. But many argue the province routinely big-foots them.

Vicky Hardisty, executive director of Kunuwani Child and Family Services, based in Timmins, argues all too often the province takes aboriginal children independently, without consulting community leaders. It's such a mess in the north, five Treaty 9 chiefs have banned provincial child welfare officers from their reserves.

Anne Machowski-Smith, spokesperson for Ontario children and youth services, says the law requires local CAS agencies to consult with bands or native communities in the apprehension and placement of aboriginal children. She adds: "We believe that, wherever possible, aboriginal children in need of protection, should be cared for in ways that recognize their culture and traditions."

Hardisty counters: "They always say that and we always tell them it's not happening. We ask them to provide us with proof of this compliance, but they don't. ... There's a huge ..

For many aboriginal families, the lawsuit represents closure.

Once news of *Star* interest circulated, my phone began to ring with calls for help. Aboriginal adults in their 40s, 50s and older describe a nation of lost souls - Ontario's own "disappeared" - as they search for brothers, sisters and children who vanished into provincial care.

"Can you help me?" asks James Wesley, over a scratchy line from the northern Mountbatten First Nation. One of four kids who were split up, he's still looking for sister, Emma Lulu, and brother, Raymond Randy. "They kept moving me from home to home. ... I pretty much got lost myself."

Nobody places all the blame on Ontario's child welfare system or suggests children should never be removed from parents. Robert Commanda, 49, a plaintiff in the class-action suit living in Peterborough, says CAS officials took him after his mother ran off and left her five little boys alone. The oldest was 5 and kept his siblings, including Robert, 2, alive on chips and pop.

"She left us to die," says Commanda. "I sort of haven't come to terms with that. ... I'm a mess but I'm working on it. I just don't feel I belong anywhere."

The issue, rather, is about ensuring children in foster and adoptive homes don't lose their identity. Aboriginal leaders don't maintain all non-aboriginal families involved are terrible people. But they are fiercely adamant children receive "culturally appropriate" services and argue communities themselves, with their extended families, can best care for children.

MUCH TO her surprise, Martel found an inner strength. It nurtured her through childhood and, in her 30s, periods of homelessness. She says she never drank or took drugs and when, at age 28, her son, now 17, was born, "I realized survival wasn't good enough. My life had to be about happiness too."

She lays two photos on the table. In one, she's a glowing bride in beaded deerskin, shown almost two years ago on a sacred rock near Beaverhouse after she married Raymond Martel. The couple - he a simultaneous translator, she a social worker - live near Kirklund Lake.

In another photo some 40 years earlier at the same site, a plump little girl with glossy hair holds tightly to her pet black cat. It's Sally Susan at 3 with big sister, Doris Lynn. She's smiling with a child's confidence life will be wonderful.

In a roundabout way, that's how it turned out. The *Star*'s Tony Bock photographed Martel against a snowy northern landscape. She's cuddling another pet black cat and looks, well, happy.

She is, she says. Sally Susan Mathias has come home. And the best part? She believes the lawsuit at last shows her meaning in all these wretched times.

# WAWATAY NEWS

*Blending Tradition with Technology*

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## Surviving the Sixties Scoop

Create: 12/01/2015 - 19:23 Author: Lenny Carpenter — Wawatay News



As a young child, Marcia Brown Martell was taken from her home in Beaverhouse First Nation, located near Kirkland Lake, Ontario, to be adopted by a non-Native family in southern Ontario.

Knowing her heritage, Brown Martell said it was a struggle to be raised by and live among non-Native people, especially when she moved with her foster mother to Texas.

"Terribly lonely," she said about her feelings during those years. "To myself, I was isolated. There weren't any of my people with me and what I learned about my culture I learned from books."

A week before she was to be taken away, a young lady visited Brown Martell and had her repeat a line over and over.

"I must've said it well over 100 times a day for a week," Brown Martell said. "She said, 'Say this, say this, say it again and again.'"

The line that continues to stay with her is: "My name is Sally Susan Mathias and I'm from Kirkland Lake, Ontario. I'm from Beaverhouse."

Sally Susan Mathias, as Brown Martell later learned, is her birth name given to her by her original family. And the young lady who taught her the line is her biological sister, Nancy.

After living in Texas for years, Brown Martell's foster mother took her to the Houston International Airport about a month before her 18th birthday.

"I didn't know why I was there," Brown Martell recalls. "While I was standing around waiting, I was handed a ticket. 'Your biological sister Nancy is going to see you in North Bay,' they said."

Brown Martell did not even know where North Bay was and had not seen her sister for more than 10 years. Brown Martell figured she could find her sister by looking for another "Native lady."

"To my surprise, there were many other Native people there," Brown Martell said. "I was baffled, let's say. It was a surprise to see other First Nations people around."

After the crowd dissipated, Brown Martell was approached by her sister, who recognized her physical features as being from the Mathias family.

"She looked at me," Brown Martell said. "She said, 'I'm Nancy. Are you...' — I don't recall if she called me Sally or Marcia."

Brown Martell was brought back to Beaverhouse, where she found it difficult to re-adapt to her home community. "It was quite the struggle to bond with people who you never grew up with," she said.

"For years, I just sat back and I listened. I watched what other people did and listened to how they spoke.

I had conversations and things, but I didn't engage with people in depth for years."

At first, Brown Martell found it strange how people talked to her. She later learned the family was told by officials that Brown Martell was mentally handicapped.

"They looked at me and talked to me as though I had limited speaking ability, limited understanding," she said. "That in itself was a challenge to adapt to, let alone to adapt to a First Nations community."

Another challenge was learning her first language. Brown Martell said even today she does not speak it with the fluency she would have had she not been adopted.

"I never had the opportunity to have in-depth conversations with my grandparents or my parents," she said, adding that only her father could speak English fairly well. "And it was my grandmother and mother who had their first language. And I had not been able to and have not been able to (speak to them)."

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"I never had the opportunity to have in-depth conversations with my grandparents or my parents," she said, adding that only her father could speak English fairly well. "And it was my grandmother and mother who had their first language. And I had not been able to and have not been able to (speak to them)."

Years later, Brown Martell was learning about the residential school legacy through a local Aboriginal family agency. It was then she first heard of the term, 'Sixties Scoop.'

"And I said, I think I'm a part of that," she said. "And I had to deal with that emotionally first and seek out other people about what happened to me."

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Brown Martel then asked whether anybody had done anything about it. The answer was no, so she looked for an acknowledgement and compensation from the government over the Sixties Scoop.

"If it was wrong to me, it must've been wrong to the other thousands of people," she said.

A class action suit was launched in 2008, and Brown Martel was listed as one of the two plaintiffs. The suit was certified as a class action suit but this was overturned by another judge in 2010.

Another class suit was re-launched and certified last month. Brown Martel said an Ontario Superior Judge would speak on the suit while the Crown will have the opportunity to appeal the certification of the suit.

"We'll see how that comes about," Brown Martel said. "It would also give them (the Canadian government) an opportunity to deal with First Nations in an honourable way instead of the appeal process."

Brown Martel said she hopes more survivors of the Sixties Scoop will step up and become claimants to the class action suit. But she recognizes it will be hard for some.

"At times I thought I was alone (but) there are so many others," she said.

"As challenging as these next days, next months are going to be, the care that we need to have for each other and surviving members, this will be a healing journey that can only bring us a greater strength."

Brown Martel said she is still on her healing journey, but she has come a long way. She is in her third year as chief of Beaverhouse, and served on the council before that.

"To become the chief of this First Nation under the circumstances that I was taken from this community - I am blessed," she said. "It is a remarkable series of events that brought me to this place."

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MARCIA BROWN and ~~ROBERT COMMANDA~~**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA**

Defendant

**THE PLAINTIFF'S ANSWERS TO THE  
DEFENDANT'S QUESTIONS ON WRITTEN EXAMINATION FOR DISCOVERY**

The following are the Plaintiff's answers to the Defendant's written examination for discovery by written questions pursuant to the October 16, 2015 Order of the Honourable Justice Belobaba.

#	Question	Answer
<b>Name(s)</b>		
1.	Please set forth your full legal name.	At birth I was legally named Sally Susan Mathias.
2.	Please set forth any other names which you have been given or used and the inclusive dates during which each name was used.	<p>At my adoption in November 1972/1973, I was legally renamed Marcia Sally Susan Brown.</p> <p>In my search for self-identity, I also used the name Marcia Sally Susan Mathias Brown intermittently from May 1981 to September 2, 2007.</p> <p>After September 3, 2007 I intermittently used Marcia Sally Susan Mathias Brown Martel.</p> <p>When I married in September 3, 2007 my husband's name was legally changed to be Marcia Sally Susan Brown Martel.</p>
<b>Address(es)</b>		
3.	Please set forth your current address.	25 Dixon Avenue, Kirkland Lake, ON, P2N 1W5
4.	Please set forth any other addresses you have had or used.	<p>October 2006 to May 1, 2015: 43 Duncan Avenue, Kirkland Lake, ON</p> <p>October 1993 to October 2006: 33 Woods Street, Kirkland Lake, ON</p>

		<p>Late 1991 to October 1993: 47 Main Street, Kirkland Lake, ON</p> <p>Early 1991: 24 Hudson Bay Avenue, Kirkland Lake, ON</p> <p>1989 to early 1991: Beaverhouse First Nation, ON</p> <p>1981 to 1989: I lived at various locations across the country. At times I was homeless.</p> <p>May 1981: I moved to 26 or 28 McCamus Avenue, Kirkland Lake, ON</p> <p>1979 to May 1981: I lived in Bryan, Texas, USA</p> <p>1977 to 1979: I moved back to Trent River, ON</p> <p>1976 to 1977: I lived with my uncle Pete in Ontario. At one point, unsure of timing, I lived with my adopted sister in Toronto, Ontario.</p> <p>From the time of my adoption (1972/73) until 1976: I lived at Trent River, Ontario</p> <p>1968 to 1972/1973: I was placed in foster care and lived in several different places (which I cannot recall) until I was adopted.</p> <p>June 7, 1963 to 1968: I lived with my biological family on our reserve.</p>
5.	As to each address identified in your answer to question no. 4, please state whether the address also constituted your mailing address during the period in which you occupied that address.	From the summer of 1981 to present, I used Temagami First Nation, Bear Island, ON, POH 1C0 as a permanent address. I also received mail at some of my various residences.
6.	If your answer to question no. 5 was no, please set forth the mailing address you utilized during each period of occupancy.	See answer 5 above.
<b>Birth Information</b>		
7.	Please set forth your date of birth.	June 7, 1963
8.	Please set forth the place of your birth.	Kirkland Lake, Ontario

9.	Please set forth the names of your biological parents.	Mother: Genvieve Mathias also known as Jemima Mathias  Father: Alec Mathias
10.	Please set forth the dates of birth of your biological parents.	Mother: December 25, 1925 Father: November 10, 1925
11.	Please set forth the places of birth of your biological parents.	The traditional area of Beaverhouse or Temagami
12.	Please set forth whether of each of your biological parents were registered at the time of your birth.	Mother: Yes Father: Yes
13.	Please set forth the band or First Nation to which each of your biological parents was a member at the time of your birth.	Mother: Beaverhouse First Nation and Temagami Band  Father: Beaverhouse First Nation and Temagami
14.	Please set forth the treaty affiliation, if any, of the band or First Nation of each of your biological parents.	Treaty Nine and Robinson-Huron Treaty
15.	When you were cross-examined on February 23, 2010 on your affidavit sworn May 14, 2009, filed in support of the certification of these proceedings, ("the February 23, 2010 cross-examination") you stated that you did not recall when you received your status through your father (Q. 69-75). Have you since determined when you were registered?	I was registered under my father's status card as a child, but I am still unaware of the exact date I was registered.
16.	If the answer to question 15 is yes, please set forth the relevant date.	N/A
17.	Please set forth your Indian status prior to your adoption.	I was registered as a Status Indian with Temagami Band prior to my adoption.
18.	Please set forth the band or First Nation of which you were a member prior to your adoption.	Temagami Band and Beaverhouse First Nation
19.	Please set forth the treaty affiliation, if any, of the band or First Nation of which you were a member prior to your adoption.	Treaty Nine and Robinson-Huron Treaty
<b>Damage Claim</b>		
20.	With respect to paragraph 52 of your Claim, please particularize, including the nature and period suffered, including date of onset, as well as particulars of any diagnoses and prognoses received: (a) Emotional suffering alleged; (b) Psychological suffering alleged; (c) Spiritual suffering alleged; (d) Disorientation alleged;	I was suicidal and felt completely alone and depressed. Therefore I sought psychiatric treatment. I was also in a psychiatric ward for a period of time. I have not viewed my medical files/records from these doctors because I decided to change my treatment process. I chose to begin traditional treatment practices because I did not feel that

	<p>(e) Reduced ability to lead a healthy life;</p> <p>(f) Reduced ability to lead a functional life;</p> <p>(g) Reduced ability to lead a fulfilling life; and</p> <p>(h) Reduced ability to pass on spiritual, cultural and behavioural bases of your people.</p>	<p>the medical/psychiatric professionals I was seeing understood my traumas and suffering. I began attending first nation's traditional healing centers including sweat lodges and healing ceremonies. These treatment facilities do not provide reports or diagnosis.</p>
21.	<p>With respect to paragraph 55 of your Claim, please particularize the nature and amount of pecuniary damages claimed, with respect to the following categories itemized in the claim:</p> <p>(a) Education grants;</p> <p>(b) Extended health care benefits for each of the following:</p> <p style="padding-left: 20px;">(i) prescription and non-prescription drugs,</p> <p style="padding-left: 20px;">(ii) medical transportation,</p> <p style="padding-left: 20px;">(iii) dental care; and</p> <p style="padding-left: 20px;">(iv) any other benefit which you claim;</p> <p>(c) Treaty annuities;</p> <p>(d) Entitlement to reserve land, including any loss of enjoyment of a parcel of band land upon which to build a house and any other loss related thereto;</p> <p>(e) Trapping rights;</p> <p>(f) Fishing rights;</p> <p>(g) Hunting rights;</p> <p>(h) Tax benefits, including but not limited to the GST exemption.</p>	<p>(a) The range of damages for economic losses due to lesser education is \$200,000-\$1,800,000 per claimant.</p> <p>The amount of damages varies based on gender and level of education claimant received versus what they could have received if they were informed about their entitlements. The damages account for lost opportunity and loss of income stream.</p> <p>(c) Treaty annuities vary on each reserve. Each Band has their own pay schedule based on the treaty that applies to their territory. For example treaty nine governs Beaverhouse. Treaty nine states that each band member will receive \$4.00 per annum.</p> <p>(d) This will range from \$4,800 to \$57,000 per claimant. This amount is limited to housing during the period when a claimant attended a post secondary institution.</p> <p>(b), (e), (f), (g), (h) Details regarding the amount of damages for each category will be particularized and expert evidence will be served prior to trial.</p>
22.	<p>With respect to paragraph 55 of your Claim, please particularize the nature and amount of pecuniary damages claimed in respect of any other entitlements and benefits not itemized in paragraph 55.</p>	<p>Tuition fees, housing, harvesting rights, materials for hunting, fishing, trapping etc., reserve royalties and or settlement funds.</p> <p>See answer 21 for amount of damages.</p>
23.	<p>With respect to paragraph 55 of your Claim, please particularize the nature and amount of any other pecuniary damages claimed in respect of categories not itemized in the Claim.</p>	<p>See answer 21 and 22 above.</p>
<b>Family of Origin</b>		
24.	<p>With respect to paragraphs 6 to 8 of your Claim and as they relate to the home of your biological family, prior to the first apprehension and on return between foster care placements:</p> <p>(a) In what locations did you live?</p> <p>(b) If you lived on a reserve, please identify it.</p> <p>(c) Whom did you live with?</p> <p>(d) Provide the number and age of any siblings or other children you lived with.</p>	<p>(a) I lived at Beaverhouse for a period of time. I may have also lived on the Temagami Band reserve but because I was a child I have no memory of this.</p> <p>(b) Temagami Band and Beaverhouse First Nation.</p> <p>(c) I lived with my parents and my extended family.</p> <p>(d) I lived with 6 siblings: Art- born in 1954;</p>

<p>(e) Provide the number and age of any other siblings with whom you did not live.</p> <p>(f) With respect to question no. (e) above, state why other siblings were not living in the home</p> <p>(g) Describe your relationship with each of your parents and any other adults with who you lived.</p> <p>(h) Describe your relationship with each of your siblings.</p> <p>(i) Which languages were spoken in the home?</p> <p>(j) Which languages were spoken to you?</p> <p>(k) Which languages did you speak?</p> <p>(l) What customs and traditions were practiced in your home?</p> <p>(m) On the February 23, 2010 cross-examination, you stated that you occasionally returned to your family after your initial apprehension from your home (Question no. 131 of the transcript). Do you have any knowledge or information as to why you were once again removed from your family home?</p>	<p>Nancy- born in 1953; Terry- birth date unknown to me; Henry -birth date unknown to me; Lynn- birth date unknown to me; Teddy 1965.</p> <p>(e) Unknown to me.</p> <p>(f) Unknown to me.</p> <p>(g) I cannot recall much because I was young but I remember that I had a good relationship with my parents. I spoke to my mother in our traditional language. My parents were my safe people. I remember playing with my parents. I remember my mother cooking for me. I remember fishing for minnows with my mother. I remember receiving gifts from my father when he returned from work. I got little tiny tea sets and tiny dolls.</p> <p>(h) I cannot recall much because I was young but I remembered everyone sibling except Teddy. My closest playmate was my sister Lynne. My other siblings took care and fed me.</p> <p>(i) Algonquin</p> <p>(j) Algonquin</p> <p>(k) Algonquin</p> <p>(l) Within daily living the culture and tradition were practices. Some examples include: hunting; eating wild meats throughout the day and night; harvesting plants and berries with my mother; learning to Canoe and fish; camping on the land with family and community; building shelters; medicine picking; learning about the offerings for the animals; and speaking the traditional mother tongue Algonquin.</p> <p>(m) I have no knowledge or information about why I was removed from my home.</p>
<p><b>Foster Care</b></p>	
<p>25. With respect to paragraph 8 of your Claim, as it relates to the period of foster care, for each of the homes in which you were placed:</p> <p>(a) At what ages were you apprehended?</p> <p>(b) In what locations did you live?</p> <p>(c) If you lived on a reserve, please identify it.</p> <p>(d) Whom did you live with?</p> <p>(e) Provide the names of the foster care parents.</p> <p>(f) Provide the number and age of any children you lived with.</p> <p>(g) Describe your relationship with each of your foster parents and any other adults with who you lived</p> <p>(h) Describe your relationship with each of the children of your foster parents.</p>	<p>(a) Initially I was apprehended at around 4 or 5 years of age. Afterward at various times and ages until I was adopted.</p> <p>(b) Beaverhouse First Nation, Chaput Hughes, Mill Brook, Bracebridge area, the Kirkland Lake area.</p> <p>(c) I didn't live on a reserve while I was in foster care but I did live on a reserve prior to being apprehended.</p> <p>(d) When I was apprehended I lived with foster parents.</p> <p>(e) Mrs. Lively; Margaret and Jack Pascoe; Mr. and Mrs. Beauvage;</p>

	<p>(i) Which languages were spoken in the home?  (j) Which languages were spoken to you?  (k) Which languages did you speak?  (l) On the February 23, 2010, cross-examination, you state that there was a period of foster care prior to you being adopted into a non-aboriginal family. In response to the question (no. 136 of the transcript) whether you were ever placed in care in an aboriginal foster care home, you responded "If they were aboriginal, they weren't my people". Do you recall if some of these homes were aboriginal?  (m) If the answer to this question was yes, please state how many of the homes during this period were aboriginal.</p>	<p>(f) In the Pascoe home there were teenager children living there. In the Beauvage home there were children but I cannot recall their ages.  (g) I do not recall having much relationship with any of my foster parents. I only recall them giving me food.  (h) It is hard for me to recall details because I was a young child but I do recall that didn't fit in. I played by myself because the other children did not want to play with me. I also recall that a number of my foster siblings sexually assaulted me.  (i) English. This was not a language that I understood.  (j) English. This was not a language that I understood.  (k) My mother tongue was Algonquin. Because no one understood me I often did not speak at all. I was declared mentally retarded at this age or period of time because I did speak. Eventually I began to learn English.  (l) I do not think they were Aboriginal but at the time, all I knew is that they did not speak my language nor did they seem familiar.  (m) N/A</p>
<b>Adoption</b>		
26.	<p>With respect to paragraph 8 of your Claim and as it relates to the period of adoption:  (a) In what locations did you live?  (b) Whom did you live with?  (c) Please provide the full names of your adoptive parents.  (d) Provide the number, names and age of any children you lived with.  (e) Describe your relationship with each of your adoptive parents and any other adults with who you lived.  (f) Describe your relationship with each of the children of your adoptive parents.  (g) Which languages were spoken in the home?  (h) Which languages were spoken to you?  (i) Which languages did you speak?</p>	<p>(a) and (b) :  My adopted parents separated and as a result I moved from time to time as follows:  I lived in Trent River, Ontario from the time I was 8 years old until 14/15 years old;   I moved with my (Uncle Pete and his wife) in southern Ontario for a very brief period,   I lived with my father and brothers in Trent River, Ontario,   I moved in with my adopted sister in an unknown location in the Toronto area,   I moved to Los Angeles, USA to live with my adopted mother;   I moved to Texas to love with my adopted mother and grandfather; and   I was sent back to Ontario at 17 years old and for the next several years I lived in</p>

		<p>boarding homes and intermittently I spent many years on the street.</p> <p>(c) My adopted parents in Texas were Judith Marie Brown and Alexander Brown (also known as Jay Brown).</p> <p>(d) My adopted siblings in Texas were: Ellen who was approximately 10 years older than me; William 8 years older than me; Daniel 3 years older than me; and Philip 2 years younger than me.</p> <p>(e) My relationship with my adoptive father in Texas was non-emotional. I felt unloved or cared for by him. For example he did not even acknowledge me or my name or my gender. He constantly referred to me as Marcus.</p> <p>My relationship with my adoptive mother was extremely abusive, dysfunctional and unhealthy.</p> <p>(f) There was no relationship. I felt unwanted by them. They made it clear to me that I didn't belong, yet they referred to me as the Indian "rescued from my people".</p> <p>(g) English</p> <p>(h) English</p> <p>(i) English</p>
<b>Marital/Common-law status</b>		
27.	Please state whether you are presently married or in a common law relationship.	Married
28.	If you are presently married or in a common-law relationship, please identify your spouse.	Raymond Martel
29.	If you are presently married or in a common-law relationship, please set forth the date that you were married or entered into the common-law relationship.	September 3, 2007
30.	If you are presently married or in a common-law relationship, please state whether you are separated from your spouse.	No
31.	If you were formerly married or in a common-law relationship, please identify the person or persons to who	I was formerly in a common-law relationship with Ernie Chie Chie.

	you were formerly married or in a common-law relationship.	
32.	If you were formerly married or in a common-law relationship, please set forth the date or dates you were married or entered into the common-law relationship.	In or about 1986/1987.
33.	If you were formerly married or in a common-law relationship, please set forth the date that your marriage(s) or common-law relationship(s) terminated.	Approximately 1992
34.	If you were formerly married or in a common-law relationship, please set forth the reason that the marriage(s) or common-law relationship(s) terminated.	Ernie Chie Chie was physically abusive. As a result I was force to leave our home and live at the Pavillion Women's Shelter.
<b>Children</b>		
35.	Please state whether you have given birth to any children other than the child who was placed in adoption (as referenced in question 85 below)?	Yes
36.	If your answer to question no. 35 was yes, please set forth the full legal name and date of birth of each of your children.	Isaiah Charles Adam Chie Chie. He was born on May 27, 1991.
37.	If your answer to question no. 35 was yes, please set forth the present address of each of your children.	35 McCamus Avenue, Kirkland Lake, ON
38.	If your answer to question no. 35 was yes, please state whether you contribute financially to the support of any of your children.	Yes
39.	Please state whether you have any stepchildren or adoptive children.	No
40.	If the answer to question no. 39 was yes, please set forth the full legal name and date of birth of each child.	N/A
41.	If your answer to question no. 39 was yes, please set forth the present address of each child.	N/A
42.	If your answer to question no. 39 was yes, please set forth whether you contribute financially to the support of any child.	N/A
43.	Which languages are spoken in your home?	English and French
44.	Which languages did you speak?	English
45.	Which languages do you speak with your children or stepchildren?	English

46.	What customs and traditions have you practiced in your home?	Christian tradition and limited Algonquin tradition
<p><b>Impacts</b>                  In paragraphs 52 to 54 of your Claim, you allege continuing emotional, physical and spiritual suffering; accordingly, with respect to other impacts on your emotional, psychological and spiritual wellbeing in your childhood and adult life,</p>		
47.	<p>In an article in the Toronto Star, dated March 16, 2009 (attached) ("Toronto Star article), you are reported to have felt "worthless" and unwanted as a result of the apprehension by child welfare authorities.                  (a) Is the report accurate? If not, how is it inaccurate?                  (b) Please provide particulars of how the apprehension affected you.</p>	<p>(a) The report is accurate in stating that I felt worthless and unwanted.                  Other inaccuracies in the report are as follows:</p> <ul style="list-style-type: none"> <li>• My sister's name is Lynn Doris as opposed to Doris Lynn;</li> <li>• My age of adoption may have been age 8 or 9;</li> <li>• I expressed a belief that five of my siblings were left at Beaverhouse because I only had one sibling with me; and</li> <li>• I ran away and spoke to a police officer during the time I was adopted, not during the time I was in foster care.</li> </ul> <p>(b) It made me feel worthless and depressed. I constantly had suicidal thoughts. I did not understand my background and where I came from or who my family was. I felt a loss of identity. I felt alone. I felt unsafe and unprotected. I felt as if my life was constantly in danger. As a result I was unable to cope and function in society. I had a reduced ability to lead healthy and fulfilling life. I suffered for many years from mental distress and continue to experience feels of depression and trauma.</p>
48.	<p>In the Toronto Star article, you are reported to have suffered "physical and emotional abuse" while in foster care.                  (a) Is the report accurate? If not, how is it inaccurate?                  (b) Provide particulars of the physical abuse suffered, the identity of the perpetrator(s), the nature of the abuse, its duration and frequency, and whether you required and received medical treatment.                  (c) If you received medical treatment, please provide particulars of the treatment received, by whom and when.                  (d) Please provide particulars of how the abuse affected you.                  (e) Provide particulars of the emotional abuse suffered, the identity of the perpetrator(s), the nature of the abuse, its duration and frequency and whether you required and received medical treatment.</p>	<p>(a) Yes                  (b) Not all the people that abused me lived in my foster home. Some of the abusers were neighbours and visitors. When the abuse occurred I was very young so the perpetrators and homes blend together. I am able to remember locations where abuse occurred e.g. shed, bathroom, bedroom but I can't remember whose house or which family member specifically. I have vivid memories of young men and old men touching me, but I can't remember each abuser. I also remember being very scared to go to bed because people would come into my bedroom at night. I used to dread having</p>

	<p>(f) If you received medical treatment, please provide particulars of the treatment received, by whom and when.</p> <p>(g) Please provide particulars of how the abuse affected you.</p>	<p>my door left open because then they could come in silently. My thoughts were, "Don't go to sleep."</p> <p>Specifically, I remember at the Pascoe foster house I was grabbed by my wrists and brought to the shed and sexually assaulted by boys. After that, and for many years, I could not tolerate being grabbed by my wrists.</p> <p>(c) and (f) I do not recall receiving medical treatment but I did require it. In fact, there were many days that I stayed in bed, after being beaten, because I could not move.</p> <p>As an adult I did receive psychiatric treatment. I was also admitted to a psychiatric ward for a period of time. I also attended traditional healing centers including sweat lodges and healing ceremonies.</p> <p>(e) I was constantly made to feel worthless. I was called retard because I could not speak the language. I was told I did not belong.</p> <p>(d) and (g) It made me feel worthless and depressed. I constantly had suicidal thoughts. I cried every morning that I was alive. I believed that even God didn't want me. I did not understand my background and where I came from or who my family was. I felt a loss of identity. I felt alone. I felt unsafe and unprotected. I felt as if my life was constantly in danger. As a result I was unable to cope and function in society. I had a reduced ability to lead healthy and fulfilling life. I suffered for many years from mental distress and continue to experience feels of depression and trauma.</p>
<p>49.</p>	<p>In the Toronto Star article, you are reported to have complained to a police officer about the abuse you suffered in foster care but he replied "Aw, it can't be that bad".</p> <p>(a) Is the report accurate? If not, how is it inaccurate?</p> <p>(b) When and where was the report made?</p> <p>(c) What information was provided to the police officer?</p> <p>(d) How did the police officer's response affect you?</p> <p>(e) Did you report the abuse to anyone else? If so, to whom, when and what was the outcome of the report?</p>	<p>(a) The Toronto Star article was inaccurate. The police report was in reference to an incident that occurred when I was in adoptive care not foster care.</p> <p>(b) I spoke to a police officer near Campbellford Ontario at Ferris Provincial Park.</p> <p>(c) A police officer asked why I was running away. I told the officer that my</p>

		<p>older and younger adoptive siblings Dan and Philip were physically abusive to me. They broke my finger and kicked me in my shins so often I have chips out of my bone. I also informed the police officer that my adoptive mother beat me until I was bruised.</p> <p>(d) Helpless. I knew my adoptive mother was in a car nearby while I was in the police car. I was terrified most that I would end up having to go back to her.</p> <p>(e) No, I didn't report it to anyone else. I was too scared.</p>
50.	<p>In the Toronto Star article, you are reported to have been physically and emotionally abused by your adoptive mother, specifically: "I got beat until I was black and blue with everything - spoons, hangers, the vacuum cleaner tubing. But she never touched my face"; you were told to "eat off the floor like the savage [she said you] were; she "rubbed [your skin] raw to wash off [what she said was] 'dirty' brown colour"; and she destroyed your stuffed tiger toy in your presence, saying that it was full of "Indian bugs".</p> <p>(a) Is the report accurate? If not, how is it inaccurate?</p> <p>(b) Did you require or received medical treatment?</p> <p>(c) If you received medical treatment, please provide particulars of the treatment received, by whom and when.</p> <p>(d) Were you physically or emotionally abused in any other way in adoptive care?</p> <p>(e) If the answer to question (d) was yes, provide particulars of the physical and emotional abuse, the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.</p> <p>(f) If the answer to question (d) was yes, did you require or receive medical treatment?</p> <p>(g) If you received medical treatment, please provide particulars of the treatment received, by whom and when.</p> <p>(h) Did you report the abuse to police or anyone else? If so, to whom, when and what was the outcome of the report?</p> <p>(i) How did the physical and emotional abuse in adoptive care affect you?</p>	<p>(a) Yes</p> <p>(b) (c) and (f) I was beaten so often that I would lose an enormous amount of blood. I remember waking up in my bed and it there was a medical person present doing a house call. I do not recall more. I required treatment on many other occasions but did not receive it. In fact, there were many days that I stayed in bed after being beaten because I could not move.</p> <p>As an adult I did receive psychiatric treatment. I was also admitted to a psychiatric ward for a period of time. I also attended traditional healing centers including sweat lodges and healing ceremonies.</p> <p>(d) I was physically and emotionally abused daily. I did not go a day without emotional abuse. I did not go a week without physical abuse.</p> <p>(e) The physical abuse was constant. For example I was dragged down the hall by my hair, I got my clothing ripped off and was thrown out in the snow with nothing on. I was beaten until I was bruised. If I ate too slow or ate too fast I got punched in the back of the head. If I dressed in the wrong clothes or said the wrong thing I was beaten. I would get quizzed (about things like current events, geography etc.) and if I got the question right I was beaten by mother for being a "know it all" and if I got it wrong I was beaten because I was stupid. I remember one</p>

		<p>especially horrifying incident when my adoptive mother put a diaper on me and put me outside in front of our house so all the passer buys and neighbours saw me.</p> <p>I was emotionally abused by my adopted parents my younger adopted brothers; my social worker; my classmates etc.</p> <p>Emotional abuse occurred daily. It focused on me being Indian and different. For example I was told I was lucky I was adopted because I was a disgrace to my people, I was constantly told that my brown skin was ugly and that I did not belong.</p> <p>(f) No, other than the police office I encountered when I ran away during school.</p> <p>(g) I stopped trusting anyone not even family. I believed that family and relationships were only temporary. I learned that I was not worth protecting. I learned that I was not of value. I began to believe I was worthless and nobody wanted me. I had low self esteem and experienced confusion about my identity. I constantly had suicidal thoughts. I cried every morning that I alive. I believed that even God didn't want me. I did not understand my background and where I came from or who my family was. I felt a loss of identity. I felt alone. I felt unsafe and unprotected. I felt as if my life was constantly in danger. As a result I was unable to cope and function in society. I had a reduced ability to lead healthy and fulfilling life. I continue to suffer from this trauma to this day.</p>
51.	<p>Aside from the emotional abuse referenced in questions no. 48 and 50 (above), did you suffer emotional abuse at any other time in your life, including your childhood with your biological family and your adult life?</p>	<p>As a child I was not abused by my biological parents. I was molested by my oldest brother.</p> <p>In my adult life, I was abused by my common-law partner. After experiencing tremendous abuse as an adolescent I thought the abuse was normal. I therefore involved myself with people who were abusive.</p>
52.	<p>If your answer to question no. 51 was yes, please provide the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.</p>	<p>My older brother molested me once when I was about three years old.</p> <p>As an adult, specifically from the years of 18-30, I was extremely vulnerable to abusive</p>

		relationships. I was romantically involved with a man that was abusive to me and as a result I had to end my relationship with him. I also had many issues trusting people and expected no one to remain permanent in my life.
53.	If your answer to question no. 51 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.	When I was in my early 20's I sought psychiatric care.  I was hospitalized for spousal assault incidents. As a result I moved into the Pavillion women's shelter and other battered women's shelters and received care from these shelters.
54.	If your answer to question no. 51 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.	The domestic abuse I experienced from my common law partner was reported to the police and my ex-partner was charged and convicted. The relationship ended.
55.	If you answer to question no. 51 was yes, how did the abuse affect you?	Adult abuse further reinforced my beliefs around my lack of self worth that I had learned from a young age in both my foster and adoptive homes. It further perpetuated my low self esteem, depression and suicidal thoughts. I also saw no longevity in my life.
56.	Apart from the physical abuse referenced in questions 48 and 50 (above), did you suffer physical abuse at any other time in your life, including your childhood with your biological family and your adult life?	See answer to question 51 above.
57.	If your answer to question no. 56 was yes, please provide the identity of the perpetrator(s), the nature of the abuse, when it occurred, and its duration and frequency.	See answer to question 52 above.
58.	If your answer to question no. 56 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.	See answer to question 53 above.
59.	If your answer to question no. 56 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.	See answer to question 54 above.
60.	If you answer to question no. 56 was yes, how did the abuse affect you?	See answer to question 55 above.
61.	At any time in your life, did you suffer sexual abuse?	Yes, once by my oldest brother Arthur and on many other occasions while I was in

		foster care (See answer to question 48). I was also sexually assaulted by about approximately 10 other men I dated. I experienced exploitation, rape including sexual abuse incidents with objects.
62.	If your answer to question no. 61 was yes, please provide the identity of the perpetrator(s), the nature of the sexual abuse, when it occurred, and its duration and frequency.	See answer to question 61 above.
63.	If your answer to question no. 61 was yes, please state whether you required medical treatment, whether treatment was received, and, if so, what treatment was provided, by whom and when.	See answer to question 53 above.
64.	If your answer to question no. 61 was yes, please state the abuse was reported to police or anyone else and, if so, to whom, when, and what was the outcome of the report.	I never reported any sexual assaults or abuse.
65.	If you answer to question no. 61 was yes, how did the abuse affect you?	I stopped trusting anyone. I felt worthless. I had low self esteem and believed there was something inherently wrong with me and that nobody wanted me, cared for me, or loved me. I also experienced great confusion about my identity. I constantly had suicidal thoughts. I felt alone. I felt unsafe and unprotected. I felt as if my life was constantly in danger. I was unable to cope and function in society. I had a reduced ability to lead healthy and fulfilling life. I believed that I was at fault for the incidents.
66.	At any time in your life, did you witness or experience any events that were unpleasant or frightening to you (other than any incidents already addressed in your responses to the questions above)?	I had a constant feeling of fear and trauma from the time of my apprehension and placement in foster homes until August 7, 2014. I did not feel safe or protected in any of the homes I was placed in. I continued to feel in danger after I was sent back to Canada and while I was living on the street and in shelters.
67.	If you answer to question 66 was yes, please provide particulars of the nature of the event(s), when it occurred and its duration and frequency.	It is impossible to explain a lifetime of fear. I would not be able to recall each of the thousands of daily events (and abuse) that I experienced in my foster/adopted homes that made me feel frightened. A few examples are explained above in the answers 48 and 50.
68.	If you answer to question 66 was yes, please state whether you required and received medical treatment and, if so, what treatment was provided, by whom and when.	See answer to question 53 above.

69.	If your answer to question 66 was yes, please provide particulars of the impact on you.	My life was a consistent and persistent reign of terror. I stopped trusting anyone. I felt worthless. I had low self esteem and experienced confusion about my identity. I constantly had suicidal thoughts. I felt alone. I felt unsafe and unprotected. I felt as if my life was constantly in danger. I was unable to cope and function in society. I had a reduced ability to lead healthy and fulfilling life.
70.	At any time in your life, did you experience bedwetting, nightmares or sleepwalking?	I experience flashbacks, which is a nightmare of sorts.
71.	If the answer to question 70 was yes, please provide particulars of the nature of the experience, when it occurred and its duration and frequency.	They have occurred throughout my childhood, adult life and still occur to this day.
72.	At any time in your life, did you witness or experience any family violence?	It may have occurred in my foster/adopted homes but I did not recognize it or recall it because I was focused on my survival.
73.	If the answer to question 72 was yes, identify the relevant family or families and provide particulars of the nature of the violence, when it occurred, its duration and frequency and the how it affected you.	N/A
74.	If your answer to question 72 was yes, please state whether your required and received medical treatment and, if so, what treatment was provided, by whom and when.	N/A
75.	If your answer to question 72 was yes, please state whether this violence was reported to police or anyone else and, if so, to whom, when and what was the outcome of the" report.	N/A
76.	At any time in your life, did you witness or suffer any drug or alcohol abuse?	The domestic abuse occurred in my first common law relationship was related to alcohol and drug abuse as was the more generalized violence among friends and acquaintances.
77.	If the answer to question 76 was yes, identify the abuser, provide particulars of the nature of the abuse you witnessed or experienced, when it occurred, the extent and frequency and the impact on you.	See answer to question 76 above.
78.	If you answer to question 76 was yes, please state whether your required and received medical treatment and, if so, what treatment was provided, by whom and when.	I required medical treatment. As explained in answer 53 above, I was hospitalized and received medical treatment in the shelters I resided in.

79.	Aside from any injuries that may have resulted from physical abuse referenced in questions 48, 50 and 56, at any time in your life, have you suffered any injuries that required medical treatment?	N/A
80.	If the answer to question 79 was yes, please provide particulars of the nature, of the injury or injuries, whether you received medical or other treatment, what treatment was provided, by whom and when.	N/A
81.	If the answer to question 79 was yes, please provide particulars of the impact of the injuries on you.	N/A
82.	Have you suffered any illnesses that required medical treatment?	Mental illness and emotional trauma already referenced above.
83.	If the answer to question 82 was yes, provide particulars of the nature of each illness, its frequency and duration, whether you received medical, what treatment was provided, by whom and when.	N/A
84.	If the answer to question 82 was yes, please provide particulars of the impact on you.	N/A
85.	In the Toronto Star article, you are reported to have, "had a child at age 16 which you placed in adoption. You are reported to have described this as " ... one of the hardest things I've ever done". (a) Is the report accurate? If not, how is it inaccurate? (b) What were the circumstances leading to the decision to place the child in adoption? (c) How did it affect you?	(a) At age 16 I was pregnant. I didn't give birth until I was 17 years old. (b) I was unable to physically protect and support myself or a child. (c) I have spent many years grieving the loss of my child.
86.	In an article in the Wawatay News dated December 1, 2015, (attached) ("Wawatay News article"), you are quoted as saying, during the period of adoption, "what I learned about my culture I learned from books". (a) Is the report accurate? If not, how is it inaccurate? (b) What books were available to you? (c) Who provided them? (d) What did you learn?	(a) This quote is accurate. (b) Local library books and books I found in my school. (c) Library and School. (d) I learned only negative things such as Indians were stupid not respectable.
87.	In the Wawatay News article, it is reported that prior to your apprehension by child welfare authorities, a young lady whom you later identified as your sister Nancy, told you to repeat a line over and over. The line was "My name is Sally Susan Mathias and I'm from Kirkland Lake, Ontario. I'm from Beaverhouse". (a) Is the report accurate? If not, how is it inaccurate? (b) Did you always recall that the name given to you by your biological parents was Sally Susan Mathias? (c) Did you always recall that you were from Kirkland	(a) The full accurate quote is as follows: "My name is Sally Susan Mathias. I come from Kirkland Lake, Ontario, Beaverhouse." (b) Yes. (c) Yes. (d) Yes.

	Lake? (d) Did you always recall that you are from Beaverhouse First Nation?	
88.	In the Toronto Star article, it is reported that you saw a children's aid file, describing yourself as "slow" and not likely to "progress beyond the mental capacity of a 10-year-old". (a) Is the report accurate? If not, how is it inaccurate? (b) When did you review the Children's Aid file? (c) Where did you review the file? (d) What other information did you obtain from the Children's Aid file? (e) How did receipt of this information affect you?	(a) The file was from my elementary school not Children's Aid. (b) I saw this file when I was approximately 18 years of age. (c) I found the file in the school archives. (d) I did not read the rest of the file. (e) I felt stupid and worthless. It further diminished my self esteem. These feelings followed me through the rest of my academic career.
89.	On the February 23, 2010 cross-examination, you stated that you sought information about your apprehension from community services, such as the Native and Child Family Services (Q 124 of the transcript). (a) What other organizations did you contact? (b) What information did you receive? (c) If you received information, how did receipt of this information affect you?	(a) I sought information from Timiskaming Child and Family Services (TCFS) and from the Adoption Division in INAC. (b) I received little to no information from INAC on the questions I was asking. I actually gave them more information than they gave me. (c) The little information I received made me believe I had little hope of finding answers.
<b>Registered Indian Record</b>		
90.	With respect to paragraph 14 of your Claim, (a) Did anyone assist you in searching for your records as an Indian person? If so, please identify who assisted you. (b) Please produce any documents you obtained as a result of your search. (c) When did you make a request to be registered as an Indian person? (d) When did you receive confirmation of your registration? (e) Please produce a copy of all correspondence and applications with respect to your request to be registered as an Indian person? (f) Did anyone assist you in making your request for registration? If so, please identify who assisted you? (g) Why did you make the request for registration? (h) Your Registered Indian Record, being Registration #2220020701 (previously produced) states that your registration was recorded on November 23, 1981. Did you make the request for registration prior to this date? (i) When did you become aware of your entitlements and benefits as an Indian person? (j) How did you become aware of your entitlements and benefits as an Indian person?	(a) My sister Nancy Allen and the staff at Temagami Band helped me search my records (b) I do not have any documents. I was simply allowed to view the file at the Native child and family services office. (c) Approximately June/July of 1981 (d) Unknown. (e) I did this through the Temagami Band and they have the file it is not in my possession. (f) My sister Nancy Allen and staff at Temagami Band (g) Because I felt lost and alone and I had a desire to belong somewhere. (h) Yes, in approximately June/July of 1981. (i) Approximately June/July of 1981. (j) My sister Nancy Allen and staff at Temagami Band office informed me
<b>Claim of damages for loss of benefits and entitlements</b>		
91.	At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to medication	(a) I recall taking medication as a child. I also required psychiatric assistance.

	<p>expenses (whether prescription or non-prescription),</p> <p>(a) Have you ever required medication (whether prescription or non-prescription)?</p> <p>(b) If the answer to question (a) was yes, did you receive extended health care benefits for the medication (whether prescription or non-prescription)?</p> <p>(c) If answer to question (b) was no, please identify the medication, whether it was covered by extended health care benefits at the relevant time and the costs to you.</p>	<p>(b) Unknown to me as I was child</p> <p>(c) Unknown to me as I was a child.</p>
92.	<p>At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to medical transportation,</p> <p>(a) Have you ever required medical transportation?</p> <p>(b) If the answer to question (a) was yes, did you receive extended health care benefits for the medical transportation?</p> <p>(c) If the answer to question (b) was no, please provided particulars of the transportation required, whether it was covered by extended health care benefits at the relevant time and the costs to you.</p>	<p>As a child this information was unknown to me.</p> <p>Since I have become a status Indian and I was hospitalized I have taken an ambulance. This was covered by Tamagami Band.</p>
93.	<p>At paragraph 55 of your Claim, you allege a loss of extended health care benefits relating to dental care,</p> <p>(a) Have you ever required dental care?</p> <p>(b) If the answer to question (a) was yes, did you receive extended health care benefits for the dental costs?</p> <p>(c) If the answer to question (b) was no, please provided particulars of the dental care, whether it was covered by extended health care benefits at the relevant time and the costs to you.</p>	<p>(a) Yes.</p> <p>(b) As a child this information was unknown to me.</p> <p>(c) As a child this information was unknown to me.</p> <p>Since I have become a status Indian these costs were covered by Tamagami Band.</p>
94.	<p>At paragraph 55 of your Claim, you allege a loss of treaty annuities,</p> <p>(a) Under which treaty do you base your claim? Please identify the provisions upon which you rely?</p> <p>(b) Have you received treaty annuities?</p> <p>(c) If the answer to question (b) is yes, when did you first seek an annuity?</p> <p>(d) How many annuity payments have you received and in which years?</p> <p>(e) What is the total amount of annuities you have received?</p> <p>(f) What annuities do you claim you were entitled to but did not receive?</p> <p>(g) If the annuities in question (d) were paid during a time that a band or First Nation administered payment, please provide copies of the records of payment in the relevant time period.</p>	<p>(a) Treaty 9</p> <p>(b) Yes</p> <p>(c) July 1981</p> <p>(d) I received payment each year after receiving my status card.</p> <p>(e) and (f) Temagami Band has the payment schedule and an accurate record of this.</p> <p>(g) I have received them all.</p> <p>(h) I do not have these records. Temagami Band would have submitted payment records to INAC.</p>
95.	<p>At paragraph 55 of your Claim, you allege a loss of entitlement to reserve land,</p> <p>(a) With respect to your claim for land on reserve:</p> <p>(i) Do you base your claim to reserve land on a treaty?</p>	<p>(a) i. Treaty Nine ii. Robinson Huron</p> <p>(b) I visited reserves, but have never lived on one because I don't belong. I don't speak the</p>

	<p>If so, under which treaty do you base your claim?</p> <p>(ii) Or is there another basis on which you claim an entitlement to reserve land? If so, what is the basis?</p> <p>(b) Since returning to Canada in 1981, have you resided on reserve? If so, on what reserve did you reside?</p> <p>(c) Did you ever request land on reserve on which to reside? If so, when, to whom and what was the result of the request?</p>	<p>language and I don't understand or know how to practice their community customs. I am an outsider.</p> <p>(c) No because I don't belong.</p>
96.	<p>At paragraph 55 of your Claim, you allege a loss of trapping rights,</p> <p>(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to trapping rights?</p> <p>(b) Have you trapped? If so, when and where?</p> <p>(c) Have you ever been prevented from trapping? If so, for what reason?</p> <p>(d) Have you purchased a trapping license? If so, when and where?</p>	<p>(a) Treaty Nine</p> <p>(b) I have trapped, but was prevented from learning how to trap and from trapping itself because I was taken out of my trapping territory when I was apprehended in 1969 and put into foster care. As an adult, I was prevented from trapping because I was never taught these skills as a child from my family/community.</p> <p>(d) No because I do not have the knowledge and skills to trap because I was not able to be taught and practice these skills as a child.</p>
97.	<p>At paragraph 55 of your Claim, you allege a loss of fishing rights,</p> <p>(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to fishing rights?</p> <p>(b) Have you fished? If so, when and where?</p> <p>(c) Have you ever been prevented from fishing? If so, for what reason(s)?</p> <p>(d) Have your ever been purchased a fishing license? If so, when and where?</p>	<p>(a) Treaty Nine</p> <p>(b) and (c) I have fished primarily in the Misema River system. I fished there as a child prior to apprehension but only once as adult when I returned to the community because my knowledge and fishing skills are not proficient.</p> <p>(d) No because I do not have the knowledge and skills fish because I was not able to be taught and practice these skills as a child.</p>
98.	<p>At paragraph 55 of your Claim, you allege a loss of hunting rights,</p> <p>(a) Do you base your claim on a treaty? If so, which treaty? If not, what is the basis for your claim to hunting rights?</p> <p>(b) Have you hunted? If so, when and where?</p> <p>(c) Have you ever been prevented from hunting? If so, for what reason(s)?</p> <p>(d) Have you purchased a hunting license? If so, when and where?</p>	<p>(a) Treaty Nine</p> <p>(b) and (c) I have hunted in the Nishnawbe Aski Nation Territory and the Robinson-Huron Territory. I was prevented from hunting during the time I was apprehended and placed in foster/adopted homes (other than one trip with my adoptive sister's boyfriend).</p> <p>(d) No because I do not have the knowledge and skills to hunt because I was not able to be taught and practice these skills as a child.</p>
99.	<p>At paragraph 55 of your Claim, you allege a loss of tax benefits,</p> <p>(a) Have you incurred any taxes (including the GST exemption) which would have been otherwise covered by tax benefits associated with Indian status?</p> <p>(b) If the answer to question (a) is yes, please provide</p>	<p>Throughout my childhood I did not receive tax benefits. I only begin to receive these benefits once I received my status card.</p>

	particulars of your payments of taxes, including date and amount, and the exemption or benefit available to those with Indian status at the relevant time.	
<b>Education</b>		
At paragraph 55 of your Claim, you allege a loss of education grants and at paragraphs 52 and 54 of your Claim, you allege having been "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives",		
100.	Please set forth the highest degree, diploma or certificate you have received from an educational institute.	My high school diploma
101.	Please identify any educational institute you attended, including address(es).	<ul style="list-style-type: none"> <li>• Holy Name Catholic School, Kirkland Lake, ON From Kindergarten to Grade 3;</li> <li>• Kent Public School, Campbellford, ON From Grade 3 to Grade 5/6;</li> <li>• Hillcrest Public School, Campbellford, ON From Grade 5/6 to Grade 8;</li> <li>• Highschool, Campbellford, ON Grade 9;</li> <li>• Bryan Highschool, Bryan, Texas</li> <li>• Kirkland Lake Collegiate and Vocational Institute, Kirkland Lake, ON;</li> <li>• Public Highschool, Temagami area, ON;</li> <li>• Widdifield Secondary School, North Bay, ON;</li> <li>• Confederation College, Thunder Bay, ON – Developmental Services;</li> <li>• Northern College, Kirkland Lake Campus, Kirkland Lake, ON;</li> <li>• Northern College, South Porcupine, Timmins, ON – Social Work</li> </ul>
102.	As to any educational institute you attended, please set forth the period during which you attended.	See answer to question 101 above.
103.	As to any educational institute you attended, please set forth any major area of study.	See answer to question 101 above.
104.	As to any educational institute you attended, please set forth whether you graduated.	I did not graduate from any college program
105.	If you did not graduate from an educational institute, indicate why you did not graduate.	I was suffering from depression and mental distress. I did not feel I was adequate enough.
106.	As to any educational institute you attended, please describe any degree, diploma or certificate you received as a result of your course of study.	None

107.	As to any education institute you attended, please provide a breakdown of the cost of each institute.	The Temagami Band covered school expenses at Widdifield Secondary School and onward throughout my college year.
108.	As to the costs in question no. 107, please indicate if the cost was paid by you.	The majority of fees were paid by the Temagami Band.
109.	Please state whether you applied for any education grants in respect of the education costs of each educational institute.	I did not personally apply for grants.
110.	If the answer to question no. 109 is yes; provide the amount of the grant.	N/A
111.	If you did not apply for an education grant in respect of an educational institute, please state: (a) Why you did not apply; (b) How you would have qualified for the grant; and (c) The costs that would have been covered by the grant.	I didn't know this was something available to me. My self esteem was so low that I would never have thought I was good enough to obtain this.
112.	Please identify any course, seminar or professional program you attended.	See answer to question 101 above. After June 1991. I also attended multiple training programs, workshops and events related to my employment and my volunteer work.
113.	Please set forth the dates that you attended any course, seminar or professional program.	See answer to question 101 above.
114.	Please set forth the subject matter of each course, seminar or professional program you attended.	Emergency Management, Crisis Intervention and Response, Life Skills. I have attended these courses from June 1991 to present.
115.	Please state whether that course, seminar, or professional program offered a certificate of completion or similar acknowledgement.	I received several certificates of completion and acknowledgement of participation from these courses.
116.	Please state whether you received a certificate of completion or similar acknowledgement.	See answer to question 115 above.
117.	As to any course, seminar or professional program you attended, please provide a breakdown of the cost of each of them.	Unknown. The costs were paid by my employer or the organization or I volunteered for.
118.	As to the costs in question no. 117, please indicate if the cost was paid by you.	No
119.	Please indicate whether you applied for any education grants in respect of the costs of each course, seminar or professional program.	No
120.	If the answer to question no. 119 was yes, provide the amount of any grant received.	N/A

121.	If you did not apply for an education grant in respect of a course, seminar or professional program please state: (a) Why you did not apply; (b) How you would have qualified for the grant; and (c) The costs that would have been covered by the grant.	The costs were paid by my employer or the organization or I volunteered for.
122.	As to any high school you attended, please set forth: (a) The name and address of the high school; (b) The dates that you attended; (c) Whether you completed the prescribed requirements for graduation from that high school; (d) If you graduated, the date that you graduated from high school; and (e) If you did not graduate, please state why you did not graduate.	(a) and (b) See answer to question 101 above (c) Yes (d) June 1984 (e) N/A
123.	As to any primary school you attended, please set forth: (a) The name and address of the primary school; (b) Whether you completed the prescribed requirements for completion of primary school; (c) If you completed the requirements, the date that you completed primary school; and (d) If you did not complete requirements, please indicate why you did not do so.	(a) and (c) See answer to question 101 above (b) Yes (d) N/A
<b>Employment</b> At paragraphs 5 2 and 54 of your Claim, you allege that you were "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".		
124.	Please state whether you are currently employed.	No
125.	If your answer to question no. 124 was yes, please state: (a) Where you are employed; (b) The duties and title(s) of your position (s); and (c) Your rate of pay.	N/A
126.	Please identify any other employer for whom you have worked.	<ul style="list-style-type: none"> <li>• Beaverhouse First Nation, Crisis Coordinator, \$15/hr. Crisis prevention and intervention work. Resigned to take on another unpaid position;</li> <li>• Salvation Army, Family Services Worker \$12 - \$15/hr. Counselling, supporting families, crisis intervention, food bank coordinator. Quit - refused permission to attend hospital with my son</li> <li>• Skookum Inn, Bookkeeping \$14/hr. Bookkeeping. Laid off</li> <li>• Wellington Inn, Bookkeeping \$15/hr. Bookkeeping. Quit</li> <li>• Journey's End, Chamber Maid Minimum</li> </ul>

		Wage. Cleaned Rooms. Quit to move. • Extended Care Nursing Home Student Wage. Taking care of residents. Student summer job.
127.	As to each employer for who you have worked, please set forth the title and duties of your position during the course of the employment.	See answer to question 126 above.
128.	As to each employer for who you have worked, please set forth your rate of pay.	See answer to question 126 above.
129.	As to each employer, please set forth the reason for which employment terminated.	See answer to question 126 above.
<b>Financial Support</b> In paragraphs 52 and 54 of your Claim, you allege being "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".		
130.	Have you ever received financial support from a government?	Yes
131.	If the answer to question no. 130 was yes, what type of assistance did you receive, when, why and in what amount.	Welfare intermittently from 1982/83 through to 1995.
132.	Have you received financial support for any other institution, agency or person?	I received a small inheritance from the estate of my adoptive father in 1993. Since receiving my status card I received benefits and financial support from the Temagami Band.
133.	If the answer to question no. 132 was yes, from whom, when, why and in what amount.	See answer to question 132 above.
<b>Criminal Record</b> In paragraphs 52 and 54 of your Claim, you alleged being "left fundamentally disoriented, with a reduced ability to lead healthy, functional and fulfilling lives".		
134.	Have you ever been found guilty or convicted of a criminal offence?	No
135.	If your answer to question no. 134 was yes, for any finding or conviction, please identify: (a) The jurisdiction in which you were found guilty or convicted; (b) The criminal offence for which you were found guilty or convicted; (c) The date of the finding or conviction and the name of the presiding Judge; (d) Whether this resulted from a verdict of guilt or a plea of guilty; (e) The nature of any disposition or sentence imposed:	N/A

	<p>(f) Any dates you were incarcerated;                  (g) Any facility in which you were incarcerated;                  (h) Whether you received a pardon from any government authority; and                  (i) If you received a pardon from any government authority, please identify the public authority that granted that pardon.</p>	
<p><b>Witnesses</b></p>		
<p>136.</p>	<p>Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of the allegations in paragraphs 6 to 14 and 52, 54 and 55 of your Claim, and please provide a summary of each of the witness' evidence.</p>	<p>Final determination of witnesses has not been made. It will be made in a timely fashion prior to trial.</p> <p>At this time, the witnesses <i>may</i> include the following:</p> <p>Harvey Armstrong: expert evidence</p> <p>Ana Bodnar: expert evidence</p> <p>Kenn Richard: expert evidence</p> <p>Vern Harper: expert evidence</p> <p>Jason Smith: adopted child's experience concerning loss of culture and corresponding entitlements;</p> <p>George Bott: adopting parent's experience concerning their adopted First Nations' child loss of Indian beneficial financial entitlements;</p> <p>Mark Seabrook: foster child's experience concerning loss of culture and corresponding entitlements;</p> <p>James Moss: foster parent's experience concerning their adopted First Nations' child loss of Indian beneficial financial entitlements;</p> <p>Wilmer Nadjiwon: First Nation's Chief as to the impact, if any, of the 1965 Agreement, lack of consultation, and loss of cultural identity for the Class members</p> <p>Luke Hunter: First Nations person living on the reserve during the Class Period and the availability of financial entitlements.</p> <p>Christopher Bruce: expert report to be served quantifying loss of potential financial entitlements to Class members;</p>

		A Minister of the federal Crown with responsibility during the Class Period
<b>Legal proceedings</b>		
137.	In the Wawatay News article, it is reported that "years" after returning to your community, you were learning about the residential school legacy through a local Aboriginal family agency. "It was then [you] first heard of the term, 'Sixties Scoop'." And I said, I think I'm part of that". (a) Is the report accurate? If not, how is it inaccurate? (b) When did this event occur? (c) When did you first seek legal advice with respect to a claim against the federal government?	(a) No. Through the Aboriginal family agency I was learning about both the residential school legacy and the sixties scoop legacy.  (b) 2002  (c) summer of 2008
138.	Please state whether you have ever initiated or been involved in any other legal proceedings in relation to the apprehension from your home on the reserve and subsequent placement in foster or adoptive care, other than your adoption itself.	No
139.	If your answer to question no. 138 was yes, please identify the court or administrative body in which the proceedings were taken.	N/A
140.	If your answer to question no. 138 was yes, please set forth the file number of the proceedings and the parties to that proceeding.	N/A
141.	If your answer to question no. 138 was yes, please set forth the current status of the proceedings.	N/A
142.	Please state whether you have ever initiated or been involved in any other legal proceedings in relation to alleged loss of customs, traditions, and practices.	No
143.	If your answer to question no. 142 was yes, please identify the court or administrative body in which the proceedings were taken.	N/A
144.	If your answer to question no. 142 was yes, please set forth the file number of the proceedings and the parties to that proceeding.	N/A
145.	If your answer to question no. 142 was yes, please set forth the current status of the proceedings.	N/A
146.	Please state whether you have ever initiated or been involved in any other legal proceedings in relation to aboriginal rights, benefits or entitlements.	Not as an individual plaintiff. However, I belong to bands that initiated legal proceedings that were settled.
147.	If your answer to question no. 146 was yes, please identify the court or administrative body in which the proceedings were taken.	N/A

148.	If your answer to question no. 146 was yes, please set forth the file number of the proceedings and the parties to that proceeding.	N/A
149	If your answer to question no. 146 was yes, please set forth the current status of the proceedings.	N/A
<b>Allegation that a fiduciary obligation was owed</b>		
At paragraph 1 (b) of your Claim, you seek a declaration that the Defendant breached its fiduciary obligation and duty of care to the Class Members "by reason of the events described in this action".		
150.	What facts, information or belief do you rely on in support of the allegations made in paragraphs 37 to 40, or elsewhere, in your Claim that a fiduciary duty or obligation was owed to you and other class members by the Defendant?	As pleaded, and the experiences of the adopted children within the Class, and adopting parents of children within the Class, and the experiences of the Chiefs of the Ontario Bands involving children of the Class.
151.	Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.	All documentation has been produced; if there is further documentation, a supplementary affidavit of documents will be filed.
152.	Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a fiduciary duty or obligation was owed to you and the class members by the Defendant, and please provide a summary of each of the witness' evidence.	Includes the affiants on the motion for summary judgment whose evidence is set out in their respective affidavits, and such further witnesses as may be required to be disclosed prior to trial.
153.	At paragraph 37 of your Claim, you allege that a duty of honour arises by virtue of the Defendant's constitutional obligation. Please identify the duty to which you refer and the provisions of the Constitution upon which you rely.	Section 91(24) of the Constitution Act, 1867 Duty of honour arises from (i) the fact that the beneficiaries that form the class were children at all relevant times; (ii) the fact that the 1965 Agreement required consultation with Chiefs of the First Nations' peoples in addition to the obligation that already existed at law; (iii) the fact that the nature of the interest is intrinsic to the identity and health of First Nations' peoples; and (iv) the fact that the only actor with power and authority is the federal Crown
154	Further with regard to paragraph 38: (a) Please describe what you assert would have constituted adequate monitoring. (b) Please describe the steps required to accomplish this adequate monitoring. (c) How would those steps have been implemented? (d) Please describe what you assert would have constituted an adequate exercise of influence. (e) Please describe the steps required to accomplish such adequate influence. (f) How would those steps have been implemented?	Answers to (a) – (o) include:  Maintaining of records of children of the Class who were adopted or placed as crown wards; Contact with the guardians of the children of the class and provision of information pertaining to access to cultural identity; Contact with the children of the Class when of capacity to be aware as to cultural identity; Contact with the children of the Class prior to reaching age of majority as

	<p>(g) Please describe what you assert would have constituted adequate safeguarding.</p> <p>(h) Please describe the steps required to accomplish such adequate safeguarding.</p> <p>(i) How would those steps have been implemented?</p> <p>(j) Please describe what you assert would have constituted adequate measures to secure the vital interests of vulnerable aboriginal children.</p> <p>(k) Please describe the steps required to accomplish such adequate security.</p> <p>(l) How would those steps have been implemented?</p> <p>(m) Please describe what you assert would have constituted adequate protection.</p> <p>(n) Please describe the steps required to accomplish adequate protection.</p> <p>(o) How would those steps have been implemented?</p>	<p>to cultural identity; Contact with the Bands of the children of the Class placed in non-First Nations homes so as to enable and facilitate receiving the children or their guardians; Identification of an office within the federal Ministry to respond to, and facilitate access to information concerning cultural identity and provision of available services; liaison services between this federal Office and the Ontario overseeing child welfare; consultation with the Bands at all relevant times during the Class period .</p>
<p>155.</p>	<p>Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support the allegation that a fiduciary duty or obligation was owed by the Defendant? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.</p>	<p>Not at this time</p>
<p><b>Allegation that a fiduciary duty was breached</b></p>		
<p>156.</p>	<p>What facts, information or belief do you rely in support of the allegations made in paragraphs 41 to 51, or elsewhere, in your Claim that a fiduciary duty or obligation was owed to you and other class members by the Defendant?</p>	<p>As pleaded, and as set out in the evidence filed in 2009 and the accompanying questioning and the evidence referred to above at item 152, and the jurisprudence.</p>
<p>157.</p>	<p>Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.</p>	<p>As produced pursuant to the affidavit of documents, and if further documentation, as will be produced in a supplementary affidavit of documents and as filed on motion for summary judgment</p>
<p>158.</p>	<p>Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a fiduciary duty was breached by the Defendant, and please provide a summary of each of the witness' evidence.</p>	<p>See item 136 above</p>
<p>159.</p>	<p>At paragraph 44 of your Claim, you allege that the Defendant breached its fiduciary duty "by failing to prevent the Plaintiff and the Class Members from losing their cultural identity".</p> <p>(a) Is your position that, because of your apprehension from your home on the reserve and subsequent placement in a non-aboriginal home:</p> <p>(i) You feel that never had a cultural identity?</p>	<p>Steps to reclaim cultural identity</p> <ul style="list-style-type: none"> <li>• I didn't know I lost my cultural identity. How do you know you lost something if you never had it. All I know is I didn't fit in from the time I was 4 years old. I did not fit in any more and I still work at regaining my cultural identity.</li> </ul>

	<p>(ii) Or that, for a period of your life, namely while in adoptive care, you had no cultural identity?</p> <p>(b) If your answer to both (i) and (ii) was "No", please explain the periods in your life when you felt you had no cultural identity?</p> <p>(c) What steps did you take to reclaim your cultural identity?</p> <p>(d) When were those steps taken?</p>	Steps taken to regain cultural identity and identifying when: as pleaded.
160.	At subparagraph 45(a) of your Claim, you allege that "Canada did nothing to stop Ontario from providing child welfare services in consequence of which the Class Members lost their cultural identity". Please set out the steps that the Defendant should have taken to stop Ontario, and how each of these steps should have been implemented.	See item 154, above
161.	At subparagraph 45(b) of your Claim, you allege that "Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services". Please set out the steps that the Defendant should have taken to ameliorate the alleged harmful effects of Ontario's services, and how each of these steps should have been implemented.	See item 154, above, and carrying out the duty of consultation with Ontario Chiefs.
162.	<p>At subparagraph 45(c) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes".</p> <p>(a) Please explain what you mean in this context by the term "status".</p> <p>(b) In your own case, you were quite young when you were placed in a non-aboriginal home. How should the Defendant have communicated your status to you at that age?</p> <p>(c) At what point in time in your childhood do you assert that the Defendant should have made you aware of this status?</p> <p>(d) Do you assert that this point in time be the same for all Class Members?</p> <p>(e) Please set out what steps should have been taken by the Defendant to make you and the Class Members aware of your status and how each step should have been implemented.</p>	<p>As set out at item 155, above, and:</p> <p>(a) Status = identity</p> <p>(b) To the Plaintiff's guardians</p> <p>(c) When Plaintiff had awareness, capacity, as identified by the Plaintiff or her guardians, and in any event, before reaching age of majority;</p> <p>(d) yes</p> <p>(e) Item 154, above</p>
163.	<p>At subparagraph 45(d) of your Claim, you allege that "Canada did nothing to ensure that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes".</p> <p>(a) Please explain or particularize what is meant by 'services' in this subparagraph.</p> <p>(b) Please set out what steps should have been taken by the</p>	<p>(a) Item 154, above</p> <p>(b) Item 154, above</p>

	Defendant to provide these services, and how each step should have been implemented.	
164.	At subparagraph 45(e) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal persons or the benefits available to them when they left their non-aboriginal homes or entered their age of majority". Please describe what monitoring or other measures you assert the Defendant should have taken determine when an aboriginal child left his or her non-aboriginal home prior to reaching their age of majority?	Item 154, above
165.	At subparagraph 45(f) of your Claim, you allege that "Canada did nothing to ensure the aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural "identity". (a) By using the term 'reclaim' is it your allegation that the aboriginal children referred to did at one time have their cultural identity? Please identify that period of time. (b) Please describe the steps that the Defendant should have taken to ensure services were available upon the child leaving the non-aboriginal home and how those steps should have been implemented? (c) How do you assert that the Defendant would have known when a Class Member was leaving his or her non-aboriginal home?	(a) Cultural identity, as a matter of right, is from the date of birth as a First Nation's person (b) Item 154, above, in addition to that as pleaded (c) Item 154, above
166.	At subparagraph 45(g) of your Claim, you allege that "Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial Child and Family Services Act". Please describe the protections that are the subject of this allegation with relevant provisions from the provincial statute?	Including but not limited to:  Notice to Band concurrent with placement in a non-First Nations home; Participation of Band surrounding event of placement in non-First Nations' home; Maintenance of records as to placement of children in non-First Nations' home; Systemic annual review of child placed in non-First Nation's home;  Beyond that, this question requires legal, not factual response.
167.	At paragraph 46 of your Claim, you allege that the Defendant "had authority and an obligation to intervene" and the Defendant "knew the Agreement did not provide protection for the cultural identity of vulnerable aboriginal children within Ontario's child welfare system". (a) Please provide the source of the asserted 'authority' to intervene. (b) Please provide the source of the asserted 'obligation' to intervene.	(a) 1965 Agreement, Constitution Act, 1867, Indian Act, common law and equity, jurisprudence (b) 1965 Agreement, Constitution Act, 1867, Indian Act, common law and equity, jurisprudence (c) Absence of records of the First Nations' children placed in non-aboriginal homes.

	<p>(c) What facts, information or belief do you rely to support the knowledge attributed to the Defendant in this paragraph?</p> <p>(d) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.</p>	(d) As contained in the Plaintiff's affidavits of documents
168.	<p>At paragraph 47 of your Claim, you allege that the Defendant "knew" that "adoption and permanent foster care in non-aboriginal homes were events in apparent and actual conflict with the protection of aboriginal cultural identity".</p> <p>(a) What facts, information or belief do you rely on to support the knowledge attributed to the Defendant?</p> <p>(b) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.</p>	<p>(a) As pleaded, and absence of records by the Defendant</p> <p>(b) As referred to above;</p>
169.	<p>At paragraph 48 of your Claim, you allege that the Defendant "failed to consult with the Ontario Indian Bands in respect of the provision of funding for child welfare practices and policies to on-reserve Indian children that it knew were clearly in conflict with its duty to protect the cultural identity of on-reserve Indian children".</p> <p>(a) What is the position of the plaintiff as to the source and nature of the alleged obligation to consult?</p> <p>(b) What facts, information or belief do you rely on in support of the allegation that the Defendant failed to consult as alleged?</p> <p>(c) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.</p>	<p>(a) Evidence of one or more Chiefs</p> <p>(b) Absence of any documentation produced by the Defendant which reasonably should be in the Defendant's possession if there were any initiatives involving consultation</p> <p>(c) As produced in affidavits of documents</p>
170.	<p>At paragraph 49 of your Claim, you allege that the Defendant, among other things, deliberately accepted or promoted a policy of cultural assimilation.</p> <p>(a) What facts, information or belief do you rely on in support of that allegation?</p> <p>(b) Is there a document or series of documents that you rely on in support of this allegation? If your answer to this question was yes, please produce these documents.</p>	<p>(a) As pleaded and expert opinion evidence,</p> <p>(b) As produced in affidavits of documents</p>
171.	<p>At paragraph 51 of your Claim, you allege that actions and omissions on the part of the Defendant were, among other things, dishonest. Provide examples of where, in your assertion, the Defendant acted dishonestly.</p> <p>(a) What facts, information or belief do you rely on in support of that allegation?</p> <p>(b) Is there a document or series of documents that you rely on to support this allegation? If your answer to this question was yes, please produce these documents.</p>	<p>(a) As pleaded and expert opinion evidence which establishes that the Defendant knew or reasonably should have known that its actions or omissions were harmful and part of a larger plan of assimilation and cultural genocide</p> <p>(b) As produced in affidavits of documents</p>
172.	At paragraph 53 of your Claim, you describe the entire class	- As pleaded, and they were children,

	as "unwilling participants in what is now known in the aboriginal community as the 'Sixties Scoop". What facts, information or belief do you rely on to support the contention that the entire class was 'unwilling'? Please provide all documents and evidence that establish that the entire class was 'unwilling'.	- As produced in affidavits of documents
173.	At paragraph 54 of your Claim, you allege that "Canada's egregious conduct in violating the fundamental rights of children". Please describe the source(s) and nature of the rights to which you refer?	As pleaded: - Right of cultural identity - Right of health and welfare - Right of belonging
174.	Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support this allegation that a fiduciary duty or obligation was breached? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.	See 136, above.
<b>Allegation of duty of care</b>		
175.	What facts, information or belief do you rely on in support of the allegations made in paragraph 24, or elsewhere, in your Claim to assert a duty of care was owed by the Defendant to you or to the members of the class?	As above items 150-174
176.	Is there a document or series of documents that you rely on to support each of those allegations? If your answer to this question was yes, please produce these documents.	As above items 150-174
177.	Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegations that a duty of care was owed by the Defendant to you or to the other members of the class. Please provide a summary of each of the witness' evidence.	As above items 150-174
178.	At subparagraphs 24(a) to (f) of your Claim, you provide the grounds upon which you assert a duty of care was owed to you or to the other members of the class by the Defendant. (a) Please identify the 'constitutional obligations' to which you refer at subparagraph (a). (b) Please identify the 'jurisprudence of high and binding authority' to which you refer at subparagraph (b). (c) Please identify the jurisprudence to which you refer in relation to the "special relationship with aboriginal persons referred to in jurisprudence as a 'duty of honour'" at subparagraph (c). (d) Please identify the 'traditions and customs of aboriginal societies', which you plead at subparagraph (d) have been incorporated into the common law, giving them legal force as part of the Canadian legal system, and as incorporated into the Constitution Act 1982, and please provide your	As above items 150-174 Jurisprudence includes, but is not limited to: <i>Tsilhqot'in Nation v. British Columbia</i> , 2014 SCC 44.; <i>Natural Parents v. British Columbia Supt. of Child Welfare</i> [1976] 2 S.C.R. 751; <i>South Holly Holdings Ltd. v. Toronto-Dominion Bank (c.o.b. TD Canada Trust)</i> [2007] I.J. No. 2445 (C.A.); <i>Heward v. Eli Lilly &amp; Co.</i> [2008] O.J. No. 2610 (Div. Ct.); <i>Anderson v. Wilson</i> [1998] O.J. No. 2494 (C.A.); <i>McCracken v. Canadian National Railway</i> , 2010 ONSC 4526 (Ont. Sup. Ct.); <i>Cloud v Canada (Attorney General)</i> [2004] O.J. No. 4924; <i>Bonaparte v. Canada (Attorney General)</i> [2003] 2 C.N.L.R. 43.; <i>Silver v. Imax Corp.</i> [2011] O.J. No. 656 (Div. Ct.); <i>Wewaykum Indian</i>

	<p>authority for stating that these traditions and customs have been incorporated into the common law.</p> <p>(e) Please identify what provisions of the Indian Act you rely on for the assertion at subparagraph (e) that there is a statutory acknowledgement of Canada's duty of care to aboriginal people.</p> <p>(f) Please identify the sources and provide all documents which you rely on for the allegation at subparagraph (f) of "the formal acknowledgement of responsibility by Canada and apology for past policies of assimilation of vulnerable aboriginal children which caused harm."</p>	<p><i>Band v. Canada</i> [2002] 4 S.C.R. 245; <i>McIver v. Canada (Registrar of Indian &amp; Northern Affairs)</i> [2009] 2 C.N.L.R.; <i>Shubenacadia Indian Band v. Canada (Minister of Fisheries and Oceans)</i> [2001] F.C.J. No. 347; <i>Davis v. Canada (Attorney General)</i> [2004] N.J. No. 274; <i>Hunt v. Carey Canada Inc.</i> [1990] S.C.J. No. 93; <i>Edwards v. Law Society of Upper Canada</i> [1995] O.J. No. 2900; <i>Bendall v. McGhan Medical Corp</i> (1993), 14 O.R. (3d) 734; <i>Drummond-Jackson v British Medical Assn.</i> [1970] 1 All E.R. 1094 (Eng. C.A.); <i>Western Canadian Shopping Centres Inc. v. Dutton</i> [2001] 2 S.C.R. 534, 2001 SCC 461; <i>Rewega (next friend of) v. Rewefa</i> [2005] A.J. Npo. 1443; <i>Windsor v. Canadian Pacific Railway Ltd.</i> (2006), 26 C.P.C. (6th) 309, [2006] A.J. No. 584, 2006 ABQB 348; <i>Harrington v. Dow Corning Corp</i> [2000], 193 DLR (4<sup>th</sup>) 67 (BCC); <i>Hollick v City of Toronto</i> [2001] 3 S.C.R. 158</p>
179.	<p>Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support your allegation that a duty of care was owed to you or to the other members of the class? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.</p>	As above at item 174
<b>Allegation of breach of duty of care</b>		
180.	<p>What facts, information or belief do you rely on in support of the allegations made Paragraph 25 to 30, or elsewhere, in your Claim to assert that the Defendant breached a duty of care owed to you or to the members of the class?</p>	As above, items 150-174
181.	<p>Is there a document or series of documents that support each of these allegations? If your answer to this question was yes, please produce these documents.</p>	As produced in affidavits of documents
182.	<p>Please identify any witnesses, other than yourself, who will be called at trial to give evidence in support of your allegation that a duty of care was breached by the Defendant, and please provide a summary of each of the witness' evidence.</p>	See item 136, above
183.	<p>At paragraph 25 of your Claim, you allege that cultural identity is a fundamental element in respect of which the Defendant owes vulnerable aboriginal children a duty of care.</p>	As above, items 150-174

	<p>(a) What facts, information or belief do you rely on in support of the assertion that 'cultural identity is a fundamental element' in the context of this allegation?</p> <p>(b) Is there a document or series of documents that support this pleading? If your answer to this question was yes, please produce these documents.</p>	
184.	At paragraph 26 of your Claim, you state that the Defendant breached its duty of care by "omitting or failing to take reasonable steps to prevent the Plaintiff and the Class Members from losing cultural identity". Please set forth the reasonable steps that should have been taken and how they should have been implemented?	See item 154, above
185.	At paragraph 28 of your Claim, you allege that "when the Agreement was made, it was not sufficient for Canada to provide funding only" and that "reasonable steps for the protection and exercise of aboriginal cultural identity" were required. Please set forth the reasonable steps that should have been taken and how those steps should have been implemented.	As above, item 154
186.	<p>At paragraph 29(a) of your Claim, you allege that "Canada did nothing to stop Ontario from providing child welfare services in consequence of which Canada knew or ought to have known would result in the Class Members losing their cultural identity".</p> <p>(a) Please identify under what authority you assert the Defendant could have stopped or controlled Ontario's administration of child welfare services.</p> <p>(b) Please set forth the steps that should have been taken by the Defendant and how those steps should have been implemented.</p>	<p>(a) Defendant had constitutional authority over the members of the Class both before and after long-term placement or adoption</p> <p>(b) As above, item 154</p>
187.	At paragraph 29(b) of your Claim, you allege that "Canada did nothing to ameliorate the harmful effects of Ontario's child welfare services". Please set forth the steps that should have been taken by the Defendant, and how those steps should have been implemented.	As above, item 154
188.	<p>At paragraph 29(c) of your Claim, you allege that "Canada did nothing to ensure that vulnerable aboriginal children were made aware of their status as aboriginal children when they were placed in non-aboriginal homes".</p> <p>(a) Is it the plaintiff's assertion that, as a term of adoption or foster care, new parents should have been required to provide an undertaking to educate the child concerning their status as aboriginal children? If so, to whom do you assert should have required the undertaking, and to whom should it have been given?</p> <p>(b) What do you assert that education should have entailed?</p> <p>(c) Who should have provided that education?</p>	<p>As above, item 154</p> <p>(a) No</p> <p>(b) Cultural identity</p> <p>(c) Federal Crown</p> <p>(d) Plaintiff makes no such assertion</p> <p>(e) As above, item 154</p>

	<p>(d) By what means does the plaintiff assert that adoptive and foster parents should have been supervised to ensure compliance that such an education was provided?</p> <p>(e) Please set forth the steps that you assert should have been taken by the Defendant and how those steps should have been implemented to ensure you and Class Members were made aware of their status.</p>	
189.	<p>At paragraph 29(d) of your Claim, you allege that "Canada did nothing to ensure that the aboriginal children would be provided with services that could enable them to be aware of and exercise their culture, traditions, customs and identity during the period of their placement in non-aboriginal homes".</p> <p>(a) Please identify the 'services' to which you refer.</p> <p>(b) Please explain who, according to the plaintiffs, should have managed these services.</p> <p>(c) Do the plaintiffs assert that adoptive and foster-care parents would have to be ordered to facilitate these services? If so, whom do you assert should have made the Orders? What is the source and basis of the authority for making such orders</p>	<p>(a) See item 154, above</p> <p>(b) Federal Crown</p> <p>(c) No such assertion</p>
190.	<p>At paragraph 29(e) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children were made aware of their status as aboriginal persons when they left their non-aboriginal homes or entered their age of majority". Please set forth the steps that should have been taken by the Defendant and how those steps should have been implemented.</p>	As above, item 154
191.	<p>At paragraph 29(t) of your Claim, you allege that "Canada did nothing to ensure that aboriginal children, when approaching their age of majority, or leaving their non-aboriginal homes, would be provided with services that could enable them to reclaim their cultural identity". Please set forth the steps that should have been taken by the Defendant to ensure children would be provided with services that could enable them to reclaim their cultural identity and how those steps should have been implemented.</p>	As above, item 154
192.	<p>At paragraph 29(g) of your Claim, you allege that "Canada failed to ensure that vulnerable aboriginal children had, at least, the protections in respect of their cultural identity as those which were subsequently implemented by Ontario in the 1984 provincial Child and Family Services Act" ("CFSA").</p> <p>(a) Please set forth the protections to which you refer and the provisions of the CFSA which you rely on as providing those protections.</p> <p>(b) Is the plaintiff asserting that the Defendant should have enacted federal legislation prior to 1984?</p>	<p>(a) As above, item 166</p> <p>(b) No, the Defendant did not require legislated changes to achieve the appropriate objectives and to avoid cultural genocide</p>

193.	<p>At paragraph 30 of your Claim, you allege that the Defendant "turned a blind eye to the Class who it knew or reasonably should have known would thereby individually and collectively lose their cultural identity, and suffer the psychological and other harm described herein".</p> <p>(a) What facts, information or belief do you rely on in support of this allegation?</p> <p>(b) Is there a document or series of documents that you rely on to support this allegation? If you answer to this question was yes, please produce these documents.</p>	<p>(a) As above, items 150-174, and the expert evidence relied upon by the Plaintiff</p> <p>(b) Affidavits of document</p>
194.	<p>Are there any more facts apart from those in your Claim and those provided in response to these interrogatories that you intend to rely on to support this allegation that a duty of care owed to the plaintiff or to the members of the class was breached? If your answer to this question was yes, please set forth the facts and provide any documents relied on in support of those facts.</p>	Not at this time
<b>Further questions on the Claim</b>		
195.	<p>Throughout your Claim you use the term "vulnerable aboriginal children".</p> <p>(a) What is the basis for asserting that the plaintiff was a vulnerable aboriginal child?</p> <p>(b) What is the basis for asserting that the members of the class were vulnerable aboriginal children?</p> <p>(c) Does the use of the term 'vulnerable' refer to the high-risk environments in which the plaintiff lived prior to being removed from her home?</p> <p>(d) With respect to the members of the class, does the use of the term 'vulnerable' refer to the high-risk environments in which these children lived prior to being removed from their homes?</p> <p>(e) If your answer to either (c) or (d) the question was no, is it the assertion of the plaintiff that the children who were removed from their homes were not at risk or in need of protection?</p>	<p>(a) Age and circumstances during the Class Period</p> <p>(b) Same</p> <p>(c) Not necessarily</p> <p>(d) Not necessarily: risks of harm occasioned by loss of cultural identity applies independent of "high-risk environments" as that term in your question is understood</p> <p>(e) No</p>
196.	<p>When did you first learn of the existence of the Canada-Ontario Welfare Services Agreement of 1965 (the "1965 Agreement)? Please provide as precise a date as possible.</p>	2009, prior to the delivery of the Statement of Claim
197.	<p>What was the context in which you learned about the 1965 Agreement?</p>	From counsel, in school, and once I was elected into Beverhouse council.
198.	<p>Did you read the 1965 Agreement at the time you learned of its existence?</p>	Not in full.
199.	<p>If the answer to question no. 199 was yes, please describe your understanding of what the 1965 Agreement states?</p>	My understanding is based upon advice from counsel which is privileged.

200.	If the answer to question no. 199 was yes, has your understanding of the 1965 Agreement changed since you first read it? If so, how?	Yes, as a consequence of the two certification decisions in this proceeding.
201.	If the answer to question no. 199 was no, have you ever read the 1965 Agreement? If your answer was yes, please provide as precise a date as possible of when you read it	Unsure
202.	Do you know who the parties were to the 1965 Agreement?	No information other than as contained in the Agreement.
203.	If your answer to question no. 203 was yes, please identify the parties.	n/a
204.	In the course of these proceedings you have taken the position, and Justice Belobaba in his certification decision repeats your contention, that the 1965 Agreement "gave rise to these claims" [paragraph 70 of the reasons, [2013] O.J. No. 4381] (a) Is it your position that the 1965 Agreement created the alleged fiduciary duty or obligation, whether explicitly or by implication? (b) If your answer to this question was no, what created the alleged fiduciary duty or obligation? (c) Is it your position that the alleged breach of fiduciary duty or obligation was caused by the 1965 Agreement? (d) If your answer to this question was no, what was the cause of the alleged breach of fiduciary duty or obligation? (e) Is it your position that the 1965 Agreement was the source of the alleged duty of care, whether explicitly or by implication? If your answer to this question was no, what was the source of the alleged duty of care? (f) Is it your position that the breach of duty of care was caused by the 1965 Agreement, whether explicitly or by implication? (g) If your answer to this question was no, what was the cause of the alleged breach of duty of care?	These are not factual inquiries of the Plaintiff, and require legal conclusions and argument.
205.	On the February 23, 2010 cross-examination, you recalled that community members were present when you were apprehended from your home (Q120-123 of the transcript). (a) By this reference to community members, do you mean people living on the reserve? (b) In this lawsuit, are you challenging actions taken by band members at the time of your apprehension?	(a) Yes (b) no
206.	At paragraph 1 (c) of your Claim, you state that damages sought include the following: non-pecuniary, general, pecuniary, special, punitive exemplary and aggravated damages. (a) What additional damages do you seek? (b) What facts, information or belief do you rely on in	(a) None (b) As pleaded (c) See item 21, above and expert evidence to be relied upon (d) Expert evidence to be relied upon at trial and includes costs of therapeutic

	<p>support of a claim for non-pecuniary and general damages? Please provide all documentation to support this claim.</p> <p>(c) What facts, information or belief do you rely on in support of a claim for pecuniary damages? Please provide all documentation to support this claim.</p> <p>(d) What facts, information or belief do you rely on in support of a claim for special damages? Please provide all documentation to support this claim.</p> <p>(e) What facts, information or belief do you rely on in support of a claim for punitive damages? Please provide all documentation to support this claim.</p> <p>(f) What facts, information or belief do you rely on in support of a claim for exemplary damages? Please provide all documentation to support this claim.</p> <p>(g) What facts, information or belief do you rely on in support of a claim for aggravated damages? Please provide all documentation to support this claim.</p>	<p>interventions, education and re-payment for university and other expenses that were part of entitlements</p> <p>(e) As pleaded and including cultural genocide</p> <p>(f) As pleaded and including cultural genocide</p> <p>(g) As pleaded and including cultural genocide</p>
207.	<p>At paragraph 55 of your Claim, you further particularize your claim for pecuniary damages by referring to "deprivation of various entitlements and benefits" to which you and the class would have been entitled to.</p> <p>(a) Which of the entitlements and benefits listed in this paragraph do you assert that you were deprived of?</p> <p>(b) Which of the entitlements and benefits do you know other Class Members to have been deprived of? What is the basis of your knowledge?</p> <p>(c) You also state that the Defendant had a duty to notify class members of these entitlements and benefits? When should you and Class Members have been notified of these entitlements and benefits?</p> <p>(d) By what means should you and Class Members have been notified</p>	<p>(a) See item 21 above,</p> <p>(b) All based upon communications with other members of the Class</p> <p>(c) See item 154 above, and notification to adoptive and foster parents as well as to child welfare authorities</p> <p>(d) See item 154 above</p>
208.	<p>At paragraph 2(d) of your Claim, you define "child welfare services" as referring to the provision of state services to children. Does this definition refer exclusively to the province of Ontario?</p>	Yes
209.	<p>If the answer to question no. 209 was no, please define what is meant by "state services"</p>	n/a
210.	<p>Do you have any knowledge of how the adoption process worked in Ontario during the class period, including any legislation that governed it?</p>	No
211.	<p>If your answer to question no. 211 was yes, please describe your understanding of the process.</p>	n/a
212.	<p>Do you have any knowledge as to whether the adoption process in Ontario treated you and the Class Members any differently from other children apprehended from homes considered a risk to a child?</p>	No

213.	If your answer to question no. 213 was yes, please set forth the differences and any facts, information or belief you rely on in support of such differences.	n/a
214.	If your answer to question no. 213 was yes, is there a document or series of documents that you rely on to support of such differences.	n/a
215.	At paragraph 4 of your Claim you state that the class is "made up of more than 16,000 aboriginal persons". At this time, do you have any further information on the size of the class?	No
<b>Expert Witness Identification</b>		
216.	Have you consulted with any person whom you consider to have qualifications as an expert concerning any aspect of this litigation?	Yes
217.	If your answer to question no. 217 was yes, please identify each expert.	At this time, potential witnesses for trial <i>may</i> include:  Ana Bodnar  Kenn Richard  Vern Harper  Paul Driben  Janet Armstrong  Christopher Bruce  Harvey Armstrong
218.	If your answer to question no. 217 was yes, please set forth the discipline in which that person has expertise.	As will be provided with the reports and acknowledgements of expert duty
219.	If your answer to question no. 217 was yes, please set forth the nature and extent of the expert's training and experience.	Included in C-V, attached to expert's report
220.	If your answer to question no. 217 was yes, please state the subject matter on which the expert is expected to opine.	As set out in report
221.	If your answer to question no. 217 was yes, please state the substance of all facts and opinions to which the expert is expected to testify.	As set out in report
222.	If your answer to question no. 217 was yes, please provide a summary of the grounds for each such opinion of the expert.	As set out in report

Documents	
<p>223. In addition to documents requested in the questions above, please produce the following documents that pertain to you. If the documents are not within your possession, control or power, please provide an explanation as to why this is the case:</p> <ul style="list-style-type: none"> <li>(a) Copies of Children's Aid Society files and documentation;</li> <li>(b) Copies of court files relating to child welfare proceedings and adoption, including the records of any organization identified by you in question 91;</li> <li>(c) Records relating to your childhood and adult illnesses and hospitalizations;</li> <li>(d) School records from schools you attended (primary school, high school, college, university, technical school, up-grading courses, etc.);</li> <li>(e) Copies of your certificates, apprenticeship papers, diplomas, degrees, or other credentials;</li> <li>(f) Criminal record, namely, Canadian Police Information Centre ("CPIC") print-out or documents relating to any criminal charges, convictions and/or time spent in jail or prison;</li> <li>(g) Clinical notes and records from all medical doctors, including specialists and physiotherapists, chiropractors, etc.;</li> <li>(h) Decoded OHIP summaries or similar reports from state, provincial or federal health insurance programmes;</li> <li>(i) List of medications taken by you;</li> <li>(j) Copies of any therapy and/or counselling notes and records (including psychologists' and psychiatrists' notes records);</li> <li>(k) Copies of any marital or family counselling records;</li> <li>(l) Records and documentation relating to any drug and alcohol treatment programs;</li> <li>(m) Employment or personnel files from all past and present employers (including performance appraisals, any information regarding disciplinary action, salary details, attendances and terminations);</li> <li>(n) All documentation relating to any UI, EI, General Welfare, Family Benefits, Disability;</li> <li>(o) Copies of any private insurers' disability files;</li> <li>(p) Income Tax Returns (with supporting documentation) and income information re: any unreported income;</li> <li>(q) Any documentation regarding financial support received from other people or sources (i.e. child support, spousal support, property settlements in matrimonial actions, etc.);</li> <li>(r) Curriculum Vitae (or plaintiffs work history/list of positions held);</li> <li>(s) Any vocational assessments;</li> <li>(t) Documentation relating to any Criminal Injuries Compensation Board Claims (including application form);</li> <li>(u) Copies of any police reports or notes relating to</li> </ul>	<ul style="list-style-type: none"> <li>(a) to (w) Previously responded to</li> <li>(e) I have some certificates</li> <li>(f) I can get that because I volunteer</li> <li>(i) I have a list of current medications</li> <li>(k) I have gone to counseling with Pastor Peter Panabaker, Tower Street 1<sup>st</sup> Baptist Church, Kirkland Lake, ON</li> <li>(p) I have income tax returns from 2008 to present</li> <li>(r) I have an outdated resume, but I can update it</li> <li>(v) I can provide the name of the lawyer that represented me in my son's Isaiah's custody matter, but I don't have the information</li> <li>(w) I have a number of work journals, some of which contain personal reflections and thoughts.</li> </ul>

<p>disclosure to police of any incidents in which the plaintiff was victim or witness;  (v) Copies of any court files relating to family/divorce proceedings, along with details of any restraining orders, criminal proceedings, etc.; and  (w) Any journal or diaries kept by you.</p>	
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Date: February 19, 2016

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Solicitors for the Defendant

02/25/2016 17:58



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(FAX)

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Our File: 3617798  
Notre dossier:

Your File:  
Votre dossier:

February 25, 2016

**VIA FACSIMILE**

Jeffery Wilson  
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99 Yorkville Avenue  
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Dear Sirs:

Re: *BROWN, Marcia v. The Attorney General of Canada*  
Court File No.: CV-09-00372025-00CP

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Thank you for your letter of February 19, 2016, attaching your client's answers to the Defendant's written examination for discovery. In an effort to avoid a motion with respect to answers, we ask you to reconsider your position with respect to documents requested, the questions that do not appear to have been answered or are incomplete, and the refusal of question 205.

Documents requested/not produced

In our letter of November 20, 2015, we requested a number of documents from your client. In your response of November 30, 2015, you advised that inquiries had been made of your client and that "we have none of the documents". We repeated our request in our written examination for discovery (Question 223, reproduced below). Our request is for documents in the plaintiff's "possession, control or power" in accordance with Rule 30.02(1). In her answer, the Plaintiff has stated: "previously answered". We take this to refer to your letter of November 30. Nevertheless, she has also stated that some of the documents are, in fact, in her possession.

We appreciate that some of these documents will not be in your client's physical possession; however, it is our position that the Plaintiff must exercise her power to make requests of the persons and entities that hold the documents in order to comply with her production obligation. Please advise if such requests have been made. If requests have been made, please advise of the responses received. If requests have not been made, please advise why that is the case and

Canada

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whether your client will provide the Defendant with the necessary directions and consents to permit the release of the documents to the Defendant.

For your ease of reference, the following documents were requested in our letter of November 20 and question 223 of the Defendant's written discovery:

- (a) Copies of Children's Aid Society files and documentation;
- (b) Copies of court files relating to child welfare proceedings and adoption, including the records of any organization identified by you in question 91;
- (c) Records relating to your childhood and adult illnesses and hospitalizations;
- (d) School records from schools you attended (primary school, high school, college, university, technical school, up-grading courses, etc.);
- (e) Copies of your certificates, apprenticeship papers, diplomas, degrees, or other credentials;
- (f) Criminal record, namely, Canadian Police Information Centre ("CPIC") print-out or documents relating to any criminal charges, convictions and/or time spent in jail or prison;
- (g) Clinical notes and records from all medical doctors, including specialists and physiotherapists, chiropractors, etc.;
- (h) Decoded OHIP summaries or similar reports from state, provincial or federal health insurance programmes;
- (i) List of medications taken by you;
- (j) Copies of any therapy and/or counselling notes and records (including psychologists' and psychiatrists' notes records);
- (k) Copies of any marital or family counselling records;
- (l) Records and documentation relating to any drug and alcohol treatment programs;
- (m) Employment or personnel files from all past and present employers (including performance appraisals, any information regarding disciplinary action, salary details, attendances and terminations);
- (n) All documentation relating to any UI, EI, General Welfare, Family Benefits, Disability;
- (o) Copies of any private insurers' disability files;
- (p) Income Tax Returns (with supporting documentation) and income information re: any unreported income;
- (q) Any documentation regarding financial support received from other people or sources (i.e. child support, spousal support, property settlements in matrimonial actions, etc.);
- (r) Curriculum Vitae (or plaintiff's work history/list of positions held);
- (s) Any vocational assessments;

- 3 -

- (t) Documentation relating to any Criminal Injuries Compensation Board Claims (including application form);
- (u) Copies of any police reports or notes relating to disclosure to police of any incidents in which the plaintiff was victim or witness;
- (v) Copies of any court files relating to family/divorce proceedings, along with details of any restraining orders, criminal proceedings, etc.; and
- (w) Any journal or diaries kept by you.

The following additional documents were requested in the written examination for discovery.

- (x) Band records of annuity payments (Question 96). The Plaintiff has answered that the records are in the possession of the Temagami Band which then reported to INAC. Kindly take the appropriate steps to obtain copies from the Band.

Questions not answered/incomplete/refused

The following questions do not appear to have been answered or appear to be incomplete. Question 205 is refused. Please note that the Defendant's question 154 was not reproduced in your document. Commencing at that point, your numbering of questions one less than the Defendant's.

1. Question 23 – The Defendant requested the nature of any additional pecuniary damages claimed. The answer includes “etc.”: “Tuition fees, housing, harvesting rights, materials for hunting, fishing, trapping etc. reserve royalties and or settlement funds”. Please identify and particularize any other additional pecuniary damages claimed.
2. Question 101 – In answer to question 26, residence in Los Angeles is listed. Did you attend a school in Los Angeles? If so, what is the name and address of the school?
3. Questions 101 and 112 - Please provide a list, as requested, of the multiple training programs, workshops and events attended.
4. Question 124 – The answer states that you are not currently employed. In answer to question 198, you state that you were “elected into Beverhouse (sic) council”. Do you now or have you in the past been elected to the position of Chief, Beaverhouse First Nation? When did you hold that position? Have you held any other positions on the Band council of a First Nation?
5. Question 125 – The answer states that you are not currently receiving employment income. If you currently hold or have held a position with the council of a First Nation, what is the amount of the salary and/or compensation and/or benefits and/or honoraria you are receiving or received?
6. Question 131 - Regarding welfare received, please provide particulars of the amount received, why it was received and in what amount, as requested.

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7. Question 150 – This question asks for facts, information or belief relied upon in support of the allegations that a fiduciary duty or obligation was owed to you and other class members by the Defendant. The answer states: “As pleaded, and the experiences of the adopted children within the Class, parents of children within the Class, and the experiences of the Chiefs of Ontario”. If there are facts, information and belief of these individuals that you intend to rely upon, kindly specify it.

8. Question 154 - This question is not answered. It is also not reproduced by you. It reads:

At paragraph 38 of your Claim, you allege that “Canada’s constitutional obligation, the Indian Act, and the common law, including the duty of honour, bestow a discretionary control requiring Canada to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of vulnerable aboriginal children and, in particular, their cultural identity”. Please provide particulars as to the source and nature of the alleged discretionary control over yourself and other members of the class.

9. Questions 158, 168 (d), 169(b), 170 (c), 171 (b) 172 (b), 173, 177, 179(f), 182, 184 (b), 194 (b) [Plaintiff’s numbering is one less than the Defendant’s] – In answer to these questions requesting the document or documents upon which you rely, you have referred the Defendant to your affidavit of documents containing 198 documents. Please identify the document or documents, as requested.

10. Question 162 [Plaintiff’s 161] – The answer states: “See item 154, above, and carrying out the duty of consultation with Ontario Chiefs”. Please specify the duty to which you refer?

11. Question 174 [Plaintiff’s 173] – The question asked, in part, for the source of the rights to which you refer. This portion of the question has not been answered.

12. Question 179(d),(e),(f) [Plaintiff’s 178 (d)-(f)]– These questions have not been answered. Although the e answer refers the Defendant to the answers to questions identified by the Plaintiff as 150 to 174 – Those answers do not appear to answer the questions identify provisions of the *Indian Act*, as requested in Question 179 (e).

13. Question 205 [Plaintiff’s 204] – The question has been refused for the following reason: “These are not factual inquiries of the Plaintiff, and require legal conclusions and argument”. As framed, the question asks for the factual basis for the claim of a duty and accordingly is a factual inquiry. In any event, the Defendant is entitled to know the Plaintiff’s position and the basis for that position in respect of each of the points. For your ease of reference, the question is:

In the course of these proceedings you have taken the position, and Justice Belobaba in his certification decision repeats your contention, that the 1965 Agreement “gave rise to these claims” [paragraph 70 of the reasons, [2013] O.J. No. 4381]

- (a) Is it your position that the 1965 Agreement created the alleged fiduciary duty or obligation, whether explicitly or by implication?
- (b) If your answer to this question was no, what created the alleged fiduciary duty or obligation?

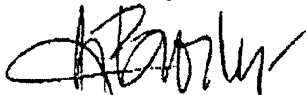
- 5 -

- (c) Is it your position that the alleged breach of fiduciary duty or obligation was caused by the 1965 Agreement?
- (d) If your answer to this question was no, what was the cause of the alleged breach of fiduciary duty or obligation?
- (e) Is it your position that the 1965 Agreement was the source of the alleged duty of care, whether explicitly or by implication? If your answer to this question was no, what was the source of the alleged duty of care?
- (f) Is it your position that the breach of duty of care was caused by by the 1965 Agreement, whether explicitly or implication?
- (g) If your answer to this question was no, what was the cause of the alleged breach of duty of care?

14. Question 206 (d)-(g) [Plaintiff's 205 (d)-(g)] – These questions have not been answered. They request the documents upon which you rely.

We look forward to hearing from you.

Yours truly,



Janet Brooks  
Counsel  
Aboriginal Law Division



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February 29, 2016

**SENT BY FACSIMILE TO (416) 973-2319**

Janet Brooks  
 Department of Justice  
 Ontario Regional Office  
 The Exchange Tower  
 130 King Street West  
 Suite 3400, Box 36  
 Toronto, Ontario M5X 1K6

Dear Ms Brooks:

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

In answer to your note of February 25, 2016, and following your order of further inquiry:

Items (a) to (w) on pages 2 & 3: our client has no further documentation. Some of this documentation goes back to her childhood days. Some of it is not applicable to her. If you wish her to sign consents for the release of further written information that our client does not have in her possession and in respect of which she would not know how to go about to obtain, prepare the specific consents, and we will review same with our client.

Item (x) on page 3: Although not previously asked for, if you prepare the specific consent, our client will sign same.

Follow-up to your alleged "Questions not answered/incomplete/refused", and responding *seriatim*:


1. Question 23 on page 3: I believe we did answer this question by referring you to item 21 and the work of an expert report which will be tendered when required under the Rules.
2. Question 26 and 101 on page 3: Our client attended a school in Los Angeles.
3. Question 101 and 112 on page 3: Our client attended crisis response training and boat licensing.

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4. Question 124 on page 3: Our client was a council member since approximately 1995 and was elected as chief in 2011.
5. Question 125 on page 3: Our client receives \$325.00 a week for travel benefits.
6. Question 131: Our client does not have the documentation to provide the particulars requested.
7. Question 150, on page 4: This is a follow-up question that looks to the evidence at trial, to be distinguished from the facts. The evidence at trial will be presented by the various witnesses who experienced the consequences of cultural genocide, as children, the guardians of the children, Chiefs of the Bands where the children formerly resided, and any other observers in the process. That said, for more specifics you have now the affiants' evidence on the motion for summary judgment.
8. Question 154 on page 4: This is a question that invites a legal, and not solely a factual response. Question 154 is also answered by referring to and incorporating the answer to item 167(a).
9. Questions 158 *et al*: such documentation, if any, is contained in our Affidavit of Documents. There are no specific references beyond that, and the answers already given.
10. Question 162 *et al*: This is a question that invites the legal and not factual answer beyond that which we have already answered.
11. Question 174: Please see the answer at item 167;
12. Question 179(d), (e) (f): Beyond that provided, your questions seeks a legal and not factual answer.
13. Question 205: We do not agree with your assertion.
14. I believe we did answer this. We reference item 21, and that takes us to the answers provided and the expert report to be provided in accordance with the *Rules*.

Yours sincerely,

**WILSON CHRISTEN LLP**

  
Jeffery Wilson  
JW/jld

c.c. Morris Cooper  
Jessica Braude

02/29/2016 MON 15:52

FAX

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 \*\*\* FAX TX REPORT \*\*\*  
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TRANSMISSION OK

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DESTINATION ADDRESS	#5214169732319
SUBADDRESS	
DESTINATION ID	
ST. TIME	02/29 15:51
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RESULT	OK

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 BARRISTERS

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February 29, 2016

SENT BY FACSIMILE TO (416) 973-2319

Janet Brooks  
 Department of Justice  
 Ontario Regional Office  
 The Exchange Tower  
 130 King Street West  
 Suite 3400, Box 36  
 Toronto, Ontario M5X 1K6

Dear Ms Brooks:

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

In answer to your note of February 25, 2016, and following your order of further inquiry:

Items (a) to (w) on pages 2 & 3: our client has no further documentation. Some of this documentation goes back to her childhood days. Some of it is not applicable to her. If you wish her to sign consents for the release of further written information that our client does not have in her possession and in respect of which she would not know how to go about to obtain, prepare the specific consents, and we will review same with our client.

Item (x) on page 3: Although not previously asked for, if you prepare the specific consent, our client will sign same.

Follow-up to your alleged "Questions not answered/incomplete/refused", and responding *seriatim*:

1. Question 23 on page 3: I believe we did answer this question by referring you to item 21

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,<sup>1</sup> the Sixties Scoop class action is before the court for a decision on the first stage of the merits. The representative 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

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<sup>1</sup> *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.

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,<sup>2</sup> 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”<sup>3</sup> 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 a trace.”<sup>4</sup> As a former Chief of the Chippewas Nawash put it: “[i]t was a tragedy. They just disappeared.”<sup>5</sup>

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<sup>2</sup> *Ibid.*

<sup>3</sup> 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.

<sup>4</sup> 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.

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

[7] The impact on the removed aboriginal children has been described as “horrendous, destructive, devastating and tragic.”<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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

[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”<sup>10</sup> that

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

<sup>7</sup> *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.)

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

<sup>9</sup> 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).

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

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was driven by racial prejudice to “take the savage out of the Indian children.”<sup>11</sup> 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?<sup>12</sup>

[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.

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<sup>11</sup> *Supra*, note 5.

<sup>12</sup> 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.

### 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.<sup>13</sup>)

### 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.”

[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 reserves<sup>14</sup> 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

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<sup>13</sup> *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.”

<sup>14</sup> 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.

*Indian Act*,<sup>15</sup> 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.

[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:

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<sup>15</sup> *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.

*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 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."<sup>16</sup> 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 standards basis. The level of federal funding was now significant<sup>17</sup> as was the impact on the reserves.<sup>18</sup>

[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

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<sup>16</sup> Chambers, *supra*, note 4, at 118.

<sup>17</sup> 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.

<sup>18</sup> *Ibid.*, at 1: "After 1965" aboriginal children were taken into care "in disproportionate numbers."

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.<sup>19</sup>

[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.

[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.

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<sup>19</sup> 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.

**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.<sup>20</sup> 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."<sup>21</sup>

[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

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

<sup>21</sup> *Ibid.*, at 783-84.

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 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 clarification<sup>22</sup> 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.

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<sup>22</sup> *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*.

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[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 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,<sup>23</sup> 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

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<sup>23</sup> 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.

into the Indian family relationship” that could “obliterate the [Indian] family and...destroy [Indian] status.”<sup>24</sup>

[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 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.

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<sup>24</sup> 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.

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.”<sup>25</sup> 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”<sup>26</sup>

[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,

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<sup>25</sup> 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.

<sup>26</sup> *Ibid.*

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**

[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,<sup>27</sup> 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.

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<sup>27</sup> *Supra*, note 23.

### **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,<sup>28</sup> a fiduciary relationship alone does not necessarily give rise to a fiduciary duty.<sup>29</sup> 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 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.<sup>30</sup>

[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.<sup>31</sup> The degree of discretionary control must be "equivalent or analogous to direct administration of that interest."<sup>32</sup>

[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.

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<sup>28</sup> *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.

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

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

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

<sup>32</sup> *Elder Advocates of Alberta Society*, *ibid*, at para. 53.

[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.

[71] Fiduciary duty has meaning as a legal term and should not be used "as a conclusion to justify a result."<sup>33</sup> 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.<sup>34</sup>

[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

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<sup>33</sup> *Lac Minerals*, *supra*, note 29, at 652.

<sup>34</sup> McCamus, *The Law of Contracts* (2<sup>nd</sup> ed.) at 315. And see Waddams, *The Law of Contracts*, (5<sup>th</sup> 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.

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”<sup>35</sup>, the same should follow even more where there is not only a unique and 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,<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup>

[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

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<sup>35</sup> *White v. Jones*, *ibid.*, at 276.

<sup>36</sup> 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.”

<sup>37</sup> 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.

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

constitutional relationship between Canada and aboriginal peoples that has evolved into a unique and important fiduciary relationship.

[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."<sup>39</sup>

[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."<sup>40</sup> 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."<sup>41</sup>

[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

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<sup>39</sup> *Cooper, supra*, note 37, at para. 34.

<sup>40</sup> 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.

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

its spending power to ensure that Ontario had the capacity to provide Indian children on 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

**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 2)

**WILSON CHRISTEN**  
Barristers  
137 Church Street  
Toronto, Ontario  
M5B 1Y4

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

**Jeffery Wilson** (LSUC #17649K) LSUC # 15904C  
**Jessica Braude** (LSUC # 64806F) Tel: (416) 961-2626  
Tel: (416) 360-5952 Fax: (416) 961-4000  
Fax: (416) 360-1350

Counsel for the Plaintiff

*THIS IS EXHIBIT "15" REFERRED TO IN THE  
AFFIDAVIT OF DAVID ROSENFELD  
SWORN BEFORE ME, THIS 18<sup>TH</sup> DAY OF APRIL, 2018*



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*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
**GARTH MYERS**



Department of Justice  
Canada

Ministère de la Justice  
Canada

50 O'Connor Street  
Ottawa, Ontario  
K1A 0H8

Telephone: (613) 670-6368  
Fax: (613) 941-5879  
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June 9, 2017

Our File Number: 8578680

**BY E-MAIL**

Ms. Gladys R. Gabbidon  
Assistant to Justices Belobaba and Pattillo  
Superior Court of Justice  
361 University Avenue, Room 170  
Toronto, Ontario  
M5G 1T3

Dear Ms. Gabbidon:

**Re: BROWN, Marcia v. The Attorney General of Canada ("AGC")**  
**Court File No.: CV-09-00372025-00CP**

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Please bring the following to the attention of Justice Belobaba.

Further to his request at the case management meeting of May 12, we enclose a brief, bullet-point summary of our concerns with class counsel's motion material. If and when a motion as to the availability of aggregate damages is required, we will, of course, file evidence and formal argument.

Yours very truly,

Catharine Moore  
General Counsel  
Department of Justice Canada  
National Litigation Sector

c.c. Owen Yong, Department of Justice  
Gail Sinclair, Department of Justice

Jeffrey Wilson, Wilson Christen LLP  
Morris Cooper, Barrister

**Canada**

**1. The Court and the Parties always contemplated that class identification, causation, damages and quantum of damages would have to be determined individually.**

- In determining whether the preferable procedure criteria was met, Justice Perell said:

[185] In a sense, the litigation of Ms. Brown's and Mr. Commanda's story will be the test case for determining whether the federal Crown committed a civil harm. If Ms. Brown or Mr. Commanda successfully prove or fail to prove that the federal Crown owed them respectively a fiduciary or common law duty, then a precedent will be established and other class members will be bound by that result. If Ms. Brown and Mr. Commanda are successful, then other class members, if they are inclined to do so, can come forward in individual issues trials to prove class identification, causation, damages and quantum of damages.

[186] It remains to be seen how many members of the class, said to be 16,000 persons, would proceed to individual issues trials because each class member will have an individual history and story to tell about the consequences of their placement in non-aboriginal homes. That said, in my opinion, the common issues trial and any individual issues trial will be manageable and provide access to justice, and they are the preferable and perhaps the only procedure for resolving the claims of those allegedly injured by the Sixties Scoop.

Justice Belobaba set out this same quote in the 2013 certification decision (as did the OCA), saying "I agree with Justice Perell's analysis."

- No common issue was certified or attempted with respect to aggregate damages
  - three common issues relating to damages were attempted but not certified by Justice Perell:

[173] Ms. Brown and Mr. Commanda propose as common issues the following questions:

- ...
5. If the answer is affirmative in respect of the questions noted above, what are the damages, if any, associated with any such breach or actionable wrong, limited as they must be to that pleaded in the February 9, 2009 Statement of Claim?
  6. If the answer is affirmative in respect of the questions noted above, is the Defendant's conduct such as to attract punitive, exemplary or aggravated damages?
  7. If so, what amount of punitive, exemplary or aggravated damages is appropriate?
- ...

[175] In any event, I would not have certified questions 5, 6 and 7 because, in my opinion, in the circumstances of this case, they are not common issues and they could only be answered as an aspect of individual issue trials.

- No common issues relating to damages were attempted before Justice Belobaba

**2. The summary judgement decision does not establish liability – the claim is pleaded in negligence and while duty of care and breach have been established on behalf of the class, causation in fact and damages still need to be proven individually.**

**3. Causation cannot be established on a class-wide basis.**

- The class is defined as:

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.

- differences within class negate class-wide causation finding; for example:
  - foster care (connection to biological family retained) or adoption (biological tie severed)
  - chronological – short-term or long-term foster care
  - adoption as infant or as older child
  - family with one aboriginal parent

#### 4. An aggregate assessment of damages is not possible.

- Section 24(1) not met as causation cannot be established on a class-wide basis
- Evidence is insufficient to establish entitlement to aggregate damages:
  - no theory as to how aggregate damages could be assessed – no model, no opinion
  - Expert evidence contains no opinion, just calculations
    - housing allowance –  $\$400 \times 12 = \$4800$
    - relative earning gaps, even accepting the quantification of the gap, no opinion as to how much is owed to the class
  - No evidence of actual class size
    - taking affidavits at face value, evidence relates to removal from reserve and not to other elements of the class definition:
      - placed in the care of non-aboriginal foster or adoptive parents
      - not raised in accordance with the aboriginal person's customs, traditions and practices

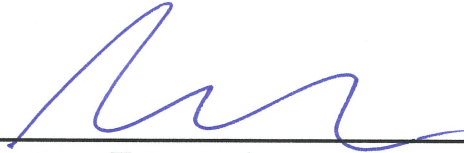
- booklet:

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. (fn#23 to Feb 14, 2017 decision)

- Some pivotal factual assumptions are incorrect:
  - post-secondary education – no individual entitlement to fully coverage - bands have always had a role in determining support, and component parts and amounts of the financial support have changed over time – tuition, housing allowance, child care, etc. non-insured health benefits – have changed over time; these expenses for children in foster care were covered by provincial Children's Aid Societies

Treaty annuities and per capita payments – factually individual, do not logically flow with respect to fostered children; adopted children (can be claimed on age of majority). INAC pays once contacted.

*THIS IS EXHIBIT "16" REFERRED TO IN THE  
AFFIDAVIT OF DAVID ROSENFELD  
SWORN BEFORE ME, THIS 18<sup>TH</sup> DAY OF APRIL, 2018*



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*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
**GARTH MYERS**

C A N A D A )  
PROVINCE OF MANITOBA )

Suit No.: \_\_\_\_\_

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

LYNN THOMPSON, DAVID CHARTRAND, and LAURIE-ANNE O'CHEEK  
PLAINTIFFS

- AND -

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, AS REPRESENTED BY THE  
MINISTER OF JUSTICE OF MANITOBA and HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN  
AFFAIRS OF CANADA.

DEFENDANTS

*Proceedings under the Class Proceedings Act*

**Statement of Claim**

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting  
for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench  
Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it  
on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of  
claim is served on you, if you are served in Manitoba.

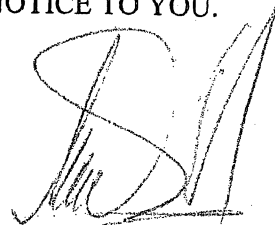
If you are served in another province or territory of Canada or in the United States if  
America, the period for serving and filing your statement of defence is 40 days. If you are  
served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN  
AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

APR 20 2009

\_\_\_\_\_, 2009

Issued by:



\_\_\_\_\_  
Deputy Registrar

TO: Minister of Justice of Manitoba  
405 Broadway Avenue, 5<sup>th</sup> Floor  
Winnipeg, Manitoba  
R3C 3L6

-AND-

TO: Minister of Indian and Northern Affairs of Canada  
10 Wellington Street, North Tower  
Gatineau, Quebec  
K1A 0H4

**I. RELIEF SOUGHT**

1. The Plaintiffs claim, on behalf of all Class members and themselves, for the following relief against the Defendants:
  - (1) an Order certifying this action as a class action and appointing representative Plaintiffs on behalf of a class of all aboriginal persons, including their estates, that were removed from their families or communities as children, and suffered injuries due to the Defendants' breach of fiduciary obligations, duty of care and cultural genocide, and their dependants and family members. ("Class");
  - (2) a declaration that, by reason of the events described in this action, the Defendants did commit crimes against humanity, cultural and identity genocide;
  - (3) an Order for an aggregate monetary award respecting all or any part of a Defendants' liability to Class members including an Order that Class members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class members;
  - (4) general and special damages for the Class in amounts to be determined at trial, including, but not limited to:
    - (a) on the elections of the Plaintiffs and Class members, the:
      - (i) the value of damages that can be attributed to loss of identity;
      - (ii) the value of damages attributed to sexual abuse; or

(iii) the value of damages that can be attributed to physical abuse

- (b) sentimental damages;
- (c) mental distress;
- (d) recovery of health care costs.
- (5) aggravated damages;
- (6) exemplary and punitive damages;
- (7) nominal damages as an aggregate monetary award;
- (8) symbolic damages as an aggregate monetary award;
- (9) pre-judgment and post-judgment interest on the foregoing sums, in the amount of 2% per month, or alternatively, in such other amounts at this Honourable Court may allow;
- (10) such further and other relief as counsel may advise and this Honourable Court may allow.

## II. THE PARTIES

### A. The Defendants

2. The Defendant, Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba ("Province of Manitoba"), has an office at 405 Broadway Avenue, 5<sup>th</sup> Floor, Winnipeg, Manitoba, R3C 3L6.

3. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs for Canada ("Canada"), has an office at 10 Wellington Street, North Tower, Gatineau, Quebec, K1A 0H4.

4. Canada and the Province of Manitoba are hereinafter collectively referred to as the "Defendants".

**B. The Plaintiffs**

*(1) Lynn Thompson*

5. The Plaintiff, Lynn Thompson ("Thompson"), is an individual who resides in Saskatoon, Saskatchewan.

*(2) David Chartrand*

6. The Plaintiff, David Chartrand ("Chartrand"), is an individual who resides in Winnipeg, Manitoba.

*(3) Laurie-Anne O'Cheek*

7. The Plaintiff, Laurie-Anne O'Cheek ("O'Cheek"), is an individual who resides in Winnipeg, Manitoba.

8. Thompson, Chartrand, and O'Cheek are hereinafter collectively referred to as the "Plaintiffs".

**III. PARTICULARS OF THE CLAIM**

**A. Factual Background**

9. These class proceedings concern the Defendants' negligence, breach of fiduciary obligation, duty of care, and failure to protect aboriginal rights because, as children, the Plaintiffs were forcibly removed at random from their indigenous family, extended family and community and were exposed to deliberate and prolonged implementation of systemic child welfare policy, practices and programs designed to assimilate the Plaintiffs and their communities into mainstream white society.

10. The mainstream media have referred to this period in Manitoba history as the "Big Scoop", the "60s, 70s, and 80s Scoop", and the era of the "nation of lost souls" in reference to Defendants' acts and omissions resulting in the forcible and arbitrary removal of aboriginal children during this period in history.
11. The Defendants' actions and omissions caused damage and harm to the Class through their deliberate creation and implementation of policies, programs and practices that systematically attempt to eradicate the particular cultural, social, linguistic, customs, traditions, and spirituality of the child's indigenous family, extended family and community ("identity genocide").
12. The Plaintiffs were removed from their indigenous aboriginal families and communities and placed in foster homes and adoptive families where they experienced prolonged abuse, denigration, and humiliation. The Plaintiffs were placed in non-Indian and non-aboriginal adoptive or foster homes, despite the availability of Indian and aboriginal homes, and were systematically denied the opportunity to preserve their identity, and the rights and benefits associated with their membership in the aboriginal community.
13. Common to the Class is the fact of childhood isolation from their constitutionally protected identity. Indian or aboriginal traditions, language, customs, heritage, spirituality and culture were extinguished through foster or adoptive care by non-Indian or non-aboriginal persons and systemic practices, programs and policies that promoted, or did nothing to avoid the extinction of identity. The aboriginal 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-aboriginal/non-Indian) society and the society of the indigenous community is a result of the Defendants' 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 the Defendants knew or should have reasonably known would cause irreparable and enduring harm to vulnerable children.

14. The Plaintiffs are individuals 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*.

15. The cultural genocide visited upon the Class contravenes international conventions to which Canada is a party and is an independent actionable wrong. In addition, the acts and omissions of the Defendants constitute the forcible transfer or deportation of a population and the enforced disappearance of persons, within the meaning of Article 7(1) of the *Rome Statute of the International Criminal Court*. The acts and the omissions of the Defendants constitute crimes against humanity pursuant to this article and were a concerted and calculated attempt to extinguish aboriginal culture, traditions, beliefs, practices, and society in Manitoba.

16. In the 1980s Kimelman, J. of the Provincial Court of Manitoba, headed the Review Committee on Indian and Metis Adoptions and Placements in Manitoba ("Committee"). The Committee's final report, *No Quiet Place*, was published in 1984.

17. In *No Quiet Place*, Kimelman J. describes the Province of Manitoba's approach to aboriginal child welfare as being a continuation of the policies, approaches and attitudes of the Indian Residential Schools era stating:

“with the closing of the residential schools, rather than providing the resources on reserves to build economic security and providing the services to support responsible parenting, society found it easier and cheaper to remove the children from their homes and apparently fill the market demand for children in Eastern Canada and the United States” (*No Quiet Place*, page 330).

18. According to statistics presented in the 1984 File Review Report of the Committee, in 1981 over 53% of children placed outside of the province of Manitoba were sent to the United States, as were several members of the Class in the within action, including the Plaintiff Chartrand, and over 86% of the children placed in care of adopted families and foster homes outside of Manitoba were of aboriginal ancestry.

19. These statistics led Kimelman, J. to unequivocally conclude that “cultural genocide has been taking place in a systemic, routine manner” (*File Review*, page 51).

20. Kimelman, J. also noted that aboriginal children were often exported to the United States of America or other provinces of Canada despite the availability of adoptive homes in Manitoba. Form letters were sent to prospective Manitoba adoptive families incorrectly indicating that children had already been placed for adoption. The letters were “dated prior to the time the child was introduced to an out of province family with whom the child was

permanently placed" (No Quiet Place, page 354). In other words, the Province of Manitoba was intentionally turning away prospective Manitoba adoptive families in favour of exporting Indian children to the United States and eastern Canada.

21. Kimelman, J. described this practice as the "most blatant, dramatic example of cultural genocide which has been apparently practiced routinely by the child welfare system" (No Quiet Place, page 354).

### **B. Plaintiffs' Harms**

#### ***(1) Lynn Thompson***

##### ***(a) abducted***

22. Thompson was born at Swan River, Manitoba on either March 1<sup>st</sup>, 1968 (the date indicated on her birth certificate) or on February 29, 1968 (the date that she was told she was born since she was a small child).

23. From the time she was born until she was approximately 2½ years old the Plaintiff Thompson was resident at Camperville, Manitoba. The Plaintiff, Thompson was taken from Camperville, Manitoba on three separate occasions without her parents' permission. She was abducted for the first time from Camperville, Manitoba at 2½ years of age and was subsequently returned to Camperville.

24. She was abducted two subsequent times and was finally adopted for the first time at 6½ years of age by the same family as her sister, Donna Mathieson. By that time she had

already resided in at least 8 foster homes. She was later moved to Winnipeg and placed in the care of the Mathieson family.

25. Thompson lived with the Mathieson family with her sister, Donna, for approximately one year, at which time children's aid forcibly removed Thompson from that home for no particular reason. Her adoptive father tried in vain to get children's aid to return the Plaintiff Thompson to her adoptive home, but children's aid refused and gave no reason for their choice.

26. The Plaintiff Thompson was moved through several foster homes throughout the Winnipeg area and was then later sent to Ontario, where Thompson alleges that she was illegally adopted for a second time by a new family in Toronto, Ontario. Thompson was placed on an airplane bound from Winnipeg to Toronto and was greeted by her new adoptive family with hugs and a teddy bear.

*(b) abused*

27. During the time that she was resident with that family in Toronto, Ontario, she suffered severe physical abuse and was treated as inferior to the other children given her aboriginal status. Thompson was tied to a car and beaten by her adoptive family (Harvey and Betty Bainbridge). She was tied to an arm chair and her arms were cut with a knife. She was once even tied to a canoe and left to float in the middle of a lake for two days. A BB gun was also pointed at her head and fired directly into her ear drums causing damage to her ears.

28. Thompson would run away and sleep by the train tracks under the evergreen trees whenever the abuse would start. As a consequence of the physical abuse she endured while residing with the Bainbridge family, she has countless scars on her arms.
29. Public officials only became aware of the abuse after Thompson arrived at school one day with bloody clothing and cuts on her arms. Teachers and other students immediately noticed her cuts and the blood on her clothing and called children's aid. Children's aid decided to remove the Thompson from her adoptive family and she was eventually sent back to Manitoba.
30. At 8½ years of age Thompson became a resident of Landmark, Manitoba. She lived at a foster home there with 26 other children until she was old enough to be sent off to a private school in Portage La Prairie, Manitoba.
31. Thompson struggled with her identity at Portage La Prairie, Manitoba and began to slash her wrists. She continued to suffer a number of different injuries, many of which involved self-inflicted physical harms, due to the physical and psychological abuse that she endured.
32. Having never been trained to cook or take care of herself and lacking many of the basic survival skills needed in life, Thompson felt frightened at the idea of living on her own and decided to attempt suicide for that reason. At the age of 18 Thompson shot herself through the stomach.

33. At 25 years of age Thompson began to use cocaine in Calgary and at approximately age 35 she contracted HIV in Saskatoon through unsterile equipment being used with needles. Thompson has two daughters, ages eighteen and twenty five.

*(c) injuries*

34. Thompson requires plastic surgery on her arms as a result of the severe abuse that she suffered as a child at the hands of her adoptive parents. Thompson further requires a substantial amount of therapy and psychological help as a result of the physical and psychological abuse that she suffered, and as a result of having been moved from house to house, city to city on so many occasions during her youth.

35. Thompson has suffered numerous injuries, including but not limited to, a loss of identity and culture, physical and psychological injuries. Thompson has lost her ability to speak her indigenous language which is Ojibway.

36. Thompson was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of her family of birth. She lost use of the indigenous language spoken by her family. She lost contact with members of her family. Her name was changed when she was adopted. Her child rearing was as a non-aboriginal, non-Indian person with no reference to her identity as an Indian.

37. Thompson had lost her 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-aboriginal society, and as a result, Thompson struggled.

38. As a child, the authorities or persons in charge of Thompson gave her 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 Thompson turned 18, Canada took no steps to enable her to have access to her adoptive records, the adoption order, or any documentation that would enable her to exercise the benefits available under the *Indian Act*, R.S.C. c. I-5.

39. Thompson also has a lot of anger for her adoptive father in the province of Ontario. She is distressed by the fact that he was able to cause so much havoc in her life, and never have to face criminal charges for what he did.

40. Thompson suffered substantial anxiety, emotional distress, pain and suffering and other damages as a result of the emotional and physical abuse that she was put through.

**(2) David Chartrand**

*(a) abducted*

41. Ivan Joseph David Chartrand is believed to have been born in Camperville, Manitoba on September 13<sup>th</sup>, 1962.

42. At the age of approximately six years he was abducted along with several other members of his family en masse and numerous other community members, when agents of the Province of Manitoba arrived at Camperville.

43. Children's aid workers snatched children up at random, without providing any reason to parents. Children who were unable to flee were taken by the Province of Manitoba.

44. Chartrand was sent to live with a white family in the Minneapolis, Minnesota area, the Van Zants, and was renamed Joel Van Zant.

*(b) abused*

45. From the time that Chartrand crossed the Canadian border the treatment he received from the Van Zants could only be characterized as abusive and degrading. Chartrand was starved by the Van Zants until he stopped using his given aboriginal name and began using his new white name.

46. Chartrand suffered severe physical abuse while residing with the Van Zants. Mr. Van Zant beat Chartrand with every imaginable object, bit him, and punched him on a regular basis until Chartrand was bloodied and immobilized.

47. Chartrand was cornered and choked repeatedly by Mr. Van Zant and was frequently left knocked out on the floor after a session of choking and beatings.

48. After one episode, Mr. Van Zant offered to have Chartrand call the children's aid worker in Manitoba who had arranged his placement with the family. Mr. Van Zant called Ted Enns, an agent of the Province of Manitoba, who, after hearing Chartrand's complaints, told Chartrand that "you have to live with what you've got, David".

49. At eight or nine years of age Chartrand was formally adopted by the Van Zant family.
50. The abuse continued until Chartrand was fourteen years of age, at which time Chartrand beat up his adoptive father using a two by four. Soon thereafter, the Van Zant family moved to Arizona and left Chartrand behind.
- (c) injuries*
51. From the age of fourteen until his return to Canada Chartrand spent his life "in the system". He was admitted to Red Wing, a juvenile facility for troubled young men, and was involved in a string of car thefts, stealing his first seven cars in one day at age fourteen.
52. Chartrand witnessed a friend having his "head blown off" in one particular incident.
53. After being released from Red Wing at age 17 Chartrand became the leader of a prominent Minneapolis gang known as the MCs or Masters of Crime.
54. Chartrand was eventually busted selling stolen guns to an undercover police officer and was admitted to the mainstream prison system for a period of 21 months.
55. While in prison Chartrand met a Medicine Man who had been involved in the politically radical American Indian Movement and had ties to aboriginal activist Leonard Peltier.
56. The Medicine Man encouraged Chartrand to find his family. After his release from prison he did find his family in Camperville, Manitoba and eventually returned.

57. Upon his return to Canada Chartrand realized the extent of his loss of identity and other differences between himself and other members of the community.
58. Chartrand was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of his family of birth. He lost use of the indigenous language spoken by his family and that he could speak as a child. He lost contact with members of his family. His name was changed when he was adopted. His child rearing was as a non-aboriginal, non-Indian person with no reference to his identity as an Indian.
59. Chartrand had lost his capacity to exercise an identity, let alone exercise membership in an Indian family and community. He formed an ambivalent, awkward and angry connection to mainstream non-aboriginal society, and as a result, Chartrand struggled.
60. As a child, the authorities or persons in charge of Chartrand gave him no information as to his birth name and no information enabling him to make contact with his identity and his Indian family, extended family and community. When Chartrand turned 18, Canada took no steps to enable him to have access to his adoptive records, the adoption order, or any documentation that would enable him to exercise the benefits available under the *Indian Act*, R.S.C. c. I-5.
61. Chartrand continues to have difficulty discussing the details of his abuse. His injuries include, but are not limited to, loss of culture and identity, psychological injuries as a result of the physical, verbal, and psychological abuse he endured at the hands of his adoptive

white family, and physical injuries resulting from the beatings he endured as a child and adolescent.

62. **Chartrand requires therapy, has experienced a loss of self-worth, and continues to suffer from** severe anxiety in relation to the physical, psychological, and verbal abuse that was inflicted upon him as a minor.

63. Chartrand's mother died nine months after his return to Canada and Chartrand is angered by the fact that he had so little time with his mother during his adult life.

**(3) Laurie O'Cheek**

*(a) abducted*

64. O'Cheek was a resident of Camperville, Manitoba until 1972 when she was abducted by the Province of Manitoba.

65. O'Cheek describes having witnessed the practice of the Province of Manitoba at the time to go onto reserves and into native communities in order to forcibly remove any Aboriginal children that could not flee fast enough. Typically, the smallest children and the youngest children were the ones who were abducted first given that they could not escape the agents of the government sent to randomly remove the children.

66. O'Cheek was only three years old when she was forcibly separated from her biological family who were living in Camperville, Manitoba.

*(b) abused*

67. O'Cheek was adopted by an Orthodox Jewish family, known to her as the Steinberg family, and was brought to Montreal, Quebec.
68. O'Cheek's adoptive father, Jack Jerry Steinberg claimed to be an observant Jew, and had adopted four other children of various ethnic backgrounds and nationalities. The four other children included a Haitian girl, a Cambodian boy, a Vietnamese boy and a Blackfoot Indian girl.
69. O'Cheek was immersed in a culture that was not her own. She quickly learned to speak French, English and even some Hebrew, and attended Synagogue with her adoptive father every Saturday, and was otherwise raised as an observant Jew, while living with that adoptive family.
70. At the age of 9 years old, O'Cheek moved from Montreal, Quebec, to Waitsfield, Vermont. During the entire time spent with her adoptive parents in both Montreal, Quebec, and Waitsfield, Vermont, physical and sexual abuse occurred.
71. O'Cheek's adoptive father had the habit of physically and sexually abusing the children after having an argument with his wife. O'Cheek's adoptive father would force her into a bedroom, lock the door and then begin to physically and sexually abuse her. This entailed forcing the child to perform oral sex in addition to full sexual intercourse. At the age of 9 years old O'Cheek recalls choking on her adoptive father's semen and even vomiting as a result of the amount of semen swallowed.

72. O'Cheek's adoptive father would threaten to beat her to death if she were to ever tell anyone about the abuse.

73. One day after discovering that O'Cheek's adoptive sister was also suffering the exact same abuse, O'Cheek, at the age of 11 years old, bravely decided to take her adoptive sister and run away to a friend's trailer park. Once at the trailer park O'Cheek's friend's mother called Vermont children's aid.

74. O'Cheek and some of the other adopted children in the family were immediately removed from the family by Vermont children's aid. Unfortunately, O'Cheek's adoptive father, who was then residing with his wife and adopted children illegally in the United States, immediately returned to Canada and escaped all criminal charges.

75. In the years following, at the age of 11, the O'Cheek remained in the state of Vermont where she attended over 50 other foster homes and suffered additional sexual and physical abuse.

76. At the age of 13 years old, after attending over 50 different foster homes, the Plaintiff O'Cheek finally managed to escape, although she had tried to escape many times before.

77. O'Cheek accepted an offer of a ride from a motorist who she met on the way to Boston, Massachusetts. The motorist, as it turned out, was a very wealthy individual and hosted O'Cheek for approximately one week during which time he showered the Plaintiff O'Cheek with clothing and the life that she always wanted as a child.

78. After about a week of residing with this man, O'Cheek was instructed that she had to repay him for all of the items that he had purchased for her.
79. She was brought to Boston where she was introduced to several other girls, most of which were around the age of 17 and 18, who were beautifully dressed and she was given clothing and instructed to put herself together to go out for the night.
80. Some hours later the O'Cheek and the other girls were deposited on a street in downtown Boston and she was passed a condom by another girl who instructed her to get in a car with a strange man. That man ordered O'Cheek to perform oral sex in an isolated parking lot in Boston.
81. The man then asked O'Cheek how old she was. O'Cheek replied that she was 18 years old, fearing that she would get in trouble. O'Cheek eventually broke down and admitted that she was 13 years old. Upon finding that O'Cheek was 13 years of age the man paid her promptly in addition to giving her an extra \$100.00 for herself.
82. O'Cheek continued to work as a prostitute for some years in the Boston and Worcester regions and was frequently picked up by police and arrested but immediately let go due to the fact that she was a minor. After having been picked up countless times the police eventually arrested her for prostitution at the age of almost 14.
83. At the hearing the Judge asked the O'Cheek what she wanted to do with her life. O'Cheek responded that she wanted to find her biological parents. The Judge ordered that O'Cheek be held in a detention centre until her biological parents could be found.

84. O'Cheek was introduced to a female member of the Dakota Tribal Council from the western United States who was put in charge of helping to find O'Cheek's biological parents. It took this individual three months to find O'Cheek's parents who were still resident in Camperville, Manitoba.

85. She was subsequently transferred from the United States to Manitoba by airplane. She was shackled and escorted in a prisoner's suit across the border and through Pearson International Airport in Toronto, Ontario at the age of 14 years old. Once having arrived in the Manitoba, she was placed in Marymound School for troubled girls.

86. O'Cheek was permitted to visit her family in Camperville once every two weeks for a weekend, provided that she was on her best behaviour.

87. At the age of 16, out of frustration the O'Cheek decided to break out of Marymound School and jumped from a four-storey window landing on her back and breaking her back in three different places. O'Cheek was subsequently put in the psychiatric ward of a hospital for three months, and was then placed in the Children's Home of Winnipeg, an institution for helping children from difficult backgrounds integrate into society.

88. The Children's Home of Winnipeg helped O'Cheek find a job as a waitress and secure a place to live. O'Cheek was then given a cheque for \$500.00 and was left to fend for herself on the streets of Winnipeg at the age of 18.

89. In subsequent years the O'Cheek battled with an addiction to cocaine and acquired Hepatitis "C" as a result of sharing needles while using cocaine.

*(c) injuries*

90. O'Cheek suffered substantial physical, psychological and sexual abuse, both in foster homes and in her adoptive family, in addition to a loss of culture and identity.

91. O'Cheek was severely beaten, often on a daily basis, by her original adoptive father and in several subsequent homes. O'Cheek was even abused by other children in the foster homes in which she stayed.

92. O'Cheek also has anxiety attacks, high blood pressure and has difficulty getting close to other people.

93. Due to the experiences she had as a child she has difficulty having normal relations with men.

94. O'Cheek also has severe nightmares in which she sees herself murdering her abusers, especially Mr. Steinberg, her adoptive father in Montreal.

95. O'Cheek also suffered a loss of identity. Up until the time she was reunited with her family she was known as Tara Elizabeth Steinberg which was her given Jewish name. Other members of O'Cheek's family would refer to her as "apple", meaning that she was red on the

outside and white on the inside. The aboriginal community no longer recognizes O'Cheek as one of their own due to O'Cheek's loss of cultural identity.

96. O'Cheek was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of her family of birth. O'Cheek lost her ability to speak her indigenous language, Saulteaux, which is spoken at Camperville and spoken by other members of her family. She lost contact with members of her family. Her name was changed when she was adopted. Her child rearing was as a non-aboriginal, non-Indian person with no reference to her identity as an Indian.

97. As a child, the authorities or persons in charge of O'Cheek gave her 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 O'Cheek turned 18, Canada took no steps to enable her to have access to her adoptive records, the adoption order, or any documentation that would enable her to exercise the benefits available under the *Indian Act*, R.S.C. c. I-5.

98. O'Cheek also has Hepatitis "C" and continues to have severe back problems due to the injury suffered when she jumped from the fourth floor of Marymound School.

99. O'Cheek currently resides in Winnipeg, Manitoba and receives disability support payments from the government of Manitoba.

**C. Defendants' Acts, Omissions, Knowledge, and Intent**

100. 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. Canada had a fiduciary obligation to the Plaintiffs given this special relationship.

101. The Plaintiffs were owed a superordinate fiduciary obligation by the Province of Manitoba given that they were particularly vulnerable, as infant wards of the state from a socially disadvantaged and discriminated against minority group, and susceptible to physical, sexual, psychological and emotional abuse.

102. The Defendants violated the Plaintiffs' right to identity pursuant to section 35(1) of the *Constitution Act, 1982*.

103. The Defendants breached their duty to the Plaintiffs to protect their right to family life and various other rights elaborated in *The Canadian Bill of Rights, 1960 c. 44 C-12.3* and the *Charter of Rights and Freedoms*.

104. In particular, the arbitrary and wanton manner in which the Defendants treated the Plaintiffs illustrates that the rights of the Plaintiffs to equality before the law and protection of the law were breached as per Section 1(b) of *The Canadian Bill of Rights, 1960 c. 44 C-12.3* and the *Charter of Rights and Freedoms*.

105. The Plaintiffs state that the sexual assaults, physical, verbal and mental abuse suffered were caused by the negligence, and breach of fiduciary duty of Canada and the Province of Manitoba and of their servants, agents and employees, the particulars of which are the following:

- a. Taking improper steps to check the character and credentials of foster parent and adoptive parent candidates;
- b. Failing to monitor, supervise, or review the homes, conduct and care of foster parents;
- c. Employing incompetent servants, agents and employees to supervise and monitor foster parents;
- d. Failing to remove Plaintiffs from the care of foster parents or adoptive families upon learning of allegations of abuse by foster parents or adoptive families;
- e. Failing to screen foster parent and adoptive parent candidates for their sensitivity to aboriginal and Indian values, traditions, beliefs and culture.

106. The Defendants are liable *inter alia* to the Plaintiffs for:

- a. Cultural abuse and systematic attempts to abduct aboriginal children from their natural homes;
- b. Cutting the Plaintiffs off from their families;
- c. Destroying the Plaintiff's sense of self worth;

- d. Reducing the Plaintiff's capacities to parent and maintain normal marital and family ties;
- e. Holding the Plaintiffs in foster homes and placing them in adoptive families without the prior consent of their parents;
- f. Depersonalizing and demeaning the Plaintiffs by generally referring to them by their given white names rather than their aboriginal names;
- g. Cutting the Plaintiffs off from their families and holding them in foster homes and subjecting them to adoption procedures against the will of their families and against their own will; and
- h. Ridiculing them and discriminating against them on the basis of their aboriginal backgrounds;
- i. Cultural and identity genocide;
- j. Sexual abuse visited upon them;
- k. Physical abuse visited upon them.

107. The behaviour of the Defendants and their servants constitute a number of criminal offences including, assault, battery, and kidnaping. In particular, the forcible removal of aboriginal children from aboriginal homes and communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

108. The Plaintiffs were not permitted to engage in First Nations cultural or religious activities. They were not permitted to engage in First Nations games. They were not

permitted to communicate with family members on a regular basis. They were not permitted to speak their First Nations languages.

109. The Plaintiffs were further subjected to disparaging comments and innuendo from foster parents, their adoptive families and others who were involved in the abduction and forced adoption of the Plaintiffs.

110. The Defendants' actions were in contravention of the treaties between the Defendants and the First Nation and in contravention of the United Nations Genocide Convention, particularly Article (2)(3) thereof to which Canada was a signatory, the Plaintiffs and other children of First Nation heritage were to be systemically assimilated into white society through their forced adoption. In pursuance of that plan, they were forcibly removed from their aboriginal communities and placed in the custody of foster families and later in the custody of adoptive families against the will of their parents. Their cultures and their languages were taken from them with sadistic punishment and practices.

111. The Plaintiffs and their cultures were denigrated. The Plaintiffs, through a combination of sexual, physical and mental abuse, were made to feel meaningless and without capacity or self worth. They were made to believe that their culture and all things "Indian" were worthless.

112. The First Nations culture of the Plaintiffs was taken from them when they were adopted by white families. They lost much of their culture in an organized cultural genocide imposed upon them by the Defendants and the Defendants' agents and servants.

113. As a result of these tortious acts by the Defendants, the Plaintiffs have lost their traditional ways of living and have lost the traditional parenting skills that they would have acquired had they not been forcibly removed from their parents.

114. The Plaintiffs lost their sense of family. They were cut off from their biological families through forced adoptions and through placement in various foster homes.

115. The Plaintiffs all suffered a loss of culture, family life, and familial capacity as a result of their abduction and placement in white homes. As a result of these tortious acts by the Defendants, the Plaintiffs lost their cultures and traditional ways of living including traditional parenting skills that they would have acquired had they not been forcibly removed from their parents.

116. The Plaintiffs further claim that the sexual and physical assaults, mental and emotional abuse, and resulting injuries thereof, were caused by the negligence, breach of trust, and breach of fiduciary duty of the Defendants.

117. The Defendants were under a positive fiduciary duty to protect the Plaintiffs from injuries to their person, physical or mental health or morals, and the Defendants knew or ought to have known that the Plaintiffs would suffer damages if the Defendants failed to carry out this duty.

118. The Plaintiffs claim and the Defendants are vicariously liable for the actions and negligence of any governmental agency or other organization that contracted with the Defendants or to whom the Defendants delegated control over the management of the adoption procedures and foster homes, and are also liable in their position as principal to such organizations, who at all times were acting as their servants, employees or agents.

119. In the alternative, the Plaintiffs claim that the cause of the physical and sexual assaults and surrounding circumstances were within the knowledge and control of the Defendants and the physical and sexual assaults would not have occurred but for the negligence of the Defendants.

120. As a result of the physical, sexual, emotional and mental abuse, the Plaintiffs sustained serious, lasting and permanent injuries which include, but are not limited to, the following:

- a. Cultural suppression;
- b. Loss of sense of family;
- c. Loss of ability to parent;
- d. Anxiety;
- e. Depression;
- f. Emotional trauma;
- g. Psychological trauma;
- h. Personality change;
- i. Loss of confidence;
- j. Decreased social ability
- k. Insomnia;

- l. Fatigue;
- m. Decreased enjoyment;
- n. Pain and suffering;
- o. Loss of enjoyment of life;
- p. Susceptibility to addictions; and
- q. Loss of identity

121. The Plaintiffs have sustained a loss of income and will continue to sustain losses of income, losses of competitive advantages in the employment field, losses of income earning potential and a diminution of income earning capacity.

122. The Plaintiffs claim that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for the Plaintiffs and the rights of the Plaintiffs. The Plaintiffs further claim that the Defendants knew or ought to have known and were or should have been conscious of the probable consequences of their actions and the damages such actions would cause to other persons including the Plaintiffs.

123. The Plaintiffs further claim that as a result of the actions and negligence of the Defendants, the Plaintiffs have suffered damages and losses which are not yet known to them.

124. The Defendants were under a positive fiduciary duty to protect the Plaintiffs from injury to their person, physical and mental health and morals, and that the Defendants knew

or ought to have known, that the Plaintiffs would suffer damages if the Defendants failed to carry out their fiduciary duty.

**D. Causation**

125. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendants have caused or materially contributed to the Plaintiffs' suffering, injuries and losses.

126. The Plaintiffs would not have experienced the aforementioned injuries and harms but for the acts and omissions of the Defendants.

**E. Damages**

127. The Plaintiffs have suffered real and substantial injury, economic loss and damages arising from, and by reason of, the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations of the Defendants.

**F. Aggravated, Punitive and Exemplary Damages**

128. As a result of the Defendants' deceitful conduct, acts, omissions, wrongdoings and breaches of legal duties and obligations, the Plaintiffs have suffered injury and economic loss and damages.

129. The Defendants have demonstrated that a cavalier and arbitrary approach was taken with respect to the rights of the Plaintiffs and with respect to the obligations of the Defendants towards the Plaintiffs.

130. At all material times the conduct of the Defendants as set forth above was malicious, deliberate and oppressive towards the Plaintiffs and the Defendants conducted themselves in a willful, wanton and reckless manner as set forth above.

131. The Defendants' aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations constitute a wanton and outrageous disrespect for proper societal and business practices and dealings with the public.

132. The Defendants' aforementioned acts and omissions are an affront to the principles of democratic society, the spirit of the Canadian constitution and are crimes against humanity within the meaning of the *Rome Statute of the International Criminal Court*.

133. As a result of the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations by the Defendants, the Plaintiffs have sustained substantial injury, economic loss and damages and are entitled to awards of aggravated, punitive and exemplary damages.

#### **IV. GENERAL**

134. The Plaintiffs plead and rely upon the *Class Proceedings Act*, C.C.S.M. c. C130, or similar legislation where applicable.

135. The Plaintiffs claim the aforementioned relief, on a joint and several basis, against the Defendants.

**DATED AT** the City of Winnipeg, in the Province of Manitoba, this \_\_\_\_ day of March, 2009.

APR 20 2009

**Address for Service:**

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This Statement of Claim was delivered by: Merchant Law Group LLP

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CI 09-01-60921

CANADA )  
PROVINCE OF MANITOBA )

Suit No.: \_\_\_\_\_

THE QUEEN'S BENCH  
WINNIPEG CENTRE

BETWEEN:

LYNN THOMPSON, DAVID CHARTRAND, and LAURIE-ANNE O'CHEEK

PLAINTIFFS

- and -

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, AS REPRESENTED BY THE  
MINISTER OF JUSTICE OF MANITOBA and HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN  
AFFAIRS OF CANADA.

DEFENDANTS

**Proceedings under the *Class Proceedings Act***

**Statement of Claim**

E.F. Anthony Merchant & Norm Rosenbaum

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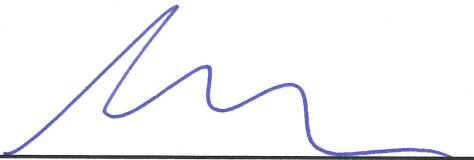
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*THIS IS EXHIBIT "17" REFERRED TO IN THE  
AFFIDAVIT OF DAVID ROSENFELD  
SWORN BEFORE ME, THIS 18<sup>TH</sup> DAY OF APRIL, 2018*



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*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
**GARTH MYERS**

File No.: C115-01-94427

The Queen's Bench  
Winnipeg Centre

BETWEEN:

**LYNN THOMPSON, DAVID CHARTRAND, and LAURIE-ANNE O'CHEEK**  
Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, AS REPRESENTED BY  
THE MINISTER OF JUSTICE OF MANITOBA and HER MAJESTY THE QUEEN IN  
RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND  
NORTHERN AFFAIRS OF CANADA**  
Defendants

Proceedings under the *Class Proceedings Act*, C.C.S.M. c. C130

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**Statement of Claim**

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R3C 3R8

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Tel: 1 306 359 7777  
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MAY 13 2015 09:45  
C115-01-94427  
FEE PAID

File No.: \_\_\_\_\_

The Queen's Bench  
Winnipeg Centre

BETWEEN:

LYNN THOMPSON, DAVID CHARTRAND, and LAURIE-ANNE O'CHEEK  
 Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, AS REPRESENTED BY  
 THE MINISTER OF JUSTICE OF MANITOBA and HER MAJESTY THE QUEEN IN  
 RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND  
 NORTHERN AFFAIRS OF CANADA

Defendants

Proceedings under the *Class Proceedings Act*, C.C.S.M. c. C130

TO THE DEFENDANTS:

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

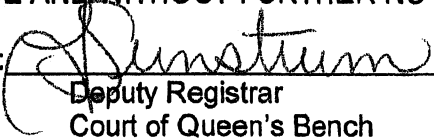
IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States if America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 13 2015

Issued by:

  
 Deputy Registrar  
 Court of Queen's Bench  
 100c - 408 York Avenue  
 Winnipeg, Manitoba R3C 3L6

T. SUNSTRUM  
 DEPUTY REGISTRAR  
 COURT OF QUEENS BENCH  
 FOR MANITOBA

**TO: Minister of Justice of Manitoba**  
405 Broadway Avenue, 5th Floor  
Winnipeg, Manitoba  
R3C 3L6

**-AND-**

**TO: Attorney General of Canada**  
Prairie Regional Office  
Department of Justice Canada  
Suite 301, 310 Broadway  
Winnipeg Manitoba  
R3C 0S6

## I. RELIEF SOUGHT

1. The Plaintiffs, on behalf of themselves and other similarly situated individuals (to be defined by the Court at certification and referred to herein as the "Class" or as "Class Members"), claims:
  - (i) an Order certifying this action as a class action and appointing representative Plaintiffs on behalf of a Class of all Aboriginal persons, including their estates, that were removed from their families or communities as children, and suffered injuries due to the Defendants' breach of fiduciary obligations, duty of care and cultural genocide, and their dependants and family members;
  - (ii) a declaration that, by reason of the events described in this action, the Defendants did commit crimes against humanity, cultural and/or identity genocide;
  - (iii) an Order for an aggregate monetary award respecting all or any part of a Defendants' liability to Class members including an Order that Class members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class members;
  - (iv) general and special damages for the Class in amounts to be determined at trial, including, but not limited to:
    - (a) on the elections of the Plaintiffs and Class members, the:
      - (i) the value of damages that can be attributed to loss of identity;
      - (ii) the value of damages attributable to interference with Aboriginal rights;
      - (iii) the value of damages attributed to sexual abuse; or
      - (iv) the value of damages that can be attributed to physical abuse
    - (b) sentimental damages;
    - (c) mental distress;
    - (d) recovery of health care costs.
  - (v) aggravated damages;

- (vi) exemplary and punitive damages;
- (vii) nominal damages as an aggregate monetary award;
- (viii) symbolic damages as an aggregate monetary award;
- (ix) pre-judgment and post-judgment interest on the foregoing sums, in the amount of 2% per month, or alternatively, in such other amounts at this Honourable Court may allow; and
- (x) such further and other relief as counsel may advise and this Honourable Court may allow.

## II. THE PARTIES

### The Plaintiffs

2. Lynn Thompson ("**Thompson**"), is an individual who resides in Saskatoon, Saskatchewan.
3. David Chartrand ("**Chartrand**"), is an individual who resides in Winnipeg, Manitoba.
4. Laurie-Anne O'Cheek ("**O'Cheek**"), is an individual who resides in Winnipeg, Manitoba.
5. Thompson, Chartrand, and O'Cheek are hereinafter collectively referred to as the "**Plaintiffs**".

### The Defendants

6. Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba ("**Province of Manitoba**"), has an office at 405 Broadway Avenue, 5th Floor, Winnipeg, Manitoba, R3C 3L6.
7. Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs for Canada ("**Canada**"), has an office at 10 Wellington Street, North Tower, Gatineau, Quebec, K1A 0H4.

8. Canada and the Province of Manitoba are hereinafter collectively referred to as the "Defendants".

### III. REAL AND SUBSTANTIAL CONNECTION TO MANITOBA

9. This action has a real and substantial connection to Manitoba. The Plaintiffs will serve this claim outside of Manitoba and pursuant to Rule 17.04 of the *Rules of Court*, pleads that the within proceeding relates to, *inter alia*:
- a) torts committed at least in part in Manitoba;
  - b) breaches of statutory, legal, and equitable duties in Manitoba;
  - c) loss and damage incurred in Manitoba; and,
  - d) matters that necessarily require that these parties, located outside of Manitoba, be a party to this proceeding.

### IV. THE PROPOSED CLASS

10. This action is brought on behalf of all Aboriginal persons (referred to herein as the "Class" or "Class Members") who were removed by the Defendants from their families or communities as children, and suffered injuries due to the Defendants' breach of fiduciary obligations, duty of care and cultural genocide, and their dependents and family members, any other subclasses that this Court finds appropriate.

### V. FACTS

#### A. Factual Background

11. These class proceedings concern the Defendants' negligence, breach of fiduciary obligation, duty of care, and failure to protect Aboriginal rights because, as children, the Plaintiffs were forcibly removed at random from their indigenous family, extended family and community and were exposed to deliberate and prolonged implementation of systemic child welfare policy, practices and programs designed to assimilate the Plaintiffs and their communities into mainstream white society.
12. The mainstream media have referred to this period in Manitoba history as the "Big Scoop", the "60s, 70s, and 80s Scoop", and the era of the "nation of lost souls" in reference to Defendants' acts and omissions resulting in the forcible and arbitrary removal of Aboriginal children during this period in history.

13. The Defendants' actions and omissions caused damage and harm to the Class through their deliberate creation and implementation of policies, programs and practices that systematically attempt to eradicate the particular cultural, social, linguistic, customs, traditions, and spirituality of the child's indigenous family, extended family and community ("**identity genocide**").
14. The Plaintiffs were removed from their indigenous Aboriginal families and communities and placed in foster homes and adoptive families where they experienced prolonged abuse, denigration, and humiliation. The Plaintiffs were placed in non-Indian and non-Aboriginal adoptive or foster homes, despite the availability of Indian and Aboriginal homes, and were systematically denied the opportunity to preserve their identity, and the rights and benefits associated with their membership in the Aboriginal community.
15. Common to the Class is the fact of childhood isolation from their constitutionally protected culture, leading to the failed development of their identity as an Aboriginal person. Indian or Aboriginal traditions, language, customs, heritage, spirituality and culture were extinguished through foster or adoptive care by non-Indian or non-Aboriginal persons and systemic practices, programs and policies that promoted, or did nothing to avoid, the extinction of identity. The Aboriginal 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-Aboriginal/non-Indian) society and the society of the indigenous community is a result of the Defendants' 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 the Defendants knew or should have reasonably known would cause irreparable and enduring harm to vulnerable children.
16. The Plaintiffs are individuals who, as Aboriginal children, enjoyed Aboriginal rights, including the right to an upbringing defined by Aboriginal traditions, pursuant to section 35(1) of the *Constitution Act, 1982*. The Defendants actions effectively prevented these children from experiencing, learning, and developing an identification with customary Aboriginal traditions including, but not limited to: linguistic traditions, spiritual traditions, parenting and child-rearing traditions (including *inter alia* significant

reliance on extended family and the local community for assistance), oral histories and ancestral knowledge.

17. These traditions were necessarily integral and centric to the Aboriginal communities in question, and were typically passed down as children learned to parent by way of example from their own parents, aunts, uncles, and other extended family members. Aboriginal communities viewed children and child-rearing in a distinct manner from that of the European settlers, and the approach used was necessarily different, in light of the internal societal, cultural, and altitudinal norms, from that of conventional Canadian society. Removing children from this environment effectively prevented them from learning to parent in accordance with these Aboriginal traditions.
18. Whatever differences between Aboriginal tradition and mainstream society may exist, nothing in these traditions bars their continuance in modern society, or in the society of the 1960's, 1970's, and 1980's. The Defendants' unlawful interference with the continuance of these Aboriginal traditions constitutes a violation of s. 35(1) of the *Constitution Act*, and is contrary to the intention and substance of other legislation in place at the time, including the *Canadian Bill of Rights*.
19. The Plaintiffs were, as a result of the Defendants' actions, deprived the opportunity to be raised by and within their indigenous culture, in spite of there being no reasonable justification for the removal of these children. The First Nations communities had established, ancestral communal mechanisms for the care of children. Notwithstanding the pivotal societal preference for involving the extended family or larger community, the Defendants unilaterally removed Aboriginal children from their indigenous environment to the long-term detriment and cultural deprivation, even extermination, of the community.
20. The cultural genocide visited upon the Class contravenes international conventions to which Canada is a party and is an independent actionable wrong.
21. The acts and omissions of the Defendants constitute the forcible transfer or deportation of a population and the enforced disappearance of persons, within the meaning of Article 7(1) of the *Rome Statute of the International Criminal Court*.

22. These acts also amount to the forced transfer of "children of the group to another group," in contravention of Article 2(e) of the *Convention on the Prevention and Punishment of the Crime of Genocide (1948)*. These children were not only removed by direct force, but also through administrative action which effectively coerced Aboriginal parents to relinquish their parental rights out of fear and a lack of understanding.
23. The acts and the omissions of the Defendants constitute crimes against humanity pursuant to these international conventions and were a deliberate, concerted and calculated attempt to extinguish Aboriginal culture, traditions, beliefs, practices, and society in Manitoba.
24. The placement of Aboriginal children in foster and adoptive homes was effectively the successive step beyond the residential schools calculated to annihilate those elements and customs which gave rise to the unique Aboriginal identity.
25. In the 1980s Kimelman, J. of the Provincial Court of Manitoba, headed the Review Committee on Indian and Metis Adoptions and Placements in Manitoba ("**Committee**"). The Committee's final report, *No Quiet Place*, was published in 1984.
26. In *No Quiet Place*, Kimelman J. describes the Province of Manitoba's approach to Aboriginal child welfare as being a continuation of the policies, approaches and attitudes of the Indian Residential Schools era stating:  
"with the closing of the residential schools, rather than providing the resources on reserves to build economic security and providing the services to support responsible parenting, society found it easier and cheaper to remove the children from their homes and apparently fill the market demand for children in Eastern Canada and the United States" (*No Quiet Place*, page 330).
27. According to statistics presented in the 1984 File Review Report of the Committee, in 1981 over 53% of children placed outside of the province of Manitoba were sent to the United States, as were several members of the Class in the within action, including the Plaintiff Chartrand, and over 86% of the children placed in care of adopted families and foster homes outside of Manitoba were of Aboriginal ancestry.

28. These statistics led Kimelman, J. to unequivocally conclude that "cultural genocide has been taking place in a systemic, routine manner" (File Review, page 51).
29. Kimelman, J. also noted that Aboriginal children were often exported to the United States of America or other provinces of Canada despite the availability of adoptive homes in Manitoba. Form letters were sent to prospective Manitoba adoptive families incorrectly indicating that children had already been placed for adoption. The letters were "dated prior to the time the child was introduced to an out of province family with whom the child was permanently placed" (No Quiet Place, page 354). In other words, the Province of Manitoba was intentionally turning away prospective Manitoba adoptive families in favour of exporting Indian children to the United States and eastern Canada.
30. Kimelman, J. described this practice as the "most blatant, dramatic example of cultural genocide which has been apparently practiced routinely by the child welfare system" (No Quiet Place, page 354).

#### **B. Plaintiffs' Harms**

##### **(1) Lynn Thompson**

31. Thompson was born at Swan River, Manitoba on either March 1st, 1968 (the date indicated on her birth certificate) or on February 29, 1968 (the date that she was told she was born since she was a small child).
32. From the time she was born until she was approximately 2½ years old, Thompson was resident at Camperville, Manitoba. Thompson was taken from Camperville, Manitoba on three separate occasions without her parents' permission. She was abducted for the first time from Camperville, Manitoba at 2½ years of age and was subsequently returned to Camperville.
33. She was abducted two subsequent times and was finally adopted for the first time at 6½ years of age by the same family as her sister, Donna Mathieson. By that time she had already resided in at least 8 foster homes. She was later moved to Winnipeg and placed in the care of the Mathieson family.

34. Thompson lived with the Mathieson family with her sister, Donna, for approximately one year, at which time Children's Aid forcibly removed her from that home for no particular reason. Her adoptive father tried in vain to get Children's Aid to return Thompson to her adoptive home, but Children's Aid refused and gave no reason for their choice.
35. Thompson was moved through several foster homes throughout the Winnipeg area and was then later sent to Ontario, where Thompson alleges that she was illegally adopted for a second time by a new family in Toronto, Ontario. Thompson was placed on an airplane bound from Winnipeg to Toronto and was greeted by her new adoptive family with hugs and a teddy bear.
- (b) abused
36. During the time that she was resident with that family in Toronto, Ontario, she suffered severe physical abuse and was treated as inferior to the other children given her Aboriginal status. Thompson was tied to a car and beaten by her adoptive family (Harvey and Betty Bainbridge). She was tied to an arm chair and her arms were cut with a knife. She was once even tied to a canoe and left to float in the middle of a lake for two days. A BB gun was also pointed at her head and fired directly into her ear drums causing damage to her ears.
37. Thompson would run away and sleep by the train tracks under the evergreen trees whenever the abuse would start. As a consequence of the physical abuse she endured while residing with the Bainbridge family, she has countless scars on her arms.
38. Public officials only became aware of the abuse after Thompson arrived at school one day with bloody clothing and cuts on her arms. Teachers and other students immediately noticed her cuts and the blood on her clothing and called Children's Aid. Children's Aid decided to remove the Thompson from her adoptive family and she was eventually sent back to Manitoba.
39. At 8½ years of age Thompson became a resident of Landmark, Manitoba. She lived at a foster home there with 26 other children until she was old enough to be sent off to a private school in Portage La Prairie, Manitoba.

40. Thompson struggled with her identity at Portage La Prairie, Manitoba and began to slash her wrists. She continued to suffer a number of different injuries, many of which involved self-inflicted physical harms, due to the physical and psychological abuse that she endured.
  41. Having never been trained to cook or take care of herself and lacking many of the basic survival skills needed in life, Thompson felt frightened at the idea of living on her own and decided to attempt suicide for that reason. At the age of 18, Thompson shot herself through the stomach.
  42. At 25 years of age Thompson began to use cocaine in Calgary and at approximately age 35, she contracted HIV in Saskatoon through unsterile equipment being used with needles. Thompson has two daughters, ages eighteen and twenty five.
- (c) injuries
43. Thompson requires plastic surgery on her arms as a result of the severe abuse that she suffered as a child at the hands of her adoptive parents. Thompson further requires a substantial amount of therapy and psychological help as a result of the physical and psychological abuse that she suffered, and as a result of having been moved from house to house, city to city on so many occasions during her youth.
  44. Thompson has suffered numerous injuries, including but not limited to, a loss of identity and culture, physical and psychological injuries. Thompson has lost her ability to speak her indigenous language, which is Ojibway.
  45. Thompson was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of her family of birth. She lost use of the indigenous language spoken by her family. She lost contact with members of her family. Her name was changed when she was adopted. Her child rearing was as a non-Aboriginal, non-Indian person with no reference to her identity as an Indian.
  46. Thompson had lost her 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-Aboriginal society, and as a result, Thompson struggled.

47. As a child, the authorities or persons in charge of Thompson gave her 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 Thompson turned 18, Canada took no steps to enable her to have access to her adoptive records, the adoption order, or any documentation that would enable her to exercise the benefits available under the *Indian Act, R.S.C. c. I-5*.
48. Thompson also has a lot of anger for her adoptive father in the province of Ontario. She is distressed by the fact that he was able to cause so much havoc in her life, and never have to face criminal charges for what he did.
49. Thompson suffered substantial anxiety, emotional distress, pain and suffering and other damages as a result of the emotional and physical abuse that she was put through.

(2) David Chartrand

(a) abducted

50. Ivan Joseph David Chartrand is believed to have been born in Camperville, Manitoba on September 13th, 1962.
51. At the age of approximately six years he was abducted along with several other members of his family *en masse* and numerous other community members, when agents of the Province of Manitoba arrived at Camperville.
52. Children's Aid workers snatched children up at random, without providing any reason to parents. Children who were unable to flee were taken by the Province of Manitoba.
53. Chartrand was sent to live with a white family in the Minneapolis, Minnesota area, the Van Zants, and was renamed Joel Van Zant.

(b) abused

54. From the time that Chartrand crossed the Canadian border, the treatment he received from the Van Zants could only be characterized as abusive and degrading. Chartrand was starved by the Van Zants until he stopped using his given Aboriginal name and began using his new white name.
55. Chartrand suffered severe physical abuse while residing with the Van Zants. Mr. Van Zant beat Chartrand with every imaginable object, bit him, and punched him on a regular basis until Chartrand was bloodied and immobilized.
56. Chartrand was cornered and choked repeatedly by Mr. Van Zant and was frequently left knocked out on the floor after a session of choking and beatings.
57. After one episode, Mr. Van Zant offered to have Chartrand call the Children's Aid worker in Manitoba who had arranged his placement with the family. Mr. Van Zant called Ted Enns, an agent of the Province of Manitoba, who, after hearing Chartrand's complaints, told Chartrand that "you have to live with what you've got, David".
58. At eight or nine years of age Chartrand was formally adopted by the Van Zant family.
59. The abuse continued until Chartrand was fourteen years of age, at which time Chartrand beat up his adoptive father using a two by four. Soon thereafter, the Van Zant family moved to Arizona and left Chartrand behind.

(c) injuries

60. From the age of fourteen until his return to Canada, Chartrand spent his life "in the system". He was admitted to Red Wing, a juvenile facility for troubled young men, and was involved in a string of car thefts, stealing his first seven cars in one day at age fourteen.
61. Chartrand witnessed a friend having his "head blown off" in one particular incident.
62. After being released from Red Wing at age 17, Chartrand became the leader of a prominent Minneapolis gang known as the MCs or Masters of Crime.

63. Chartrand was eventually arrested selling stolen guns to an undercover police officer and was admitted to the mainstream prison system for a period of 21 months.
64. While in prison Chartrand met a Medicine Man who had been involved in the politically radical American Indian Movement and had ties to Aboriginal activist Leonard Peltier.
65. The Medicine Man encouraged Chartrand to find his family. After his release from prison he did find his family in Camperville, Manitoba and eventually returned.
66. Upon his return to Canada, Chartrand realized the extent of his loss of identity and other differences between himself and other members of the community.
67. Chartrand was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of his family of birth. He lost use of the indigenous language spoken by his family and that he could speak as a child. He lost contact with members of his family. His name was changed when he was adopted. His child rearing was as a non-Aboriginal, non-Indian person with no reference to his identity as an Indian.
68. Chartrand had lost his capacity to exercise an identity, let alone exercise membership in an Indian family and community. He formed an ambivalent, awkward and angry connection to mainstream non-Aboriginal society, and as a result, Chartrand struggled.
69. As a child, the authorities or persons in charge of Chartrand gave him no information as to his birth name and no information enabling him to make contact with his identity and his Indian family, extended family and community. When Chartrand turned 18, Canada took no steps to enable him to have access to his adoptive records, the adoption order, or any documentation that would enable him to exercise the benefits available under the *Indian Act, R.S.C. c. I-5*.
70. Chartrand continues to have difficulty discussing the details of his abuse. His injuries include, but are not limited to, loss of culture and identity, psychological injuries as a result of the physical, verbal, and psychological abuse he endured at the hands of his adoptive white family, and physical injuries resulting from the beatings he endured as a child and adolescent.

71. Chartrand requires therapy, has experienced a loss of self-worth, and continues to suffer from severe anxiety in relation to the physical, psychological, and verbal abuse that was inflicted upon him as a minor.
72. Chartrand's mother died nine months after his return to Canada and Chartrand is angered by the fact that he had so little time with his mother during his adult life.

(3) Laurie O'Cheek

(a) abducted

73. O'Cheek was a resident of Camperville, Manitoba until 1972 when she was abducted by the Province of Manitoba.
74. O'Cheek describes having witnessed the practice of the Province of Manitoba at the time, go onto reserves and into native communities in order to forcibly remove any Aboriginal children that could not flee fast enough. Typically, the smallest children and the youngest children were the ones who were abducted first given that they could not escape the agents of the government sent to randomly remove the children.
75. O'Cheek was only three years old when she was forcibly separated from her biological family who were living in Camperville, Manitoba.

(b) abused

76. O'Cheek was adopted by an Orthodox Jewish family, known to her as the Steinberg family, and was brought to Montreal, Quebec.
77. O'Cheek's adoptive father, Jack Jerry Steinberg claimed to be an observant Jew, and had adopted four other children of various ethnic backgrounds and nationalities. The four other children included a Haitian girl, a Cambodian boy, a Vietnamese boy and a Blackfoot Indian girl.
78. O'Cheek was immersed in a culture that was not her own. She quickly learned to speak French, English and even some Hebrew, and attended Synagogue with her adoptive father every Saturday, and was otherwise raised as an observant Jew, while living with that adoptive family.

79. At the age of 9 years old, O'Cheek moved from Montreal, Quebec, to Waitsfield, Vermont. During the entire time spent with her adoptive parents in both Montreal, Quebec, and Waitsfield, Vermont, physical and sexual abuse occurred.
80. O'Cheek's adoptive father had the habit of physically and sexually abusing the children after having an argument with his wife. O'Cheek's adoptive father would force her into a bedroom, lock the door and then begin to physically and sexually abuse her. This entailed forcing the child to perform oral sex in addition to full sexual intercourse. At the age of 9 years old O'Cheek recalls choking on her adoptive father's semen, and even vomiting as a result of the amount of semen swallowed.
81. O'Cheek's adoptive father would threaten to beat her to death if she were to ever tell anyone about the abuse.
82. One day after discovering that O'Cheek's adoptive sister was also suffering the exact same abuse, O'Cheek, at the age of 11 years old, bravely decided to take her adoptive sister and run away to a friend's trailer park. Once at the trailer park O'Cheek's friend's mother called Vermont Children's Aid.
83. O'Cheek and some of the other adopted children in the family were immediately removed from the family by Vermont Children's Aid. Unfortunately, O'Cheek's adoptive father, who was then residing with his wife and adopted children illegally in the United States, immediately returned to Canada and escaped all criminal charges.
84. In the years following, at the age of 11, O'Cheek remained in the state of Vermont where she attended over 50 other foster homes and suffered additional sexual and physical abuse.
85. At the age of 13 years old, after attending over 50 different foster homes, O'Cheek finally managed to escape, although she had tried to escape many times before.
86. O'Cheek accepted an offer of a ride from a motorist who she met on the way to Boston, Massachusetts. The motorist, as it turned out, was a very wealthy individual and hosted O'Cheek for approximately one week during which time he showered O'Cheek with clothing and the life that she always wanted as a child.

87. After about a week of residing with this man, O'Cheek was instructed that she had to repay him for all of the items that he had purchased for her.
88. She was brought to Boston where she was introduced to several other girls, most of which were around the age of 17 and 18, who were beautifully dressed. She was given clothing and instructed to put herself together to go out for the night.
89. Some hours later, O'Cheek and the other girls were deposited on a street in downtown Boston and she was passed a condom by another girl who instructed her to get into a car with a strange man. That man ordered O'Cheek to perform oral sex in an isolated parking lot in Boston.
90. The man then asked O'Cheek how old she was. O'Cheek replied that she was 18 years old, fearing that she would get in trouble. O'Cheek eventually broke down and admitted that she was 13 years old. Upon finding that O'Cheek was 13 years of age, the man paid her promptly in addition to giving her an extra \$100.00.
91. O'Cheek continued to work as a prostitute for some years in the Boston and Worcester regions, and was frequently picked up by police and arrested but immediately let go due to the fact that she was a minor. After having been picked up countless times the police eventually arrested her for prostitution at the age of almost 14.
92. At the hearing the Judge asked the O'Cheek what she wanted to do with her life. O'Cheek responded that she wanted to find her biological parents. The Judge ordered that O'Cheek be held in a detention centre until her biological parents could be found.
93. O'Cheek was introduced to a female member of the Dakota Tribal Council from the western United States, who was put in charge of helping to find O'Cheek's biological parents. It took this individual three months to find O'Cheek's parents, who were still resident in Camperville, Manitoba.
94. She was subsequently transferred from the United States to Manitoba by airplane. She was shackled and escorted in a prisoner's suit across the border and through Pearson International Airport in Toronto, Ontario at the age of 14 years old. Once having arrived in the Manitoba, she was placed in Marymound School for troubled girls.

95. O'Cheek was permitted to visit her family in Camperville once every two weeks for a weekend, provided that she was on her best behaviour.
96. At the age of 16, out of frustration the O'Cheek decided to break out of Marymount School she jumped from a four-storey window landing on her back and breaking her back in three different places. O'Cheek was subsequently put in the psychiatric ward of a hospital for three months, and was then placed in the Children's Home of Winnipeg, an institution for helping children from difficult backgrounds integrate into society.
97. The Children's Home of Winnipeg helped O'Cheek find a job as a waitress and secure a place for her to live. O'Cheek was then given a cheque for \$500.00 and was left to fend for herself on the streets of Winnipeg at the age of 18.
98. In subsequent years, O'Cheek battled with an addiction to cocaine and acquired Hepatitis "C" as a result of sharing needles while using cocaine.

(c) injuries

99. O'Cheek suffered substantial physical, psychological and sexual abuse, both in foster homes and in her adoptive family, in addition to a loss of culture and identity.
100. O'Cheek was severely beaten, often on a daily basis, by her original adoptive father and in several subsequent homes. O'Cheek was even abused by other children in the foster homes in which she stayed.
101. O'Cheek also suffers from anxiety attacks, high blood pressure and has difficulty getting close to other people.
102. Due to the experiences she had as a child she has difficulty having normal relations with men.
103. O'Cheek also has severe nightmares in which she sees herself murdering her abusers, especially Mr. Steinberg, her adoptive father in Montreal.

104. O'Cheek also suffered a loss of identity. Up until the time she was reunited with her family she was known as Tara Elizabeth Steinberg which was her given Jewish name. Other members of O'Cheek's family would refer to her as "apple", meaning that she was red on the outside and white on the inside. The Aboriginal community no longer recognizes O'Cheek as one of their own due to O'Cheek's loss of cultural awareness and identity.
105. O'Cheek was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, heritage and culture of her family of birth. O'Cheek lost her ability to speak her indigenous language, *Saulteaux*, which is spoken at Camperville and spoken by other members of her family. She lost contact with members of her family. Her name was changed when she was adopted. Her child rearing was as a non-Aboriginal, non-Indian person with no reference to her identity as an Indian.
106. As a child, the authorities or persons in charge of O'Cheek gave her 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 O'Cheek turned 18, Canada took no steps to enable her to have access to her adoptive records, the adoption order, or any documentation that would enable her to exercise the benefits available under the *Indian Act, R.S.C. c. I-5*.
107. O'Cheek also has Hepatitis "C" and continues to have severe back problems due to the injury suffered when she jumped from the fourth floor of Marymount School.
108. O'Cheek currently resides in Winnipeg, Manitoba and receives disability support payments from the government of Manitoba.
- C. Defendants' Acts, Omissions, Knowledge, and Intent
109. 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. Canada had a fiduciary obligation to the Plaintiffs given this special relationship.

110. Canada has provided funding for, and continues to provide funding for, the delivery of social services in the Province of Manitoba including, but not limited to, child and family services to Aboriginal communities. Canada delegated the implementation of child welfare services to Aboriginal communities to the Province of Manitoba, notwithstanding its exclusive jurisdiction over Indian affairs. As such, the federal Crown owed, to the Defendants, a duty of care to ensure that its agent, the Province of Manitoba, acted in a responsible manner.
111. The Plaintiffs were owed a superordinate fiduciary obligation by the Province of Manitoba given that they were particularly vulnerable, as infant wards of the state from a socially disadvantaged and discriminated against minority group, and susceptible to physical, sexual, psychological and emotional abuse.
112. The Defendants violated the Plaintiffs' right to participate in the societal traditions inherent to their respective Aboriginal cultures, pursuant to section 35(1) of the *Constitution Act, 1982*, effectively preventing the Plaintiffs from developing and transmitting to their heirs the Aboriginal identity to which they were entitled at their birth.
113. The Defendants breached their duty to the Plaintiffs to protect their right to family life and various other rights elaborated in *The Canadian Bill of Rights, 1960 c. 44 C-12.3* and the Charter of Rights and Freedoms.
114. In particular, the arbitrary and wanton manner in which the Defendants treated the Plaintiffs illustrates that the rights of the Plaintiffs to equality before the law and protection of the law were breached as per Section 1(b) of *The Canadian Bill of Rights, 1960 c. 44 C-12.3* and the *Charter of Rights and Freedoms*.
115. The Plaintiffs state that the sexual assaults, physical, verbal and mental abuse suffered were caused by the negligence, and breach of fiduciary duty of Canada and the Province of Manitoba and of their servants, agents and employees, the particulars of which are the following:
  - a. Taking improper steps to check the character and credentials of foster parent and adoptive parent candidates;

- b. Failing to monitor, supervise, or review the homes, conduct and care of foster parents;
  - c. Employing incompetent servants, agents and employees to supervise and monitor foster parents;
  - d. Failing to remove Plaintiffs from the care of foster parents or adoptive families upon learning of allegations of abuse by foster parents or adoptive families;
  - e. Failing to screen foster parent and adoptive parent candidates for their sensitivity to Aboriginal and Indian values, traditions, beliefs and culture.
116. The Defendants are liable inter alia to the Plaintiffs for:
- a. Cultural abuse and systematic attempts to abduct Aboriginal children from their natural homes;
  - b. Cutting the Plaintiffs off from their families;
  - c. Destroying the Plaintiffs' sense of self-worth;
  - d. Reducing the Plaintiffs' capacities to parent and maintain normal marital and family ties;
  - e. Holding the Plaintiffs in foster homes and placing them in adoptive families without the prior consent of their parents;
  - f. Depersonalizing and demeaning the Plaintiffs by generally referring to them by their given white names rather than their Aboriginal names;
  - g. Cutting the Plaintiffs off from their families and holding them in foster homes and subjecting them to adoption procedures against the will of their families and against their own will; and
  - h. Ridiculing them and discriminating against them on the basis of their Aboriginal backgrounds;
  - i. Cultural and identity genocide;
  - j. Sexual abuse visited upon them; and
  - k. Physical abuse visited upon them.
117. The behaviour of the Defendants and their servants constitute a number of criminal offences including, assault, battery, and kidnaping. In particular, the forcible removal of Aboriginal children from Aboriginal homes and communities constitutes abduction pursuant to *Criminal Code, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.*

118. The Plaintiffs were not permitted to engage in First Nations cultural or religious activities. They were not permitted to engage in First Nations games. They were not permitted to communicate with family members on a regular basis. They were not permitted to speak their First Nations languages, and were even reprimanded and tortured for doing so.
119. The Plaintiffs were further subjected to disparaging comments and innuendo from foster parents, their adoptive families and others who were involved in the abduction and forced adoption of the Plaintiffs.
120. The Defendants' actions were in contravention of the treaties between the Defendants and the First Nation and in contravention of the United Nations Genocide Convention to which Canada was a signatory. The Plaintiffs and other children of First Nation heritage were to be systemically assimilated into white society through their forced adoption. In pursuance of that plan, they were forcibly removed, without justification, from their Aboriginal communities and placed in the custody of foster families and later in the custody of adoptive families against the will of their parents, and contrary to Aboriginal traditions of relying on the extended family and local community to assist where needed. Their cultures and their languages were taken from them with sadistic punishment and practices.
121. The Plaintiffs and their cultures were denigrated. The Plaintiffs, through a combination of sexual, physical and mental abuse, were made to feel meaningless and without capacity or self-worth. They were made to believe that their culture and all things "Indian" were worthless.
122. The First Nations culture of the Plaintiffs was taken from them when they were adopted by white families. They lost much of their culture in an organized cultural genocide imposed upon them by the Defendants and the Defendants' agents and servants.
123. As a result of these tortious acts by the Defendants, the Plaintiffs have lost their traditional ways of living and have lost the traditional parenting skills that they would have acquired had they not been forcibly removed from their parents.
124. The Plaintiffs lost their sense of family. They were cut off from their biological families through forced adoptions and through placement in various foster homes.

125. The Plaintiffs all suffered a loss of culture, family life, and familial capacity as a result of their abduction and placement in white homes. As a result of these tortious acts by the Defendants, the Plaintiffs lost their cultures and traditional ways of living including traditional parenting skills that they would have acquired had they not been forcibly removed from their parents.
126. The Plaintiffs further claim that the sexual and physical assaults, mental and emotional abuse, and resulting injuries thereof, were caused by the negligence, breach of trust, and breach of fiduciary duty of the Defendants.
127. The Defendants were under a positive fiduciary duty to protect the Plaintiffs from injuries to their person, physical or mental health or morals, and the Defendants knew or ought to have known that the Plaintiffs would suffer damages if the Defendants failed to carry out this duty.
128. The Plaintiffs claim and the Defendants are vicariously liable for the actions and negligence of any governmental agency or other organization that contracted with the Defendants or to whom the Defendants delegated control over the management of the adoption procedures and foster homes, and are also liable in their position as principal to such organizations, who at all times were acting as their servants, employees or agents.
129. In the alternative, the Plaintiffs claim that the cause of the physical and sexual assaults and surrounding circumstances were within the knowledge and control of the Defendants and the physical and sexual assaults would not have occurred but for the negligence of the Defendants.
130. As a result of the physical, sexual, emotional and mental abuse, the Plaintiffs sustained serious, lasting and permanent injuries which include, but are not limited to, the following:
- a. Cultural suppression;
  - b. Loss of sense of family;
  - c. Loss of ability to parent;
  - d. Anxiety;

- e. Depression;
- f. Emotional trauma;
- g. Psychological trauma;
- h. Personality change;
- i. Loss of confidence;
- j. Decreased social ability
- k. Insomnia;
- l. Fatigue;
- m. Decreased enjoyment;
- n. Pain and suffering;
- o. Loss of enjoyment of life;
- p. Susceptibility to addictions; and
- q. Loss of identity

131. The Plaintiffs have sustained a loss of income and will continue to sustain losses of income, losses of competitive advantages in the employment field, losses of income earning potential and a diminution of income earning capacity.
132. The Plaintiffs claim that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for the Plaintiffs and the rights of the Plaintiffs. The Plaintiffs further claim that the Defendants knew or ought to have known and were or should have been conscious of the probable consequences of their actions and the damages such actions would cause to other persons including the Plaintiffs.
133. The Plaintiffs further claim that as a result of the actions and negligence of the Defendants, the Plaintiffs have suffered damages and losses which are not yet known to them.
134. The Defendants were under a positive fiduciary duty to protect the Plaintiffs from injury to their person, physical and mental health and morals, and that the Defendants knew or ought to have known, that the Plaintiffs would suffer damages if the Defendants failed to carry out their fiduciary duty.

#### D. Causation

135. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendants have caused or materially contributed to the Plaintiffs' suffering, injuries and losses.

136. The Plaintiffs would not have experienced the aforementioned injuries and harms but for the acts and omissions of the Defendants.

#### E. Damages

137. The Plaintiffs have suffered real and substantial injury, economic loss and damages arising from, and by reason of, the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations of the Defendants.

#### F. Aggravated, Punitive and Exemplary Damages

138. As a result of the Defendants' deceitful conduct, acts, omissions, wrongdoings and breaches of legal duties and obligations, the Plaintiffs have suffered injury and economic loss and damages.

139. The Defendants have demonstrated that a cavalier and arbitrary approach was taken with respect to the rights of the Plaintiffs and with respect to the obligations of the Defendants towards the Plaintiffs.

140. At all material times the conduct of the Defendants as set forth above was malicious, deliberate and oppressive towards the Plaintiffs and the Defendants conducted themselves in a willful, wanton and reckless manner as set forth above.

141. The Defendants' aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations constitute a wanton and outrageous disrespect for proper societal and business practices and dealings with the public.

142. The Defendants' aforementioned acts and omissions are an affront to the principles of democratic society, the spirit of the Canadian constitution, are crimes against humanity within the meaning of the *Rome Statute of the International Criminal Court*, and constitute genocide (in a cultural sense) pursuant to the *Convention on the Prevention and Punishment of the Crime of Genocide*.

143. As a result of the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations by the Defendants, the Plaintiffs have sustained substantial injury, economic loss and damages and are entitled to awards of aggravated, punitive and exemplary damages.

#### IV. GENERAL

144. The Plaintiffs plead and rely upon the *Class Proceedings Act, C.C.S.M. c. C130*, or similar legislation where applicable.

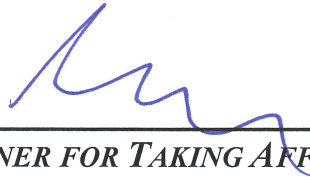
145. The Plaintiffs claim the aforementioned relief, on a joint and several basis, against the Defendants.

Date: February 10, 2015

Merchant Law Group LLP  
Barristers and Solicitors  
Suite 501, 363 Broadway Avenue  
Winnipeg, Manitoba  
R3C 3R8

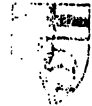
Attn: Roch Dupont, Linh Pham  
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[lpham@merchantlaw.com](mailto:lpham@merchantlaw.com)

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



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*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
GARTH MYERS



THE HONOURABLE SHANE I. PERLMUTTER  
ASSOCIATE CHIEF JUSTICE

PROVINCE OF MANITOBA  
COURT OF QUEEN'S BENCH

THE LAW COURTS  
WINNIPEG, MANITOBA, CANADA  
R3C 0P9  
(204) 945-2050

March 2, 2016

Mr. Roch Dupont  
Merchant Law Group LLP  
100 – 2401 Saskatchewan Drive  
Regina SK S4P 4H8

Mr. Jim Koch/Mr. Denis Guénette  
Manitoba Justice  
Legal Services Branch  
730 – 405 Broadway  
Winnipeg MB R3C 3L6

Mr. Bradley Favel  
Department of Justice Canada  
Prairie Region  
301 – 310 Broadway  
Winnipeg MB R3C 0S6

Dear Counsel:

Re: *Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek v. Her Majesty the Queen in Right of Manitoba, as Represented by the Minister of Justice of Manitoba, and Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indian and Northern Affairs of Canada*  
Queen's Bench File No. CI 15-01-94427

I acknowledge receipt of Mr. Dupont's letter of March 1, 2016, providing letters of consent to have this matter case managed and requesting the appointment of a case management judge.

This is to advise that I have assigned Justice Edmond as the case management judge.

I would suggest that you now make arrangements to have a first case management conference with Justice Edmond. You can arrange for this first case management conference by telephoning the Trial Coordinator, Ms Sharon Phillips, at 204-945-8697.

Yours truly,

Shane I. Perlmutter

SIP/mh

xc: Edmond J.

xc: Ms Sharon Phillips

*THIS IS EXHIBIT "19" REFERRED TO IN THE  
AFFIDAVIT OF DAVID ROSENFELD  
SWORN BEFORE ME, THIS 18<sup>TH</sup> DAY OF APRIL, 2018*



---

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
**GARTH MYERS**

**TRONIAK LAW**

ATTORNEYS-AT-LAW

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\* carries on practice through Dennis M. Troniak Law Corporation  
 \*\*also a member of the Law Society of Upper Canada

March 15, 2016

Honourable Shane I. Perlmutter

Associate Chief Justice of the Court of Queen's Bench

Law Courts Building

226 - 408 York Avenue

Winnipeg MB R3C 0P9

Dear Mr. Justice Perlmutter,

Re: Thompson et al. v. Her Majesty the Queen in Right of Manitoba et al.  
 Manitoba Queen's Bench Court File No. CI 15-01-94427

It has recently come to our attention that Mr. Justice Edmond has been assigned to case manage this putative class proceeding commenced by the Merchant Law Group ("MLG"). We write to request that Troniak Law be given notice of any case management attendances going forward so that we may make arrangements to attend for the following reasons.

Since the spring of 2014, Troniak Law has been investigating and researching the potential for a class proceeding concerning "Sixties Scoop" survivors. Since that time, extensive legal research has been conducted as have approximately seventy-five (75) interviews with potential class members (First Nations and Métis individuals who were apprehended from their birth families during the 1960s through the 1980s).

During this time, we also filed a Freedom of Information request with the Manitoba and Federal governments respecting the Federal-Provincial Agreement which forms the foundation of any proceeding. Troniak Law has also partnered with the law firm of Koskie Minsky LLP in Toronto to work together in a plaintiffs' class counsel consortium arrangement in the prosecution of this class proceeding.

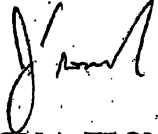
As the preparation of our Statement of Claim is ongoing and its issuance imminent, on March 8, 2016, we attended at the Winnipeg courthouse to determine if any proceeding concerning a similar subject matter had been filed with the court. At that time, we learned that MLG had requested the assignment of a case management judge, that the defendants had consented to same and that Justice Edmond had been assigned as the case management judge. We understand that no schedule for the return of the certification motion has been set down with the court.

We respectfully request that we be given notice of the impending case management conference in this matter so that we may make submissions on a schedule leading to a carriage motion. Under the circumstances, it appears a carriage motion to decide which proceeding should be permitted to go forward and which proceeding ought to be stayed, is necessary. The carriage motion ought to be the first order of business heard by the court, with certification to follow only once that issue has been finally determined.

We thank you in advance for the court's consideration and would be pleased to answer any questions arising.

Yours truly,

TRONIAK LAW



JON A. TRONIAK  
JT/ch

cc. Edmond J., Case Management Judge  
cc. Ms. Sharon Phillips, Trial Co-ordinator  
cc. Roch Dupont  
cc. Bradley Favel  
cc. Jim Koch  
cc. Kirk Baert  
cc. Celeste Poltak

*THIS IS EXHIBIT "20" REFERRED TO IN THE  
AFFIDAVIT OF DAVID ROSENFELD  
SWORN BEFORE ME, THIS 18<sup>TH</sup> DAY OF APRIL, 2018*



---

*A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.*  
GARTH MYERS



THE HONOURABLE SHANE I. PERLMUTTER  
ASSOCIATE CHIEF JUSTICE

PROVINCE OF MANITOBA  
COURT OF QUEEN'S BENCH

THE LAW COURTS  
WINNIPEG, MANITOBA, CANADA  
R3C 0P8  
(204) 945-2050

March 16, 2016

Mr. Jon A. Troniak  
Troniak Law  
1000 – 444 St. Mary Avenue  
Winnipeg MB R3C 3T1

Dear Mr. Troniak:

Re: *Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek v. Her Majesty the Queen in Right of Manitoba, as Represented by the Minister of Justice of Manitoba, and Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indian and Northern Affairs of Canada*  
Queen's Bench File No. CI 15-01-94427

I acknowledge receipt of your letter dated March 15, 2016, in which you have correctly noted that Justice Edmond has been assigned as the case management judge with respect to *Thompson et al. v. Her Majesty the Queen in Right of Manitoba et al.*, Queen's Bench File No. CI 15-01-94427, and in which you request that you be given notice of the case management conference and be permitted to make submissions.

The onus is on counsel to arrange a date with the case management judge based on available dates provided by Ms Phillips and then agreed to by counsel. Without providing any commentary on your client's standing, you, as counsel, may attend the first case management conference with Justice Edmond, at which time I expect submissions will be made as to any ongoing future involvement by you and with respect to the issues otherwise identified in your March 15th correspondence. Moving forward, I ask that any future correspondence by you or other counsel involved be directed to Justice Edmond.

Yours truly,

Shane I. Perlmutter

SIP/mh

xc: Edmond J.  
xc: Mr. Roch Dupont  
Merchant Law Group LLP  
xc: Mr. Jim Koch/Mr. Denis Guénette  
Manitoba Justice  
xc: Mr. Bradley Favel  
Department of Justice Canada  
xc: Ms Sharon Phillips, Trial Coordinator