Court File No. T-2212-16

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

JESSICA RIDDLE, WENDY LEE WHITE AND CATRIONA CHARLIE

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

MOTION RECORD OF THE PLAINTIFFS (SETTLEMENT APPROVAL)

VOLUME 4 OF 6

KOSKIE MINSKY LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2092 / Fax: 416-204-2889
Celeste Poltak
Tel: 416-595-2701 / Fax: 416-204-2909
Garth Myers
Tel: 416-595-2102 / Fax: 416-204-4924

KLEIN LAWYERS LLP
400-1385 West 8th Avenue
Vancouver, BC V6H 3V9

David A. Klein
Douglas Lennox
Angela Bespflug
Tel: 604-874-7171 / Fax: 604-874-7180

MERCHANT LAW GROUP LLP
2401 Saskatchewan Drive
Regina, SK S4P 4H8

E. F. Anthony Merchant, Q.C.
Tel: 306-653-7777 / Fax: 304-975-1983

Lawyers for the Plaintiffs

TO: **THE ATTORNEY GENERAL OF CANADA**
Department of Justice, National Litigation Sector
50 O'Connor Street
Ottawa, ON K1A 0H8

Catharine Moore
Travis Henderson
Tel: 613-670-6390 / Fax: 613-941-5879

Lawyers for the Defendant

AND TO: **WILSON CHRISTEN LLP**
137 Church Street
Toronto, ON M5B 1Y4
Jeffery Wilson
Tel: 416-360-5952 / Fax: 416-360-1350

MORRIS COOPER
Barrister
Main Flr – 99 Yorkville Avenue
Toronto, ON M5R 3K5

Tel: 416-961-2626 / Fax: 416-961-4000

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

THIS IS EXHIBIT "21" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

1186

File No. CI 16-01-01540

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C.130

STATEMENT OF CLAIM

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889
Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

TRONIAK LAW OFFICE
1000-444 St. Mary Avenue
Winnipeg, MB R3C 3T1

Dennis M. Troniak
Jonathan A. Troniak
Tel: 204-947-1743
Fax: 204-947-0101

APR 20 2016

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under
The *Class Proceedings Act*, C.C.S.M. c. C.130

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 in 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 TWENTY 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 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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750.00 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 plaintiff's claim and $750.00 for costs and have the costs assessed by the court.

April 20, 2016
Date

Signed by: T. SUNSTRUM
DEPUTY REGISTRAR
COURT OF QUEENS BENCH
FOR MANITOBA
Deputy Registrar
100C - 408 York Avenue
Winnipeg, Manitoba R3C 0P9

To: **THE ATTORNEY GENERAL OF CANADA**
510 - 405 Broadway
Winnipeg, MB R3C 3L6

CLAIM

1. The Plaintiffs claim:

(a) An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiffs as Representative Plaintiffs for the Class;

(b) A declaration that the Defendant breached its fiduciary duties to the Plaintiffs and the Class by reason of the events described in this action;

(c) A declaration that the Defendant breached its common law duties of care owed to the Plaintiffs and the Class by reason of the events described in this action;

(d) Damages for breach of fiduciary duty and negligence in the amount of $200 million or any such amount that this Honourable Court deems appropriate;

(e) Punitive damages in the amount of $50 million;

(f) Pre-judgment and post-judgment interest pursuant to the *Court of Queen's Bench Act*, C.C.S.M. c. C280;

(g) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;

(h) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 33 of the *Class Proceedings Act*; and

(i) Such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The term "Sixties Scoop" refers to the Canadian practice, generally beginning in the 1960s and continuing until the late 1980s or early 1990s, of taking ("scooping up") children of Aboriginal peoples in Canada from their families for placing in foster homes or adoption with non-Aboriginal parent(s).

3. As a result, these "scooped" children lost their identity as Aboriginal persons and suffered, *inter alia*, mentally, emotionally, spiritually, and physically. They were deprived of their status and other Aboriginal-related monetary benefits under the *Indian Act* and related legislation and policies, which the Defendant then retained on account of the scoop. Aboriginal communities describe the Sixties Scoop as destructive to their culture.

4. In Manitoba, this practice was largely dictated by the Canada-Manitoba Child Welfare Agreement, a bilateral agreement executed on September 2, 1966 between Canada and the Province of Manitoba. Under this Agreement, Children's Aid Societies ("CAS") in Manitoba scooped Aboriginal children from their homes for foster placement in, and/or adoption with, non-Aboriginal homes. In exchange, Canada reimbursed Manitoba for per diem costs of providing these services for Aboriginal children in Manitoba.

5. By virtue of this practice in Manitoba, the Defendant (or "Canada") breached its fiduciary duties and common law duties of care that it owed to the vulnerable, child, Aboriginal Plaintiffs and Class Members throughout the applicable Class Period.

THE PARTIES

6. The proposed Representative Plaintiffs on behalf of the Class are Priscilla Meeches and Stewart Garnett. Ms. Meeches was born on February 4, 1969, as a member of the Long Plain First Nation in Manitoba. She was taken from her birth mother by CAS and adopted out to non-Aboriginal parents as a newborn. Mr. Garnett was born on March 19, 1974, as a member of the Long Plain First Nation in Manitoba. He was taken from his birth mother by CAS as a newborn, placed in foster care with non-Aboriginal parents, and then adopted out to non-Aboriginal parents in or about 1975.

7. The Plaintiffs both reside in Manitoba and have suffered the consequences of the Defendant's breach of fiduciary obligation and common law duty of care.

8. The Defendant, the Attorney General of Canada, represents Her Majesty the Queen in Right of Canada.

THE CLASS

9. The Proposed Class is composed of all Indian, non-status Indian, and/or Metis children who were taken from (a) their homes on reserves lying within the boundaries of the CAS in Manitoba, or (b) resided within the boundaries of the CAS and had not established residence in a place other than a reserve in Manitoba, at or after September 2, 1966, 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.

CANADA'S FIDUCIARY DUTY TO THE CLASS MEMBERS

10. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal peoples in Canada.

11. The Defendant has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 91(24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

12. By virtue of its constitutional obligations, the Defendant has an ongoing obligation of consultation on matters relevant to Aboriginal interests. There is an expressed and implied undertaking by Canada to protect the best interests of Aboriginal persons at all times.

13. Moreover, the Defendant's fiduciary duty is compounded even further by the fact that the Class Members were vulnerable Aboriginal children when taken from their Aboriginal homes, and accordingly, by virtue of entering into the Canada-Manitoba Child Welfare Agreement, the Defendant assumed even further responsibility for the supply of all the necessities of life to Class Members, *in loco parentis*, during the Class Period.

14. Canada's constitutional obligations, in conjunction with the *Indian Act* and related legislation and policies, the common law, and the honour of the Crown, 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, which is fundamental to the security, welfare and survival of Aboriginal persons, as well as to safeguard their benefits derived from their rightful status as Aboriginals.

15. The Defendant's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued notwithstanding the Canada-Manitoba Child Welfare Agreement.

CANADA'S COMMON LAW DUTY OF CARE TO THE CLASS MEMBERS

16. The Defendant owes a duty of care to all Class Members. By virtue of, *inter alia*, the Canada-Manitoba Child Welfare Agreement, Canada created, planned, established, operated, financed, supervised, controlled and regulated the provision of child welfare services in Manitoba to the Aboriginal child Class Members.

17. Canada knew or ought to have known of the impropriety of policies in respect of Aboriginal children under the Canada-Manitoba Child Welfare Agreement, and the negligent operation of such policies, including the failure to ensure that the child welfare programs were administered appropriately to Aboriginal children, such as by adoption and/or permanent foster care in non-Aboriginal homes, failing which might foreseeably cause harms to the Aboriginal Class Members. This is especially so given that the persons affected were, by nature, vulnerable children.

18. Proximity between the Defendant and the Aboriginal Class Members is supplemented further by the acknowledged fiduciary duty in existence between them in respect of specific interests. Moreover, Canada assumed an obligation towards Aboriginal peoples regarding the provision of Manitoba child welfare programs to them by virtue of the Canada-Manitoba Child Welfare Agreement.

19. A duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act to the receiver.

CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS

20. During the Class Period, the Defendant breached its fiduciary duty and/or common law duty of care by the following acts or omissions, including but not limited to:

(a) Canada illegitimately delegated its non-delegable duties in respect of the vulnerable Aboriginal child Class Members;

(b) Canada failed to ensure that an appropriate child welfare program for Aboriginal children was delivered in Manitoba when Canada proceeded to illegitimately delegate its obligations to the Aboriginal child Class Members;

(c) Canada failed to properly monitor and properly oversee the provision of funding it made to Manitoba with respect to the child welfare programs for Aboriginal children, knowing that their operation was in conflict with its fiduciary duty and common law duty of care;

(d) Canada failed to intervene and prevent the provision of child welfare services in consequence of which the Class Members were deprived of their Aboriginal culture and/or identity;

(e) Canada failed to ameliorate the harmful effects of the child welfare services on Aboriginal persons in Manitoba for which it provided funding;

(f) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal children when they were placed in non-Aboriginal homes;

(g) Canada failed to 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;

(h) Canada failed to assure that Aboriginal children would be provided with services that could enable them to be aware of and exercise their treaty and other related rights and benefits as Aboriginal persons during the period of their placement in non-Aboriginal homes;

(i) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal persons and treaty and other related rights and benefits available to them when they left their non-Aboriginal homes or entered their age of majority, failing which the Class Members could not reclaim, or had difficulty reclaiming, their status and concordant benefits;

(j) Canada failed to assure the healthy development, childhood, and family and community life of the vulnerable Aboriginal child Class Members;

(k) Canada failed to consult with Manitoba Indian Bands and other necessary Aboriginal stakeholders in respect of the provision of funding for child welfare practices and policies to Aboriginal children that it knew were in conflict with its duty to protect the cultural identity and treaty and other related status and rights of Aboriginal persons; and

(l) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of cultural assimilation.

21. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada provided funding to Manitoba to ensure that the province's child welfare legislation would extend to Aboriginal children. As Canada knew, the Canada-Manitoba Child Welfare Agreement did not provide protection for the cultural identity and treaty and other related status and rights of vulnerable Aboriginal children within the child welfare system in Manitoba.

22. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiffs and the Class Members.

23. Canada turned a blind eye to the Class Members, when it knew, or reasonably should have known, that the Class Members would thereby individually and collectively lose their cultural identity, lose their protected treaty and other related status and related monetary and non-monetary benefits, and would suffer other harms described herein.

24. The provision of funding through the Canada-Manitoba Child Welfare Agreement did not absolve Canada from the duty to take reasonable steps to prevent vulnerable Aboriginal children from, *inter alia*, losing their Aboriginal cultural identity and treaty and other related status and benefits, as a by-product of the child welfare policies implemented in Manitoba.

THE PLAINTIFFS' EXPERIENCES

25. Priscilla Kim Meeches was born on February 4, 1969, as part of the Long Plain First Nation in Manitoba. She was taken from her birth mother by CAS as a newborn in 1969. She was adopted out to non-Aboriginal parents in Altona, Manitoba as a newborn. Her adoptive parents are listed as her biological parents on her birth certificate. Her adopted name on her birth certificate reads Myrna

Jeannette Schmidt. Her adoptive parents concealed the truth about her adoption from her for all of her adopted life.

26. Ms. Meeches was not raised in respect of her Aboriginal identity, culture, customs and background in any way. The CAS had no contact with her post-adoption. She suffered from a great deal of discrimination growing up in a non-Aboriginal community. She suffered physical abuse at the hands of her adoptive father. She also suffered sexual abuse at the hands of other persons in the community.

27. Ms. Meeches left her adoptive family just prior to her 18th birthday. At that time, she reunited with her biological birth mother who had been searching for her for years and was finally able to locate her through an adoption agency. She was subsequently disowned by her adoptive family and she has no contact with them to this day. However, her time with her birth mother was short-lived, as her birth mother passed away soon after their reunion.

28. Ms. Meeches was deprived of her Aboriginal identity, culture, customs and background, as well as her Aboriginal status and related benefits derived therefrom. She was deprived of her family relationships and has been unable to pass down her Aboriginal identity, culture, customs and background to her five children. She has lived a troubled life, including past time as a prostitute and alcohol and drug addictions. For years, she has struggled with emotional issues, depression, suicidal ideations, anxiety, low self-esteem and abusive relationships.

29. Stewart Gordon Garnett was born on March 19, 1974, as part of the Long Plain First Nation in Manitoba. His birth name was Gerald Myran. He was taken from his birth mother by CAS as a newborn and placed in foster care with non-Aboriginal parents in Brandon, Manitoba, around that

time. He was then adopted out to this same non-Aboriginal family in Brandon, Manitoba, in or about 1975. He moved with his adoptive family to Arkansas, USA, in or about 1984 or 1985. He then moved with his adoptive family to California, USA, in or about 1988 or 1989. His adoptive parents concealed the truth about his adoption from him for all of his adopted life.

30. Mr. Garnett was not raised in respect of his Aboriginal identity, culture, customs and background in any way. He was given no opportunity to learn his native language. His adoptive family was not culturally sensitive to his circumstances. He suffered from a strong sense of alienation growing up in a non-Aboriginal community.

31. Mr. Garnett's birth mother was finally able to locate and contact him in 2001. The CAS did not assist in this matter. The CAS had no contact with him post-adoption.

32. Mr. Garnett was deprived of his Aboriginal identity, culture, customs and background, as well as his Aboriginal status and related benefits derived therefrom. He was deprived of his family relationships. He has never married and has no children. His lack of ability to identify with and engage in his Aboriginal culture and language has proved devastating to him. For years, he has struggled with alcohol issues, emotional issues, and other psychological problems.

DAMAGES SUFFERED BY CLASS MEMBERS

33. As a consequence of the negligence and breach of fiduciary duty by the Defendant and its agents for whom the Defendant is vicariously liable, the Class Members, including the Plaintiffs, suffered injury and damages, including but not limited to:

(a) mental, emotional, and spiritual abuse and suffering;

(b) physical abuse and suffering;

(c) sexual abuse and suffering;

(d) deprivation of Aboriginal culture, customs, traditions, language, and spirituality;

(e) deprivation of Aboriginal identity;

(f) deprivation of status and related monetary and non-monetary benefits for Aboriginal persons;

(g) deprivation of reserve land on which to reside and join an Aboriginal community;

(h) forced cultural assimilation;

(i) deprivation of family and familial relations;

(j) deprivation of a healthy development and childhood;

(k) deprivation of one's ability to pass one's culture and identity on to one's children;

(l) loss of self-esteem and self-worth;

(m) social dysfunctionality and alienation from family, spouses and children;

(n) impaired capacity for employment and to earn income;

(o) the need for psychological, psychiatric and medical treatment as a result of the above; and

(p) pain and suffering

PUNITIVE AND EXEMPLARY DAMAGES

34. The Plaintiffs plead that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread mental, emotional, and physical abuse, or potential therefore, perpetrated upon Class Members that occurred during the Class Period. Despite this knowledge, Canada entered into the Canada-Manitoba Child Welfare Agreement and proceeded to operate under it in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

35. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. Canada breached its fiduciary duties and common law duties of care owed to the Class Members.

36. Over a lengthy period, the Plaintiffs and Class Members were treated in a manner that could only result in aggravated and increased, *inter alia*, mental, emotional, spiritual, and physical suffering for a vulnerable population. The effects of Canada's actions have violated the Class Members' rights and have irreparably altered the paths of their lives.

37. Full particulars respecting Class composition and the effects of the Sixties Scoop on the Class Members are within Canada's knowledge, control and possession.

DISGORGEMENT

38. For decades, on account of the Sixties Scoop in Manitoba, Class Members were deprived of their status and the Aboriginal-related monetary benefits that are concordant with said status. As a

result, the Defendant failed to provide its required services to these Aboriginal persons as compared to that received elsewhere in Canada, where the same fiduciary duty was and is owed by the Defendant to Aboriginal persons. Accordingly, the Defendant should be required to disgorge monetary benefits that it inequitably acquired on account of its breach of fiduciary duty, plus compound interest.

39. The Plaintiffs plead and rely upon the:

(a) *Class Proceedings Act*, C.C.S.M. c. C.130;

(b) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); and

(c) Common law.

40. The Plaintiffs propose that this action be tried in the City of Winnipeg, in the Province of Manitoba.

Date of Issue: April 20, 2016

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3
Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889
Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

TRONIAK LAW OFFICE
1000-444 St. Mary Avenue
Winnipeg, MB R3C 3T1
Dennis M. Troniak
Jonathan A. Troniak
Tel: 204-947-1743
Fax: 204-947-0101

Counsel for the Plaintiffs

THIS IS EXHIBIT "22" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

April 21, 2016

Celeste Poltak
Direct Dial: 416-595-2701
Direct Fax: 416-204-2909
cpoltak@kmlaw.ca

VIA DELIVERY

The Honourable James G. Edmond
Justice of the Court of Queen's Bench
Law Courts Building
226-408 York Avenue
Winnipeg, MB R3C 0P9

Dear Justice Edmond:

Re: **First case management conference scheduled for April 27, 2016 in *Thompson et al. v. Manitoba et al.*, Queen's Bench File No. CI 15-01-94427**

We write to you in your capacity as case management judge in the *Thompson* action and in respect of the first case management conference scheduled to occur before Your Honour in that case on April 27, 2016 at 9 a.m. CDT.

On April 20, 2016, our consortium, which consists of Troniak Law in Winnipeg and Koskie Minsky LLP in Toronto, issued and served its Statement of Claim in *Meeches et al. v. Canada*, Queen's Bench File No. CI 16-01-01540. A copy of this Statement of Claim is attached to this letter. This claim concerns a proposed class action regarding generally the same Manitoba "Sixties Scoop" subject matter as that in the proposed *Thompson* class action.

We wish to advise Your Honour that at the case management conference on April 27, 2016, our consortium plans to raise our intention to bring a carriage motion in respect of these proposed class actions.

Procedural background

On March 13, 2015, the Merchant Law Group ("MLG") issued its Statement of Claim in the proposed *Thompson* class action (File No. CI 15-01-94427). However, Your Honour was not assigned as case management judge to that action until March 2, 2016.

On March 15, 2016, our consortium wrote to Associate Chief Justice Perlmutter of the Manitoba Court of Queen's Bench requesting that we be given notice of any case management dates in the *Thompson* action going forward so that we may make arrangements for our attendance. Briefly, our letter indicated that Troniak Law has been investigating the potential for a class proceeding concerning Sixties Scoop survivors in Manitoba since spring of 2014. It has conducted extensive legal research in this respect, including a Freedom of Information request with the Federal and Manitoba governments, as well as over 75 interviews with potential class members. It was only on March 8, 2016, in preparation for the issuance of our consortium's claim, that we discovered MLG's claim in the *Thompson* action and the very recent assignment of Your Honour as case management judge. We indicated in our March 15 letter that a carriage motion will likely be necessary in respect of the two proposed class actions.

KOSKIE MINSKY

On March 16, 2016, Associate Chief Justice Perlmutter responded indicating that our consortium was permitted to attend and give submissions at the first case management conference before Your Honour. His Honour also requested that all future correspondence concerning these matters be forwarded to Your Honour's attention.

By way of letter dated April 11, 2016, MLG advised all parties, including our consortium, that the first case management date regarding the *Thompson* matter is scheduled to occur on April 27, 2016 at 9 a.m. before Your Honour. On behalf of our consortium, Troniak Law plans to attend in person, with Koskie Minsky attending via conference call, if available, as requested in the letter to Your Honour dated April 20, 2016.

The carriage motion ought to be the first motion heard

At the upcoming April 27, 2016 case management conference, submissions should be heard to set a schedule leading up to a carriage motion.

This Court has broad discretion under sections 12 and 13 of the *Class Proceedings Act*, C.C.S.M., c. C.130 to award carriage and to stay any related proceeding on such terms as it considers appropriate.

In keeping with this Court's precedent and that in the other common law provinces, the carriage motion ought to be the first order of business heard by the Court in a class action, with certification to follow only once the carriage issue has been finally determined.[1] It is impossible for the proposed class action to proceed towards certification and potential resolution for the class, until the case that will proceed, and in effect, the class counsel that will advance it, is determined by the Court.

Our consortium has standing to challenge carriage in these proposed class actions. Unlike in Quebec, but similar to the other common law provinces, there is no "first to file" rule for carriage in class actions in Manitoba. Accordingly, it is not relevant that MLG's *Thompson* claim was issued first.

There is general agreement in common law Canada that carriage motions should serve three objectives: (a) the best interests of the putative class; (b) promotion of the objectives of the *Class Proceedings Act*; and (c) fairness to the defendants.[2] To date, common law provinces have generally employed these qualitatively applicable factors to determine carriage awards:

1. the nature and scope of the causes of action advanced;
2. the theories advanced by counsel as being supportive of the claims advanced;
3. the prospects of certification;
4. the state of each class action, including preparation;
5. the attributes of the proposed representative plaintiffs;
6. the relative priority of commencing the class action;

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[1] For example, see *Grasby v. Merck Frosst Canada Ltd.*, 2007 MBQB 97.

[2] For example, for appellate authority in Canada in this respect, see *Locking v. Armtec Infrastructure Inc.*, 2013 ONSC 331 (Div. Ct.) at paras. 7-9.

KOSKIE MINSKY

7. the resources and experience of counsel;
8. the presence of any conflicts of interest;
9. a costs indemnity and funding;
10. the definition of class membership;
11. the definition of class period;
12. the joinder of defendants;
13. the plaintiff and defendant correlation; and
14. the fee/consortium agreement.[3]

These factors, among others, may be relevant to a potential carriage determination in respect of the two proposed class actions discussed herein.

To facilitate expeditious access to justice for the putative class, many of whom are elderly and vulnerable individuals who have been deprived of their day in court for far too long, and in keeping with the goal of judicial economy in class actions, it is our consortium's position that the hearing of the carriage motion in these matters ought to be expedited, returnable within 60 days of the first case management conference, or sometime during the week of June 20, 2016. We believe that one full day of hearing should be sufficient.

Please contact our consortium should you have any further questions. We will be speaking to these issues further at the upcoming case management conference on April 27.

Yours truly,

KOSKIE MINSKY LLP

Celeste Poltak
CP:ls

cc.

Kirk M. Baert – Koskie Minsky (kmbaert@kmlaw.ca)
Scott Robinson – Koskie Minsky (srobinson@kmlaw.ca)
Jon Troniak, Eric Troniak – Troniak Law (troniaklawoffice@gmail.com)
Roch Dupont – Merchant Law Group (rdupont@merchantlaw.com)
Brad Favel – Justice Canada (brad.favel@justice.gc.ca)
Jim Koch – Manitoba Justice (Jim.Koch@gov.mb.ca)
Sharon Phillips – Trial Coordinator (Sharon.Phillips@gov.mb.ca)

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[3] For example, see *Smith v. Sino-Forest Corp.*, 2012 ONSC 24 at para. 17; *Wilson v. LG Chem Ltd.*, 2014 ONSC 1875 at para. 18.

THIS IS EXHIBIT "23" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

File No. CI16-01-01540

THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE

BETWEEN:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*

File No. CI15-01-94427

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

Proceeding under *The Class Proceedings Act*

ORDER

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889
Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

TRONIAK LAW
1000-444 St. Mary Avenue
Winnipeg, MB R3C 3T1

Dennis M. Troniak
Jonathan A. Troniak
Tel: 204-947-1743
Fax: 204-947-0101

Counsel for the Meeches Plaintiffs

THE QUEEN'S BENCH
WINNIPEG JUDICIAL CENTRE

THE HONOURABLE	)	WEDNESDAY, THE 24TH
	)	
MR. JUSTICE EDMOND	)	DAY OF AUGUST, 2016

Queen's Bench File No. CI 16-01-01540

B E T W E E N:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

-and-

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under *The Class Proceedings Act*

Queen's Bench File No. CI 15-01-94427

B E T W E E N:

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 CANADA

Defendants

Proceeding under *The Class Proceedings Act*

ORDER

THESE MOTIONS, made by the Plaintiffs in Queen's Bench File No. CI-16-01-01540 ("the *Meeches* Action") and Queen's Bench File No. CI-15-01-94427 ("the *Thompson* Action"), were heard on June 17th, 2016 at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba R3C 0P9, with written Reasons having been reserved to this day.

ON READING the *Meeches* Plaintiffs' Notice of Motion (filed May 18, 2016), Motion Brief (filed June 1, 2016), the Affidavit of Jonathan Ptak (sworn May 17, 2016), the Affidavit of Dennis Troniak (sworn May 16, 2016), and the Reply Brief (filed June 15, 2016), and on reading the *Thompson* Plaintiffs' Notices of Motion (filed May 20, 2016 and June 9, 2016), Motion Brief (filed June 2, 2016) and the Affidavits of David Chartrand (sworn May 21, 2015 and May 19, 2016), the Affidavit of Brendon Ralfe (sworn May 19, 2016), the Affidavit of Purlene Halyk (sworn May 18, 2016), the Affidavit of Liesa Covill (sworn May 19, 2016), the Affidavit of Sheila Frieson (sworn May 20, 2016), the Affidavits of Laurie-Ann O'Cheek (declared May 19, 2016 and affirmed June 1, 2016), the Affidavit of Donald Outerbridge (sworn June 1, 2016), the Affidavits of Kari-Lynn Shearer (sworn May 19, 2016 and May 31, 2016), and the Affidavit of Patti Klippenstein (affirmed June 17, 2016), and on reading the Motions Brief filed by the Government of Manitoba (filed June 9, 2016), and on hearing the submissions of counsel for the *Meeches* Plaintiffs, the *Thompson* Plaintiffs, the Defendant the Attorney General of Manitoba and the Defendant the Attorney General of Canada at the hearing on June 17, 2016:

1. **THIS COURT ORDERS** that the *Meeches* Action shall proceed with its counsel, Koskie Minsky LLP and Troniak Law, as the lead counsel in the proposed class proceedings;
2. **THIS COURT ORDERS** that the *Thompson* Action is stayed as a proposed class proceeding;
3. **THIS COURT ORDERS** that no other class action may be commenced in Manitoba in respect of the facts pleaded in the *Meeches* Action without leave of the court;
4. **THIS COURT ORDERS** that leave is granted generally to amend the *Meeches* statement of claim to address the issue that the proposed members of the class ought to include as

many Aboriginal persons affected by the 60's scoop as possible, including the members of the *Thompson* action;

5. **THIS COURT ORDERS** that there shall be no order of costs on these motions.

Date: October 27, 2016.

J. EDMOND
~~Justice James G. Edmond~~
~~Manitoba Court of Queen's Bench~~

APPROVED AS TO FORM:

Per: Kirk Baert/Scott Robinson/Dennis Troniak/Jonathan Troniak
Counsel for the Plaintiffs in *Meeches*

Per: Norman Rosenbaum/Roch Dupont
Counsel for the Plaintiffs in *Thompson*

Per: Jim Koch/Denis Guenette
Counsel for the Defendant the Attorney General of Manitoba

Per: Paul Anderson/Bradley Favel/Joseph Langan
Counsel for the Defendant the Attorney General of Canada

THIS IS EXHIBIT "24" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Date: 20160824
Docket: CI 15-01-94427 and
CI 16-01-01540
(Winnipeg Centre)
Indexed as: Thompson et al. v. Minister of Justice of Manitoba et al.
and Meeches et al. v. The Attorney General of Canada
Cited as: 2016 MBQB 169

COURT OF QUEEN'S BENCH OF MANITOBA

Queen's Bench File No. CI 15-01-94427

BETWEEN:	COUNSEL:
LYNN THOMPSON, DAVID CHARTRAND and LAURIE-ANNE O'CHEEK, Plaintiffs,	Roch Dupont and Norman Rosenbaum, for the Plaintiffs:
- and -	
HER MAJESTY THE QUEEN IN RIGHT OF MANITOBA, AS REPRESENTED BY THE MINISTER OF JUSTICE OF MANITOBA	Jim R. Koch and Denis G. Guénette, for Manitoba Justice
and HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS OF CANADA, Defendants.	Bradley J. Favel and Joseph M. Langan, for the Attorney General of Canada

Queen's Bench File No. CI 16-01-01540

BETWEEN:	
	Kirk M. Baert,
PRISCILLA MEECHES and STEWART GARNETT, Plaintiffs,	Celeste Poltak and Scott Robinson Dennis M. Troniak and Jonathan A. Troniak, for the Plaintiffs
- and -	
	Bradley J. Favel and Joseph M. Langan,
THE ATTORNEY GENERAL OF CANADA, Defendant.	for the Attorney General of Canada
	Judgment delivered: August 24, 2016

EDMOND J.

INTRODUCTION

[1] Multiple plaintiffs have filed statements of claim and both actions have proposed class proceedings in relation to the same subject matter. The competing claims relate to what is commonly or historically referred to as the "60's scoop" in Manitoba. The 60's scoop is in reference to a practice that is alleged to have commenced in the 1960's and continued until the late 1980's or perhaps longer whereby the federal and provincial governments are alleged to have removed Aboriginal children from their birth families and placed them in foster or adoptive homes with non aboriginal parents. The plaintiffs in both actions allege that they suffered injuries due to the alleged breaches of duty by the defendant(s).

[2] In many class action proceedings, the proposed class representatives and legal counsel reach agreement as to how the actions should be advanced in court. Regrettably, that is not always possible and the parties seek redress from the court to determine which proposed class action should proceed and who should have carriage of the proceeding. The primary issue to be determined in this case is which of the plaintiffs and which of the law firms should have carriage of the proposed class proceedings.

[3] By consent of all counsel in the Thompson action (Q.B. File No. CI 15-01-94427) case management was ordered and the first case management conference proceeded on April 27, 2016. Prior to the case management

conference, a request was made by consent of counsel for the parties in the Meeches action (Q.B. File No. CI 16-01-01540) to participate in the case management conference. That request was permitted. At the first case management conference, the parties agreed that the first issue to be determined by the court was which of plaintiffs and their legal counsel should have carriage of the proposed class action proceedings. A scheduling order was made to file materials for a hearing which proceeded on June 17, 2016.

[4] Two motions were filed in the Thompson action. The first motion was filed on May 22, 2016 and instead of seeking carriage of the proposed class proceeding, the plaintiffs seek an order granting leave to the plaintiffs in the Thompson action and the Meeches action to proceed to certification to determine whether one or more class actions may be certified as a class action, and if so, on what terms. Alternatively, the plaintiffs in the Thompson action seek an order granting those plaintiffs leave to proceed to certification and request a stay of the Meeches action.

[5] The plaintiffs in the Meeches action filed a motion on May 18, 2016 seeking an order appointing the counsel group Koskie Minsky LLP and Troniak Law (the consortium) as counsel for the proposed class action against the Attorney General of Canada (Canada) on account of the 60's scoop in Manitoba and an order permanently staying the Thompson action and what is referred to as Thompson action No. 1 filed in 2009 and Thompson action No. 2 filed in 2015. The plaintiffs in the Meeches action also seek a declaration that no other class

action may be commenced in Manitoba against Canada in respect of the facts pleaded in the statement of claim without leave of the court.

[6] The plaintiffs in the Thompson action filed a further notice of motion on June 9, 2016 seeking an order striking the moving party's brief of law in the Meeches action. At the hearing on June 17, 2016, legal counsel for the plaintiffs in the Thompson action confirmed that they abandoned that motion.

BACKGROUND

[7] On April 20, 2009, the plaintiffs issued the first statement of claim in the Thompson action. The statement of claim was amended on February 4, 2011. No steps were taken to proceed to certification in that action. The plaintiffs in the Thompson action allege that the defendants in the Thompson action objected to having a case management judge appointed on the basis that the claim was not properly served. The plaintiffs in the Thompson action filed what they called a "replacement claim" on March 13, 2015. On October 22, 2015, legal counsel in the Thompson action requested that a case management judge be appointed to handle the class proceeding. Perlmutter A.C.J. responded by letter dated October 27, 2015 advising that at that time, case management was primarily a voluntary process. He inquired of counsel whether the other parties were in agreement with case management. He also noted that if the plaintiffs proceeded with the certification motion that the judge assigned to hear the certification motion may also provide case management. Rather than file a certification motion, legal counsel in the Thompson action wrote

Perlmutter A.C.J. again on January 20, 2016. Perlmutter A.C.J. responded by letter dated January 28, 2016 to one of the points made in the letter as follows:

> In item 8 of your letter, you write:
>
> > "In a class action process in all other provinces the motion for certification is filed then a case management judge is appointed then we proceed to set out a certification timetable as we have done in the foster care matter now in case management with yourself."
>
> Indeed, in Manitoba, the process is essentially the same. In the case at hand, the reason a case management judge has not been assigned is because you have not filed the motion for certification, which you, in item 8 of your letter, indicate is in fact also required in other provinces for the purpose of a case management judge being appointed. In the circumstances, the reference to case management being a voluntary process in Manitoba is in cases where there is no motion for certification pending. This describes the current status of this action. That is, you have not filed a motion for certification and therefore, case management remains a voluntary process.
>
> Should you decide to file a motion for certification, thereafter a case management judge will be assigned.

[8] Ultimately, letters were filed with the court in the Thompson action consenting to case management and I was assigned as the case management judge.

[9] The plaintiffs in the Thompson action attempted to file a notice of discontinuance of the first Thompson action and proceed with the replacement claim. The first notice of discontinuance was rejected by registry on February 17, 2015. Ultimately, in June 2016 the first Thompson action was discontinued. For the purposes of this decision I will refer to the Thompson action as the action issued March 13, 2015.

THE PROPOSED CLASS PROCEEDING

[10] The Thompson action defines the class for the proposed class proceeding as follows:

> All Aboriginal persons, including their estates, 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 dependants and family members.

[11] The causes of action identified in the Thompson action include breach of fiduciary duty, negligence, cultural genocide, breaches of the *Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, violations of s. 35(1) of the *Constitution Act*, 1982, contravention of Article 2(e) of the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948)* and alleged crimes against humanity within the meaning of the *Rome Statute of the International Criminal Court* which are alleged to constitute genocide pursuant to the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide*.

[12] The plaintiffs in the Thompson action name both the Province of Manitoba (Manitoba) and Canada as defendants in the action. They seek an order certifying the action as a class proceeding and although the statement of claim names Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek as plaintiffs, a motion seeking certification seeks to designate David Chartrand as the representative plaintiff for the class. The plaintiffs seek general and special damages for the class, "sentimental damages", damages for mental distress,

aggravated damages, exemplary and punitive damages, other damages and prejudgment and post-judgment interest.

[13] The Meeches action relates to the same subject matter as the Thompson action but advances a different approach to the proposed class action. The Meeches action names Canada as the sole defendant and the causes of action are based on breach of fiduciary duty and negligence relating to the alleged "60's Scoop" of Aboriginal children in Manitoba.

[14] The proposed class is defined in the statement of claim (para. 9) as follows:

> The Proposed Class is composed of all Indian, non-status Indian, and/or Métis children who were taken from (a) their homes on reserves lying within the boundaries of the CAS in Manitoba, or (b) resided within the boundaries of the CAS and had not established residence in a place other than a reserve in Manitoba, at or after September 2, 1966, 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.

[15] The plaintiffs in the Meeches action seek an order certifying a class proceeding pursuant to *The Class Proceedings Act*, C.C.S.M., c. C135 (*CPA*) and appointing the named plaintiffs, Priscilla Meeches and Stewart Garnett, as representative plaintiffs for the class. The plaintiffs seek declaratory relief that the defendant breached its fiduciary duties and common law duties of care owed to the plaintiffs and the class and seek damages in the amount of $200 million or such other amount as this court deems appropriate plus punitive damages, prejudgment and post-judgment interest and costs.

CARRIAGE OR CERTIFICATION MOTION HEARD FIRST

[16] Notwithstanding the fact that counsel attending the first case management conference on April 27, 2016 advised that they agreed that the first issue to be determined was a carriage motion, legal counsel in the Thompson action submitted that both proposed class actions ought to proceed to certification and that carriage issues be deferred.

[17] There are numerous authorities across Canada including in Manitoba (***Grasby v. Merck Frosst Canada Ltd.***, 2007 MBQB 97, 216 Man.R. (2d) 117 in which the courts have found that a carriage motion ought to precede certification. See: ***Vitapharm Canada Ltd. v. F. Hoffman-La Roche Ltd.*** (2000), 4 C.P.C. (5th) 169, [2000] O.J. No. 4594 (S.C.J.) (QL); ***Ricardo v. Air Transat A.T. Inc.*** (2002), 21 C.P.C. (5th) 297, [2002] O.J. No. 1090 (S.C.J.) (QL); ***Setterington v. Merck Frosst Canada Ltd.***, [2005] O.J. No. 3818 (S.C.J.) (QL); ***Setterington v. Merck Frosst Canada Ltd.*** (2006), 26 C.P.C. (6th) 173, [2006] O.J. No. 376 (S.C.J.) (QL) and also ***Gorecki v. Canada (Attorney General)*** (2004), 47 C.P.C. (5th) 151, [2004] O.J. No. 1315 (S.C.J.) (QL); ***Genier v. CCI Capital Canada Ltd.*** (2005), 14 C.P.C. (6th) 297, [2005] O.J. No. 1135 (S.C.J.) (QL); ***Nelson v. Merck Frosst Canada Ltd.***, 2006 BCSC 1549, [2006] B.C.J. No. 2736 (QL); ***Joel v. Menu Foods Genpar Ltd.***, 2007 BCSC 1248, [2007] B.C.J. No. 1861 (QL) and **Ward Branch, Class Actions in Canada** (Canada Law Book, Release No. 42, November 2015 at ¶4.1340).

[18] McKelvey J. in the ***Grasby*** case dealt specifically with the jurisdiction of the court to hear a carriage motion and to stay related proposed class proceedings prior to a matter being certified as a class action. After reviewing a number of the authorities noted above and relevant sections of the *CPA* and *The Court of Queen's Bench Act*, C.C.S.M., c. C280 and the Court of Queen's Bench Rules, Man. Reg. 533/88, she concluded as follows:

> 25 I have no difficulty in finding that this Court has inherent jurisdiction to order that a carriage motion proceed prior to certification. The inherent jurisdiction of this Court to control its processes and to manage litigation support this finding, as do ss. 38 and 94 of *The Court of Queen's Bench Act*. Further, the case law evidenced by ***Richard, Setterington, Nelson, Gorecki v. Canada (Attorney-General)***, [2004] O.J. No. 1315, 2004 CarswellOnt 1266 and ***Grenier v. CCI Capital Canada Ltd.***, [2005] O.J. No. 1135, 2005 CarswellOnt 1141 all demonstrate the practice of carriage motions preceding certification. This approach is primarily to streamline the process and speaks to the issue of judicial economy and access to justice. These sections of *The Court of Queen's Bench Act* and the case law support hearing carriage prior to certification in this case. The ordinary rules and the inherent jurisdiction of court are not ousted by virtue of the existence of the *CPA*. Further, this result is in keeping with the spirit of the *CPA* which serves to promote:
>
> (1) resolution of common issues in the best interests of the putative class, while being fair to the defendant;
>
> (2) procedural mechanism for resolving common or overlapping issues in a single proceeding, minimizing duplicative activity and conflicts in a proceeding; and
>
> (3) judicial economy and access to justice which enable class proceedings to be handled in the most just, expeditious and inexpensive means possible.
>
> The Court has jurisdiction to hear carriage prior to certification.

[19] I am satisfied on the basis of my review of the relevant authorities as well as the relevant legislation that the carriage motion should be heard prior to certification of the proposed class proceeding as it is in the best interests of the

putative class, while being fair to the defendants, will avoid multiplicity of proceedings and will serve to secure the just, most expeditious and least expensive determination of the proposed class proceeding.

CARRIAGE MOTION FACTORS

[20] The parties agree that the overriding principle considered by the court in deciding a carriage motion is to determine what is in the best interests of the putative class members having regard to the goals and objectives of the *CPA* and ensuring fairness to the defendant (see ***Vitapharm*** at para. 48 and ***Simmonds v. Armtec Infrastructure Inc.***, 2012 ONSC 44, 35 C.P.C. (7th) 269 at para. 16, aff'd. ***Locking v. Armtec Infrastructure Inc.***, 2013 ONSC 331, 46 C.P.C. (7th) 427 (S.C.J., Div. Ct.) at paras. 7 and 9).

[21] In the ***Vitapharm*** case, Cumming J. set forth a non-exhaustive list of factors to be considered on a carriage motion. He outlined a number of factors to be considered when determining which group and which action should be awarded carriage of a proposed class proceeding including:

- the nature and scope of the causes of action advanced;
- the theories advanced by counsel as being supportive of the claims advanced;
- the state of each class action, including preparation;
- the number, size and extent of involvement of the proposed representative plaintiffs;
- the relative priority of commencing the class actions; and

- the resources and experience of counsel. (***Vitapharm***, at para. 49)

(See: ***Grasby v. Merck Frosst Canada Ltd.***, at para. 9; ***Sharma v. Timminco Ltd.*** (2009), 99 O.R. (3d) 260 (S.C.J.), at para. 17; ***Wilson v. LG Chem Ltd.***, 2014 ONSC 1875, [2014] O.J. No. 1388 (QL), at para. 18.)

[22] In the case of ***Smith v. Sino-Forest Corp.***, 2012 ONSC 24, 34 C.P.C. (7th) 76, Perell J. referred to the factors the courts generally consider on carriage motions and added several more factors that he took into consideration in that case including:

1. Funding,
2. Definition of class membership,
3. Definition of class period,
4. Joinder of defendants,
5. The plaintiff and defendant correlation, and
6. Prospects of certification. (para. 18)

[23] In the ***Setterington*** case ([2006] O.J. No. 376), the court granted carriage of the action to a national consortium of 19 law firms from across Canada. It is important to emphasize that the court stated that the mere fact that the successful counsel had named a greater number of defendants was not a sufficient basis for the preference of one action over another. The court found that the national consortium had greater resources, had put forward evidence of having been contacted by many members of the class and that the competing counsel were in a conflict of interest.

[24] Dealing with the nature and scope of the causes action advanced, Winkler J. in the ***Setterington*** case ([2006] O.J. No. 376) stated:

> 18 Setterington counsel contend that the choice to name defendants in a class action is one that should be left to the proposed representative plaintiffs acting on the advice of experienced counsel. I agree. When the court is asked to choose between proceedings, the analysis must be qualitative rather than quantitative. The mere inclusion of a multitude of defendants is not sufficient to provide a basis for the preference of one action over another. At this stage of the proceeding, the Setterington plaintiffs assert, based on the advice of their counsel, that there is insufficient information to posit a sustainable claim against the Federal Government. That is a permissible exercise of judgment within the purview of a proposed representative plaintiff. Indeed, as held by the Supreme Court of Canada in Rumley v. British Columbia, [2001] 3 S.C.R. 184 (S.C.C.), plaintiffs are entitled to restrict the claims in a class proceeding to make it more amenable to certification. (See Rumley, para. 30; See also Pearson v. Inco, [2005] O.J. No. 4918 (Ont. C.A.)).
>
> 19 In this case, the Setterington plaintiffs provided a sufficient explanation for their decision not to include the Federal Government as a defendant at this stage of the proceeding. The purpose of a carriage motion is not to parse the action finely or overly analyze it for purposes of comparison but rather to scrutinize each for any glaring deficiencies. Here there are different theories underlying the causes of action in the two competing Statements of Claim and each plaintiff group urge that their approach is to be preferred. However, on a carriage motion it is inappropriate for the Court to embark upon an analysis as to which claim is most likely to succeed unless one is "fanciful or frivolous", to adopt the words of Rady J. in Gorecki. Contrary to the submissions of the Walsh plaintiffs, I see none of these defects in the Setterington action.

[25] In ***Locking v. Armtec Infrastructure***, the Ontario Divisional Court dealt with the appellant's argument that the motion judge erred in parsing the action too finely and assessing the merits of the actions. The Divisional Court stated:

> 25 It is always preferable on a carriage motion to avoid any analysis of the merits of including or excluding a particular claim or defence and the strategy of counsel in doing so. However, it is apparent from reviewing the authorities that some carriage motions are incapable of being resolved by merely considering whether claims have "glaring deficiencies" or can be said to be "frivolous." Sometimes it is necessary for the motion judge to conduct a more detailed and nuanced analysis, because there is no other way to properly distinguish between the actions

> and choose the proceeding that is in the best interests of the class. That does not mean that in doing so that motion judge has departed from the test established in *Setterington*, or the principles underlying that decision. We do not consider those cases that have undertaken such an analysis to have adopted a different test. Neither are we of the view that the motion judge in this case adopted a different test. Both the test he identified and the approach he took were fully consistent with *Setterington.*

[26] In ***Joel v. Menu Foods Genpar Ltd.***, 2007 BCSC 1482, [2007] B.C.J. No. 2159 (QL), the British Columbia Supreme Court considered the theories advanced in each of the competing claims and determined that the court is entitled to take into account how such theories affect the likelihood of certification. In that case the court found that "less is more" and concluded that a more narrowly construed claim against fewer defendants maximized the likelihood of certification of the proposed class action and facilitated the expeditious prosecution of the claims of the proposed class members (para. 83).

[27] I agree with the submission of counsel in the Thompson action that the focus of the court on a carriage motion is which action is in the best interests of the proposed class as opposed to what has been referred to as a "beauty pageant" between the rival law firms who describe their current talents and past accomplishments. (See: ***Sharma*** and ***Mancinelli v. Barrick Gold Corp.***, 2014 ONSC 6516, 124 O.R. (3d) 145; aff'd. 2015 ONSC 2717, 126 O.R. (3d) 296 (Div. Ct.).)

ANALYSIS AND DECISION

[28] The overriding principle to be applied in carriage motions is to determine the best interests of the putative class members having regard to the objectives of the *CPA* and fairness to the defendants.

[29] In this case the competing law firms have extensive experience in prosecuting class action claims. In the various authorities that were included in the books of authorities filed by the parties there is often very little difference between the proposed law firms and the proposed representative plaintiffs. In arriving at my decision, I considered all of the factors enunciated by Cumming J. in ***Vitapharm*** as well as other decisions noted above. I placed particular emphasis on a number of relevant factors which I will review below.

Nature and Scope of Causes of Action Advanced and Theories Advanced by Counsel as Being Supportive of the Claims

[30] One significant difference between the two proposed class proceedings is that the Meeches action names only Canada as a defendant and the Thompson action names both Canada and Manitoba as defendants. The other major difference is the number of causes of action that are alleged in the two proposed class actions. The Meeches action advances a cause of action based on breach of fiduciary duty and negligence. The various causes of action proposed in the Thompson action were outlined above and include causes of action which are novel and potentially problematic. For example, claims for cultural genocide, crimes against humanity, breaches of the *Rome Statute* and breaches of the *United Nations Convention on the Prevention and Punishment of the Crime of Genocide* are causes of action which are questionable and will probably be met with a motion to strike by the defendants in the Thompson action. That will undoubtedly result in additional cost and further delay in the Thompson action

proceeding and in my view, not serve to secure the just, most expeditious and least expensive determination of the proposed class proceeding.

[31] The authorities noted above establish that the analysis that should be undertaken when the court is asked to choose between proceedings must be undertaken on a qualitative rather than a quantitative basis.

[32] Applying these principles without making any determination as to which claim is most likely to succeed, I am concerned that some of the potential causes of action advanced in the Thompson action may be, as pointed out by the consortium, "frivolous or doomed to failure on their face".

[33] In my view, the causes of action advanced in the Meeches action are based on fiduciary duty and negligence, causes of action that are known at law and have been established in other cases. One only need examine the various decisions in ***Brown v. Canada (Attorney General)***, 2010 ONSC 3095, 94 C.P.C. (6th) 276; 2011 ONSC 1193, [2011] O.J. No. 940 (Div. Ct.) (QL); 2011 ONSC 7712, 31 C.P.C. (7th) 410 (Div. Ct.); 2013 ONCA 18, 31 C.P.C. (7th) 156; 2013 ONSC 5637, 45 C.P.C. (7th) 186; 2014 ONSC 1583, [2014] O.J. No. 1128 (Div. Ct.) (QL); and 2014 ONSC 6967, 60 C.P.C. (7th) 229 (Div. Ct.) to appreciate the problems associated with analyzing the causes of action relating to the 60's scoop. The Brown case dealt with similar proposed class proceedings in Ontario and the court reviewed deficiencies that were identified in the proposed causes of action at certification hearings. Ultimately, a class action was certified in

Ontario against Canada based on causes of action of breach of fiduciary duty and negligence.

[34] It is clear that the purpose of a carriage motion is not to overly analyze the causes of action, but on the basis of my review of the nature and scope of the causes of action advanced in both actions, it is my opinion that the best interests of the putative class members while ensuring fairness to the defendants favours the approach adopted in the Meeches action. In my view, proceeding with the Meeches action would more likely secure the just, most expeditious and least expensive determination of the potential class proceeding on its merits.

[35] The plaintiffs in the Thompson action submit that the Meeches action is defective in that it relies on the Canada-Manitoba Child Welfare Agreement dated September 2, 1966 between Canada and Manitoba as the basis for framing the class. The plaintiffs in the Thompson action submit that the agreement should not be arbitrarily chosen as the date for framing the proposed class. They submit that the operational wrongdoing originates with the *1951 Indian Act* amendment which resulted in Manitoba using its Child Welfare laws to apprehend and place class members for adoption. They submit that the theory advanced by the plaintiffs in the Meeches action is "fundamentally flawed".

[36] Further, the plaintiffs in the Thompson action submit that the Meeches action is flawed in that it only names Canada as a defendant. The Thompson action plaintiffs submit that Manitoba is a proper party responsible for the implementation of the plan of apprehending children of Aboriginal peoples in

Canada from their families and placing them in foster homes or adoption with non-Aboriginal parents.

[37] I am not satisfied that the class proposed by the plaintiffs in the Meeches action is fundamentally flawed or intended to exclude Aboriginals residing in Manitoba who may have a cause of action. The purpose of the carriage motion, as pointed out above, is not to overanalyze matters that will be reviewed in more detail at the time of certification. One issue that will require close scrutiny at the certification hearing is the proposed class definition.

[38] I agree with the plaintiffs in the Thompson action that there may be a cause of action against Manitoba. However, the possible cause of action based on the manner in which Manitoba implemented the placement of Aboriginal children during the relevant time is difficult to discern on a review of the statement of claim in the Thompson action. Although I am not making a determination on the issue at this stage, I have concern that the possible cause of action alleged against Manitoba based on an alleged fiduciary duty owed by Manitoba and an alleged breach of that duty are vague and not clearly pled. It is not the court's function to embark upon a detailed analysis as to whether a claim is likely to succeed at this stage. Instead, the overriding principle is to determine what is in the best interests of the putative class members having regard to the objectives of the *CPA* and ensuring fairness to the defendants.

[39] As noted in the ***Setterington*** decision ([2006] O.J. No. 376), the mere inclusion of more defendants is not sufficient to provide a basis for the preference of one potential class proceeding over another.

[40] In terms of the theories advanced by counsel as being supportive of the claims, I conclude that in "less is more" and a more narrowly construed claim against fewer defendants will increase the likelihood of certification and facilitate the expeditious prosecution of the claims of the proposed class members. I accept that the Meeches action is the preferred approach.

[41] I am not satisfied that if the Thompson action is stayed that the plaintiffs in that action and the proposed members of any class would be left without a claim. Those are issues that will be scrutinized in greater detail at the certification motion when the court reviews the proposed class definition, the representative plaintiffs for the class, the nature of the claims asserted, the common issues for the proposed class, the manner in which and the time within which a class member may opt out of the proceeding and whether the proposed class proceeding requires amendment before the proceeding is certified. (See sections 8 and 9 of *CPA.*)

The State of Each Respective Action, Including Preparation

[42] The plaintiffs in both actions and their legal counsel claim that a significant amount of work has been done to proceed with the proposed class proceedings. The consortium has entered into an agreement with regard to the division of work, time and effort and disbursements to prosecute the Meeches

action. Since filing the statement of claim on April 20, 2016, the affidavit of Jonathan Ptak affirmed May 17, 2016 (Ptak affidavit) provides that Koskie Minsky LLP's communication department has received and responded to enquiries from approximately 30 putative class members. As well, co-counsel in the consortium, Troniak Law, has advised that they have formally interviewed 103 putative class members and have been in communication with several hundred more putative class members.

[43] In the Thompson action, numerous affidavits have been filed by the plaintiffs and other putative class members. The plaintiffs in the Thompson action rely upon an affidavit sworn by Liesa Covill sworn May 19, 2016. At para. 3 of her affidavit, Ms. Covill swears that Merchant Law Group (MLG) and support staff "have created numerous questionnaires, notes, and other memorandum *(sic)* in paper form respecting their communications with the class members." She states Roch Dupont alone has docketed 459 hours interviewing "victims", 130 hours interviewing "plaintiffs" and 63 hours drafting or reviewing questionnaires. Her affidavit also refers to class members sending in volumes of factual documents to MLG which are summarized in her affidavit. Her affidavit further references the fact that MLG has contacted and retained experts including Trace DeMeyer.

[44] On May 5, 2016, the plaintiffs in the Thompson action filed a notice of motion seeking certification of the Thompson action as a class proceeding pursuant to the *CPA*. In support of that notice of motion an affidavit of David

Chartrand sworn May 21, 2015 was filed. Although that notice of motion was shown as being returnable on June 17, 2016, the motion for certification did not proceed. That motion was adjourned and submissions were received on the carriage motion filed by the plaintiffs in both actions in accordance with the direction made at the first case management conference.

[45] The plaintiffs in the Thompson action allege that they are ready to proceed to certification whereas the plaintiffs in the Meeches action are not. In my view, both actions are close to the same stage and I consider these factors to be neutral. However, the fact that the first Thompson action was filed in 2009 and no steps were taken to pursue that claim in a timely manner is cause for some concern. The plaintiffs in both actions are now arguing that these claims are urgent and must proceed expeditiously. I am not satisfied that MLG has moved in a timely manner with the first Thompson action or the second Thompson action.

[46] Section 2(3) of the *CPA* provides that a motion seeking certification is to be made within 90 days after the close of pleadings or with leave of the court at any other time. No certification motion was filed until May 5, 2016. There was nothing preventing the plaintiffs in the Thompson action from filing a notice of motion seeking certification much earlier than May 2016. The delay in proceeding with a motion for certification is not in the best interests of the putative class members and is inconsistent with the requirements of the *CPA*. I am also not satisfied that MLG has provided a reasonable explanation for the

delays in proceeding with the motion for certification. That is a factor that I took into account in determining which group should have carriage of the proposed class proceeding.

[47] Once this decision is released, timelines will be set to expedite hearing a motion for certification.

The Number, Size and Extent of Involvement of the Proposed Representative Plaintiffs

[48] The proposed representative plaintiff in the Thompson action is David Chartrand. Mr. Chartrand describes himself as an active member of the Aboriginal community and having a commitment to the advancement of Aboriginal people's welfare. There is no question that he is a strong advocate for Métis and Aboriginal people and has had significant involvement working with MLG respecting the proposed class proceeding.

[49] The proposed representative plaintiffs in the Meeches action are Priscilla Meeches and Stewart Garnett. Although neither of the plaintiffs have yet to swear an affidavit in the Meeches action the statement of claim describes the plaintiffs' experiences in paragraphs 25 to 32.

[50] The Ptak affidavit attaches as Exhibits A and B the contingency retainer agreements entered into with the plaintiffs in the Meeches action. The retainer agreements describe the plaintiffs' involvement and obligation to act in the best interests of the class as defined in the retainer agreement.

[51] In my view, the proposed representative plaintiffs in both the Thompson action and the Meeches action may be suitable representative plaintiffs in the

proposed class action proceeding. Although more evidence could have been filed in the Meeches action regarding the involvement of the proposed plaintiffs there is nothing to indicate that the plaintiffs in the Meeches action would do anything other than fairly and adequately represent the interests of the proposed class. No distinction of significance can be drawn on the basis of the record that has been filed, and I consider this to be a neutral factor.

Relative Priority of Commencing the Class Actions

[52] There is no question that the Thompson action was commenced prior to the Meeches action. The Province of Quebec is the only province in Canada that has adopted a "first to file" rule. Courts in Ontario and in most jurisdictions across Canada have rejected that rule. Accordingly, I did not give much, if any, weight to the fact that the Thompson actions were filed prior to filing the Meeches action. The fact that the Thompson actions were filed prior to the Meeches action and no steps were taken by those plaintiffs to seek certification in a timely manner, as noted above, worked as a negative factor for MLG in deciding the carriage motion.

The Resources and Experience of Counsel

[53] Both the consortium and MLG have considerable experience prosecuting class proceedings. There is no doubt that they both have experience, resources and expertise as class counsel. The consortium stated specifically at page 20 of their motions brief as follows:

> (a) the KMT Consortium has collectively acted in more than 100 class proceedings, including many of the leading Crown liability or Aboriginal law-related class actions;

(b) the KMT Consortium experience concerns not only the first mandatory step of certification, but considerable common issues trial experience as well, having prosecuted four (4) common issues trials and brought two (2) to the doorsteps of trial;

(c) in the last eight (8) months alone (or since November 2015), the KMT Consortium has recovered some $112 million on behalf of its client class members in just three (3) actions;

(d) the KMT Consortium has over 50 lawyers between them, nine (9) of which are specifically dedicated to a class proceedings plaintiffs' side practice, plus a sophisticated communications department which is essential to properly service class members' requests for assistance; and

(e) the KMT Consortium is a long time stakeholder in litigation concerning Aboriginal persons, including individual residential schools claims, having resolved the claims of over 1,000 survivors.

[54] I agree with the plaintiffs in the Thompson action that the focus on a carriage motion should not boil down to a "beauty pageant" between competing or rival law firms. That said, MLG submits that because it has 12 offices across Canada with more than 100 support staff that it will be better able to coordinate the class that resides across the country. As well, they have numerous lawyers who devote a significant amount of their time to class actions. MLG also submits that it has extensive experience advancing claims of Aboriginal persons. They submit that they represented 15,043 Indian Residential School clients.

[55] I was not impressed by the numerous references and/or complaints in the motions material filed in both actions about the opposing law firms' weaknesses or alleged misconduct in other proceedings. The focus should not amount to an exercise of what I will refer to as mudslinging at opposing counsel, as such practice, in my view, is unbecoming professional conduct. The focus should

always be on the resources and experience of proposed counsel to act in the best interests of the putative class.

[56] On the basis of my review of all of the affidavit evidence filed, both the consortium and MLG have the resources and experience to act as counsel in class proceedings. It is always a difficult task for the court where, unfortunately, counsel have not agreed to cooperate in the carriage of the action, to choose the group that will best serve the interests of the putative class. The selection of lead counsel must not only serve the best interests of the putative class but must also serve the policy objectives of the *CPA* and ensure fairness to the defendant or defendants. Although I considered this case to be a close call, in my opinion, the knowledge, expertise, experience and resources of the consortium tips the balance slightly in their favour.

Proposed Class Definition and Prospects of Certification

[57] Submissions were advanced by the plaintiffs in both actions regarding the proposed class definitions. The time to consider whether the pleadings disclose a cause of action, whether there is an identifiable class, whether the claims raise a common issue and whether there is a person who is prepared to act as a representative plaintiff is prescribed in s. 4 of the *CPA*. On a certification motion in accordance with s. 5(1) of the *CPA*, "[T]he court may adjourn the motion for certification to permit the parties to amend their materials or pleadings, or to permit further evidence to be filed." It is also important to emphasize that in accordance with s. 5(2) of the *CPA*, "[A]n order certifying a proceeding as a class

proceeding is not a determination of the merits" of the claim. The class definition will be considered when the certification motion proceeds.

[58] This is not the first case being heard across Canada proposing a class action relating to the 60's scoop. The Ontario courts have certified a class proceeding in the ***Brown*** action. The experience in the ***Brown*** case, although not binding in this court, will certainly be persuasive in terms of the manner in which the class proceeding, if certified, will proceed in Manitoba.

[59] I accept that the Meeches action as framed is more consistent with the approach certified as a class proceeding in the ***Brown*** case than the Thompson action. In my view, the Meeches action has a greater prospect of being certified than the Thompson action. A number of the causes of action proposed in the Thompson action, as noted above, will add needless complexity and advancing them will not serve to secure the just, most expeditious and least expensive determination of the proposed class proceeding.

CONCLUSION

[60] Taking all of the considerations set out above into account, in my view, the appropriate exercise of my discretion is to permit the Meeches action to proceed with its counsel as the lead counsel in the proposed class proceedings. The selection of the Meeches action and the consortium to act as lead counsel will, in my opinion, best serve the interests of the putative class and the policy objectives of the *CPA*. Lead counsel should frame their motion for certification to ensure that all proposed members of the class will include the members of the

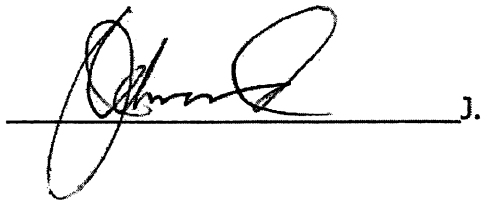
Thompson action. As stated at the hearing, I would have expected legal counsel to cooperate in a manner that would best serve the interests of the putative class. I encourage that process to continue.

[61] I am not satisfied that permitting both the Meeches action and the Thompson action to proceed to a certification hearing would serve the best interests of the proposed class and meet the objectives of the *CPA*. In my view, granting such an order will unnecessarily complicate the process, may cause one of the defendants to file motions to strike, probably delay the matter proceeding to certification and would not be in the best interests of the putative class.

[62] Accordingly, I make the following additional orders:

1. The Thompson action is stayed as a proposed class action proceeding;
2. A declaration is granted that no other proposed class action may be commenced in Manitoba in respect of the facts pleaded in the Meeches action without leave of the court;
3. Leave is granted generally to amend the Meeches statement of claim to address the issue that the proposed members of the class ought to include as many Aboriginal persons affected by the 60's scoop as possible, including the members of the Thompson action; and
4. There shall be no order of costs on the carriage motions.

[63] The consortium is directed to contact the trial coordinator to set a date for the next case management conference to be held as soon as is reasonably possible.



J.

THIS IS EXHIBIT "25" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Court of Appeal File No. AI16-30-08675
Court of Queen's Bench File No. CI15-01-94427

IN THE COURT OF APPEAL

BETWEEN :

LYNN THOMPSON, DAVID CHARTRAND and LAURIE-ANNE O'CHEEK,

(Plaintiffs) Appellants,

- 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) Respondents.

NOTICE OF APPEAL

MERCHANT LAW GROUP
100-93 Lombard Avenue
Winnipeg, Manitoba
R3B 3B1

S. NORMAN ROSENBAUM
Telephone:(204) 982-0800
Facsimile:(204) 982-0771
nrosenbaum@merchantlaw.com

File No. _____
QB File No. CI-15-01-94427

BETWEEN:

LYNN THOMPSON, DAVID CHARTRAND and
LAURIE-ANNE O'CHEEK
(Plaintiffs) Appellants

- 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) Respondents

NOTICE OF APPEAL

TAKE NOTICE that a motion will be made on behalf of the plaintiffs Lynn Thompson, David Chartrand, and Laurie-Anne O'Cheek before the Court of Appeal, as soon as the motion can be heard, by way of appeal from the judgment of the Honourable Mr. Justice Edmond of the Court of Queen's Bench, Winnipeg Centre, pronounced on the 24th day of August, 2016 and not yet filed, whereby the learned judge did order:

1. That the within action be stayed as a proposed class action proceeding;

2. That a declaration is granted that no other proposed class action may be commenced in Manitoba in respect of the facts pled in the *Meeches* action (QB File No. CI 16-01-01540) without leave of the Court;

3. That leave is granted generally to amend the *Meeches* statement of claim to address the issue that the proposed members of the class ought to include as many Aboriginal persons affected by the 60's scoop as possible, including the members of the Thompson action; and,

4. There shall be no order of costs on the carriage motions.

On the appeal, the Court will be asked to set aside the said judgment of the Honourable Mr. Justice Edmond and order that carriage be awarded to the plaintiffs in the *Thompson* action, with no

order for costs, or alternatively that both proposed class actions be permitted to proceed, on the following grounds:

1. The Learned Chambers Judge erred at law by adjudicating carriage on the basis of pleadings *as they could be amended*, rather than on the basis of the record *as was before the Court* (e.g. para. 60).

2. The Learned Chambers Judge erred at law in first, undertaking, as a part of the carriage analysis, a merits-based assessment of which causes of action were more likely to *succeed* at certification or trial, and second, concluding that "a more narrowly construed claim against fewer defendants will increase the likelihood of certification" (para. 40).

3. The Learned Chambers Judge erred at law in staying the *Thompson* action in circumstances where certain putative class members in the *Thompson* action[1] are *not* class

[1] These excluded class members include *inter alia* all those Métis and Aboriginal persons who did not reside on an Indian reserve and to whom the federal government would not have owed the same duty of care.

members in the *Meeches* action and thus have no possibility of recovering by way of the *Meeches* action absent future amendments thereto.

4. The Learned Chambers Judge erred at law by relying solely on the *pleadings* – which are not evidence – in the *Meeches* action to establish the suitability of Priscilla Meeches and Stewart Garrett as representative plaintiffs.

5. The Learned Chambers Judge erred at law in taking "fairness to the defendant or defendants" into account when determining carriage, where the *sole* concern ought to have been the best interests of the proposed classes.

6. The Learned Chambers Judge erred by holding that certification criteria (including class definition, cause of action, etc.) were to be weighed only *at certification* (para. 57), and then, inconsistently, weighing the viability of those causes of action in advance of certification (para. 58).

7. The Learned Chambers Judge erred in law in adjudicating carriage *first* rather than deferring determination of carriage until the conclusion of or as a part of the certification hearings in the *Thompson* and *Meeches* actions.

Has a transcript of the evidence with respect to the judgment appealed from been ordered from transcription services?

[ ] Yes [ ] No [X] Not applicable

DATED this 8th day of September, 2016.

MERCHANT LAW GROUP LLP
100-93 Lombard Avenue
Winnipeg, Manitoba R3B 3B1
Norman Rosenbaum
Tel: 204-896-7777
Fax: 204-982-0771
nrosenbaum@merchantlaw.com

Counsel for the Plaintiffs

TO: **MANITOBA COURT OF APPEAL**
Attn: Registrar, Court of Appeal
Law Courts Building
100E - 408 York Avenue
Winnipeg MB R3C 0P9

AND TO: **TRONIAK LAW OFFICE / KOSKIE MINSKY**
1000-444 St. Mary Avenue
Winnipeg MB R3C 3T1

Dennis M. Troniak
Tel: (204) 947-1743
Fax: (204) 947-0101

Counsel for the plaintiffs in *Meeches v The Attorney General of Canada*, CI-16-01-01540

AND TO: **MANITOBA JUSTICE (LEGAL SERVICES BRANCH)**
730 – 405 Broadway
Winnipeg MB R3C 3L6

Jim R. Koch
Tel: (204) 945-2218
Fax: (204) 524 2829

Counsel for the Defendant, Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba

AND TO: **DEPARTMENT OF JUSTICE CANADA**
(PRAIRIE REGION)
301 – 310 Broadway
Winnipeg MB R3C 0S6

Brad Favel
Tel: (204) 983-0336
Fax: (204) 984-5910

Counsel for the Defendant, Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs of Canada

IN THE COURT OF APPEAL
RULE 112

NOTICE OF INTENT TO EXERCISE LANGUAGE RIGHT

The attached document begins a proceeding in the Court of Appeal. Your rights may be affected in the course of the proceeding. You have a right to use either the English or the French language even where the attached document is in the other language, but in order to exercise your right you are required within 21 days of service of this document on you to file with the registrar of the court a notice of your intention to do so and to leave with the registrar an address for service. If you file such a notice, you will be notified, in the language indicated in your notice, of further stages in the proceeding by registered mail addressed to your address for service. If you do not file a notice of your intention to exercise your right, the appeal will continue in the language of the attached document. The time limited for your filing of notice may be enlarged or abridged at any time by order of a judge made on application in either English or French.

Registrar
Manitoba Court of Appeal
Room 100E Law Courts Building
408 York Avenue
Winnipeg, MB R3C OP9

COUR D'APPEL
RÉGLE 112

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Le document ci-joint constitue un document introductif d'instance devant la Cour d'appel. Les procédures dans l'instance pourront porter atteinte à vos droits. Vous avez le droit d'utiliser l'anglais ou le français aux différentes étapes de l'instance même lorsque le document ci-joint est rédigé dans l'autre langue. Si vous désirez exercer votre droit d'utiliser l'une or l'autre langue, vous devez, dans les 21 jours de la signification qui vous est faite de ce document, déposer auprès du registraire de la Cour d'appel un avis à cette fin et lui indiquer un domicile élu aux fins de signification. Si vous déposez cet avis, vous serez avisé(e) des procédures subséquentes par lettre recommandée envoyé à votre domicile élu aux fins de signification, dans la langue que vous aurez indiquée dans l'avis. Si vous ne déposer pas un avis de votre intention d'exercer votre droit, toutes les procédures subséquentes en appel se dérouleront dans la même langue que celle du document ci-joint. Suite à une demande présentée en anglais ou en français, le juge peut, en tout temps, par ordonnance, proroger ou abréger le délai prescrit pour le dépôt de l'avis.

Registraire
Cour d'appel du Manitoba
Palais de justice
408, avenue York, pièce 100E
Winnipeg, MB
R3C OP9

THIS IS EXHIBIT "26" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

COURT OF QUEEN'S BENCH OF MANITOBA
WINNIPEG CENTRE

CASE MANAGEMENT CONFERENCE MEMORANDUM (NO. 2)

PRELIMINARY MATTERS

Between:

(Q.B. File No. CI 15-01-94427)

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.

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C130

Between:

(Q.B. File No. CI 16-01-01540)

PRISCILLA MEECHES and STEWART GARNETT,

Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,

Defendant.

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C130

Date:	October 3, 2016, at 9 a.m. (by teleconference)
Presiding Judge:	Mr. Justice J.G. Edmond

Counsel for Plaintiffs Thompson, Chartrand, and O'Cheek:
Norman Rosenbaum
(Merchant Law Group LLP
Winnipeg, Manitoba)

Counsel for Plaintiffs Meeches and Garnett:
Celeste Poltak
Scott Robinson
(Koskie Minsky LLP
900 - 20 Queen Street West
Toronto ON M5H 3R3)

Dennis M. Troniak
(Troniak Law
Winnipeg, Manitoba)

Counsel for the Attorney General of Canada:
Bradley J. Favel
Paul R. Anderson
(Department of Justice Canada
Winnipeg, Manitoba)

Counsel for Manitoba Justice:
Denis G. Guénette
(Manitoba Justice
Legal Services Branch
Winnipeg, Manitoba)

STATUS

1. Counsel for the parties in both actions made submissions regarding the form of order to be filed regarding the Court's reasons for decision delivered August 24, 2016. After hearing submissions it was determined that the orders granted should be consistent with the wording of the orders referred to in paragraph 62 of the reasons for decision. Counsel for the plaintiffs in the Meeches action undertook to circulate a final draft of the order for approval as to form and file the order as soon as possible.

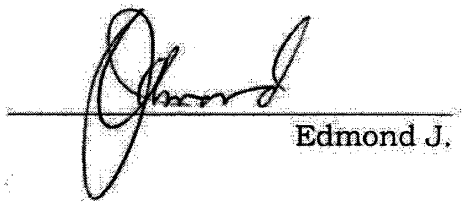
2. Counsel for the plaintiffs in the Meeches action proposed a timetable to proceed to a certification hearing. It was proposed that the plaintiffs deliver and file a notice of motion seeking certification together with affidavit material and a brief ***on or before December 15, 2016***. Canada will respond ***on or before March 15, 2017***. The proposal was that the certification hearing would proceed ***in June 2017***.

3. If the carriage motion appeal is not heard by the Court of Appeal prior to March 15, 2016 additional time may be required.

4. At this point, while the parties did not oppose attempting to proceed with a motion for certification in June of 2017, Canada wanted an opportunity to review the amended statement of claim and seek instructions.

5. The amended statement of claim is to be circulated ***within two weeks*** and filed ***on or before October 31, 2016***.

6. The case management conference was adjourned to ***November 15, 2016 at 9:00 a.m.*** At that time, the parties will be in a better position to discuss the timetable to proceed to the certification hearing.

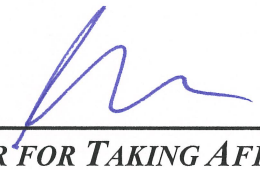


Edmond J.

JGE/ij

Copies of this case management conference memorandum have been forwarded to counsel on October 6, 2016. If there are any errors, omissions or corrections, counsel are to advise immediately.

THIS IS EXHIBIT "27" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

File No. CI 16-01-01540

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C.130

AMENDED STATEMENT OF CLAIM

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889
Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

TRONIAK LAW OFFICE
1000-444 St. Mary Avenue
Winnipeg, MB R3C 3T1

Dennis M. Troniak
Jonathan A. Troniak
Tel: 204-947-1743
Fax: 204-947-0101

mended this 27th day of Oct
) 16th on requisition dated the 25th
ay of October 2016

DEPUTY REGISTRAR

R. DAVID
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA

THE QUEEN'S BENCH
Winnipeg Centre

B E T W E E N:

PRISCILLA MEECHES AND STEWART GARNETT

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under
The Class Proceedings Act, C.C.S.M. c. C.130

AMENDED 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 in 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 TWENTY 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 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.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750.00 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 plaintiff's claim and $750.00 for costs and have the costs assessed by the court.

April 20, 2016
Date

Signed by: T. SUNSTRUM
Deputy Registrar
100C - 408 York Avenue
Winnipeg, Manitoba R3C 0P9

To: **THE ATTORNEY GENERAL OF CANADA**
510 - 405 Broadway
Winnipeg, MB R3C 3L6

CLAIM

1. The Plaintiffs claim:

(a) An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiffs as Representative Plaintiffs for the Class;

(b) A declaration that the Defendant breached its fiduciary duties to the Plaintiffs and the Class by reason of the events described in this action;

(c) A declaration that the Defendant breached its common law duties of care owed to the Plaintiffs and the Class by reason of the events described in this action;

(d) Damages for breach of fiduciary duty and negligence in the amount of $200 million or any such amount that this Honourable Court deems appropriate;

(e) Punitive damages in the amount of $50 million;

(f) Pre-judgment and post-judgment interest pursuant to the *Court of Queen's Bench Act*, C.C.S.M. c. C280;

(g) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;

(h) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 33 of the *Class Proceedings Act*; and

(i) Such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The term "Sixties Scoop" refers to the Canadian practice, generally beginning in the 1960s and continuing until the late 1980s or early 1990s, of taking ("scooping up") children of Aboriginal peoples in Canada from their families for placing in foster homes or adoption with non-Aboriginal parent(s).

3. As a result, these "scooped" children lost their identity as Aboriginal persons and suffered, *inter alia*, mentally, emotionally, spiritually, and physically. They were deprived of their status and other Aboriginal-related monetary benefits under the *Indian Act* and related legislation and policies, which the Defendant then retained on account of the scoop. Aboriginal communities describe the Sixties Scoop as destructive to their culture.

4. In Manitoba, this practice was largely dictated by the Canada-Manitoba Child Welfare Agreement, a bilateral agreement executed on September 2, 1966 between Canada and the Province of Manitoba. Under this Agreement, Children's Aid Societies ("CAS") in Manitoba scooped Aboriginal children from their homes for foster placement in, and/or adoption with, non-Aboriginal homes. In exchange, Canada reimbursed Manitoba for per diem costs of providing these services for Aboriginal children in Manitoba.

5. By virtue of this practice in Manitoba, the Defendant (or "Canada") breached its fiduciary duties and common law duties of care that it owed to the vulnerable, child, Aboriginal Plaintiffs and Class Members throughout the applicable Class Period.

THE PARTIES

6. The proposed Representative Plaintiffs on behalf of the Class are Priscilla Meeches and Stewart Garnett. Ms. Meeches was born on February 4, 1969, as a member of the Long Plain First Nation in Manitoba. She was taken from her birth mother by CAS and adopted out to non-Aboriginal parents as a newborn. Mr. Garnett was born on March 19, 1974, as a member of the Long Plain First Nation in Manitoba. He was taken from his birth mother by CAS as a newborn, placed in foster care with non-Aboriginal parents, and then adopted out to non-Aboriginal parents in or about 1975.

7. The Plaintiffs both reside in Manitoba and have suffered the consequences of the Defendant's breach of fiduciary obligation and common law duty of care.

8. The Defendant, the Attorney General of Canada, represents Her Majesty the Queen in Right of Canada.

THE CLASS

9. The Proposed Class is composed of: (1) all Indian, non-status Indian, and/or Métis children who were taken from (a) their homes on reserves lying within the boundaries of the CAS in Manitoba, or (b) resided within the boundaries of the CAS and had not established residence in a place other than a reserve in Manitoba, at or after September 2, 1966, 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; and/or (2) all Indian, non-status Indian, and/or Métis children who were taken from within the boundaries of reserves in Manitoba, or outside thereof, 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.

CANADA'S FIDUCIARY DUTY TO THE CLASS MEMBERS

10. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal peoples in Canada.

11. The Defendant has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 91(24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

12. By virtue of its constitutional obligations, the Defendant has an ongoing obligation of consultation on matters relevant to Aboriginal interests. There is an expressed and implied undertaking by Canada to protect the best interests of Aboriginal persons at all times.

13. Moreover, the Defendant's fiduciary duty is compounded even further by the fact that the Class Members were vulnerable Aboriginal children when taken from their Aboriginal homes, and accordingly, by virtue of entering into the Canada-Manitoba Child Welfare Agreement, the Defendant assumed even further responsibility for the supply of all the necessities of life to Class Members, *in loco parentis*, during the Class Period.

14. Canada's constitutional obligations, in conjunction with the *Indian Act* and related legislation and policies, the common law, and the honour of the Crown, 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, which is fundamental to the security, welfare and survival of Aboriginal persons, as well as to safeguard their benefits derived from their rightful status as Aboriginals.

15. The Defendant's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued notwithstanding the Canada-Manitoba Child Welfare Agreement.

CANADA'S COMMON LAW DUTY OF CARE TO THE CLASS MEMBERS

16. The Defendant owes a duty of care to all Class Members. By virtue of, *inter alia*, the Canada-Manitoba Child Welfare Agreement, Canada created, planned, established, operated, financed, supervised, controlled and regulated the provision of child welfare services in Manitoba to the Aboriginal child Class Members.

17. Canada knew or ought to have known of the impropriety of policies in respect of Aboriginal children under the Canada-Manitoba Child Welfare Agreement, and the negligent operation of such policies, including the failure to ensure that the child welfare programs were administered appropriately to Aboriginal children, such as by adoption and/or permanent foster care in non-Aboriginal homes, failing which might foreseeably cause harms to the Aboriginal Class Members. This is especially so given that the persons affected were, by nature, vulnerable children.

18. Proximity between the Defendant and the Aboriginal Class Members is supplemented further by the acknowledged fiduciary duty in existence between them in respect of specific interests. Moreover, Canada assumed an obligation towards Aboriginal peoples regarding the provision of Manitoba child welfare programs to them by virtue of the Canada-Manitoba Child Welfare Agreement.

19. A duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act to the receiver.

CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS

20. During the Class Period, the Defendant breached its fiduciary duty and/or common law duty of care by the following acts or omissions, including but not limited to:

(a) Canada illegitimately delegated its non-delegable duties in respect of the vulnerable Aboriginal child Class Members;

(b) Canada failed to ensure that an appropriate child welfare program for Aboriginal children was delivered in Manitoba when Canada proceeded to illegitimately delegate its obligations to the Aboriginal child Class Members;

(c) Canada failed to properly monitor and properly oversee the provision of funding it made to Manitoba with respect to the child welfare programs for Aboriginal children, knowing that their operation was in conflict with its fiduciary duty and common law duty of care;

(d) Canada failed to intervene and prevent the provision of child welfare services in consequence of which the Class Members were deprived of their Aboriginal culture and/or identity;

(e) Canada failed to ameliorate the harmful effects of the child welfare services on Aboriginal persons in Manitoba for which it provided funding;

(f) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal children when they were placed in non-Aboriginal homes;

(g) Canada failed to 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;

(h) Canada failed to assure that Aboriginal children would be provided with services that could enable them to be aware of and exercise their treaty and other related rights and benefits as Aboriginal persons during the period of their placement in non-Aboriginal homes;

(i) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal persons and treaty and other related rights and benefits available to them when they left their non-Aboriginal homes or entered their age of majority, failing which the Class Members could not reclaim, or had difficulty reclaiming, their status and concordant benefits;

(j) Canada failed to assure the healthy development, childhood, and family and community life of the vulnerable Aboriginal child Class Members;

(k) Canada failed to consult with Manitoba Indian Bands and other necessary Aboriginal stakeholders in respect of the provision of funding for child welfare practices and policies to Aboriginal children that it knew were in conflict with its duty to protect the cultural identity and treaty and other related status and rights of Aboriginal persons; and

(l) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of cultural assimilation.

21. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada provided funding to Manitoba to ensure that the province's child welfare legislation would extend to Aboriginal children. As Canada knew, the Canada-Manitoba Child Welfare Agreement did not provide protection for the cultural identity and treaty and other related status and rights of vulnerable Aboriginal children within the child welfare system in Manitoba.

22. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiffs and the Class Members.

23. Canada turned a blind eye to the Class Members, when it knew, or reasonably should have known, that the Class Members would thereby individually and collectively lose their cultural identity, lose their protected treaty and other related status and related monetary and non-monetary benefits, and would suffer other harms described herein.

24. The provision of funding through the Canada-Manitoba Child Welfare Agreement did not absolve Canada from the duty to take reasonable steps to prevent vulnerable Aboriginal children from, *inter alia*, losing their Aboriginal cultural identity and treaty and other related status and benefits, as a by-product of the child welfare policies implemented in Manitoba.

THE PLAINTIFFS' EXPERIENCES

25. Priscilla Kim Meeches was born on February 4, 1969, as part of the Long Plain First Nation in Manitoba. She was taken from her birth mother by CAS as a newborn in 1969. She was adopted out to non-Aboriginal parents in Altona, Manitoba as a newborn. Her adoptive parents are listed as her biological parents on her birth certificate. Her adopted name on her birth certificate reads Myrna

Jeannette Schmidt. Her adoptive parents concealed the truth about her adoption from her for all of her adopted life.

26. Ms. Meeches was not raised in respect of her Aboriginal identity, culture, customs and background in any way. The CAS had no contact with her post-adoption. She suffered from a great deal of discrimination growing up in a non-Aboriginal community. She suffered physical abuse at the hands of her adoptive father. She also suffered sexual abuse at the hands of other persons in the community.

27. Ms. Meeches left her adoptive family just prior to her 18th birthday. At that time, she reunited with her biological birth mother who had been searching for her for years and was finally able to locate her through an adoption agency. She was subsequently disowned by her adoptive family and she has no contact with them to this day. However, her time with her birth mother was short-lived, as her birth mother passed away soon after their reunion.

28. Ms. Meeches was deprived of her Aboriginal identity, culture, customs and background, as well as her Aboriginal status and related benefits derived therefrom. She was deprived of her family relationships and has been unable to pass down her Aboriginal identity, culture, customs and background to her five children. ~~She has lived a troubled life, including past time as a prostitute and alcohol and drug addictions.~~ For years, she has struggled with emotional issues, depression, suicidal ideations, anxiety, low self-esteem and abusive relationships.

29. Stewart Gordon Garnett was born on March 19, 1974, as part of the Long Plain First Nation in Manitoba. His birth name was Gerald Myran. He was taken from his birth mother by CAS as a newborn and placed in foster care with non-Aboriginal parents in Brandon, Manitoba, around that

time. He was then adopted out to this same non-Aboriginal family in Brandon, Manitoba, in or about 1975. He moved with his adoptive family to Arkansas, USA, in or about 1984 or 1985. He then moved with his adoptive family to California, USA, in or about 1988 or 1989. ~~His adoptive parents concealed the truth about his adoption from him for all of his adopted life.~~

30. Mr. Garnett was not raised in respect of his Aboriginal identity, culture, customs and background in any way. He was given no opportunity to learn his native language. His adoptive family was not culturally sensitive to his circumstances. He suffered from a strong sense of alienation growing up in a non-Aboriginal community.

31. Mr. Garnett's birth mother was finally able to locate and contact him in 2001. The CAS did not assist in this matter. The CAS had no contact with him post-adoption.

32. Mr. Garnett was deprived of his Aboriginal identity, culture, customs and background, as well as his Aboriginal status and related benefits derived therefrom. He was deprived of his family relationships. He has never married and has no children. His lack of ability to identify with and engage in his Aboriginal culture and language has proved devastating to him. For years, he has struggled with alcohol issues, emotional issues, and other psychological problems.

DAMAGES SUFFERED BY CLASS MEMBERS

33. As a consequence of the negligence and breach of fiduciary duty by the Defendant and its agents for whom the Defendant is vicariously liable, the Class Members, including the Plaintiffs, suffered injury and damages, including but not limited to:

(a) mental, emotional, and spiritual abuse and suffering;

(b) physical abuse and suffering;

(c) sexual abuse and suffering;

(d) deprivation of Aboriginal culture, customs, traditions, language, and spirituality;

(e) deprivation of Aboriginal identity;

(f) deprivation of status and related monetary and non-monetary benefits for Aboriginal persons;

(g) deprivation of reserve land on which to reside and join an Aboriginal community;

(h) forced cultural assimilation;

(i) deprivation of family and familial relations;

(j) deprivation of a healthy development and childhood;

(k) deprivation of one's ability to pass one's culture and identity on to one's children;

(l) loss of self-esteem and self-worth;

(m) social dysfunctionality and alienation from family, spouses and children;

(n) impaired capacity for employment and to earn income;

(o) the need for psychological, psychiatric and medical treatment as a result of the above; and

(p) pain and suffering

PUNITIVE AND EXEMPLARY DAMAGES

34. The Plaintiffs plead that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread mental, emotional, and physical abuse, or potential therefore, perpetrated upon Class Members that occurred during the Class Period. Despite this knowledge, Canada entered into the Canada-Manitoba Child Welfare Agreement and proceeded to operate under it in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

35. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. Canada breached its fiduciary duties and common law duties of care owed to the Class Members.

36. Over a lengthy period, the Plaintiffs and Class Members were treated in a manner that could only result in aggravated and increased, *inter alia*, mental, emotional, spiritual, and physical suffering for a vulnerable population. The effects of Canada's actions have violated the Class Members' rights and have irreparably altered the paths of their lives.

37. Full particulars respecting Class composition and the effects of the Sixties Scoop on the Class Members are within Canada's knowledge, control and possession.

DISGORGEMENT

38. For decades, on account of the Sixties Scoop in Manitoba, Class Members were deprived of their status and the Aboriginal-related monetary benefits that are concordant with said status. As a

result, the Defendant failed to provide its required services to these Aboriginal persons as compared to that received elsewhere in Canada, where the same fiduciary duty was and is owed by the Defendant to Aboriginal persons. Accordingly, the Defendant should be required to disgorge monetary benefits that it inequitably acquired on account of its breach of fiduciary duty, plus compound interest.

39. The Plaintiffs plead and rely upon the:

(a) *Class Proceedings Act*, C.C.S.M. c. C.130;

(b) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); and

(c) Common law.

40. The Plaintiffs propose that this action be tried in the City of Winnipeg, in the Province of Manitoba.

Date of Issue: April 20, 2016

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3
Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889
Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

TRONIAK LAW OFFICE
1000-444 St. Mary Avenue
Winnipeg, MB R3C 3T1
Dennis M. Troniak
Jonathan A. Troniak
Tel: 204-947-1743
Fax: 204-947-0101

Counsel for the Plaintiffs

THIS IS EXHIBIT "28" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

COURT OF QUEEN'S BENCH OF MANITOBA
WINNIPEG CENTRE

CASE MANAGEMENT CONFERENCE MEMORANDUM (NO. 3)

PRELIMINARY MATTERS

Between:

(Q.B. File No. CI 15-01-94427)

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.

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C130

Between:

(Q.B. File No. CI 16-01-01540)

PRISCILLA MEECHES and STEWART GARNETT,

Plaintiffs,

- and -

THE ATTORNEY GENERAL OF CANADA,

Defendant.

Proceeding under *The Class Proceedings Act*, C.C.S.M. c. C130

Date:	November 15, 2016, at 9 a.m.
Presiding Judge:	Mr. Justice J.G. Edmond

Counsel for Plaintiffs Thompson, Chartrand, and O'Cheek:
Norman Rosenbaum
(Merchant Law Group LLP
Winnipeg, Manitoba)

Counsel for Plaintiffs Meeches and Garnett:
Celeste Poltak
Scott Robinson
(Koskie Minsky LLP
900 - 20 Queen Street West
Toronto ON M5H 3R3)
[participated by teleconference]

Jonathan A. Troniak
(Troniak Law
Winnipeg, Manitoba)
[participated by teleconference]

Counsel for the Attorney General of Canada:
Paul R. Anderson
(Department of Justice Canada
Winnipeg, Manitoba)

Counsel for Manitoba Justice:
Jim R. Koch
(Manitoba Justice
Legal Services Branch
Winnipeg, Manitoba)

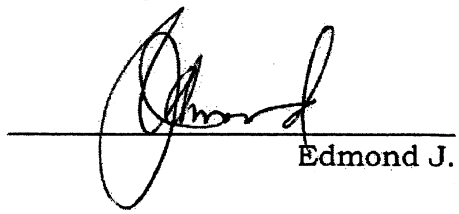
STATUS

1. Counsel for the plaintiffs in the Meeches action submitted a proposed certification timetable which was reviewed at the case management conference. The proposed certification timetable is attached to this memorandum. Counsel for Canada confirmed that the timetable has been approved subject to a caveat that the appeal by the plaintiffs in the Thompson action will be determined by the end of January 2017. The case management judge was advised that the appeal will be heard ***on January 23, 2017.*** There was a discussion about the likelihood of reasons for decision being delivered ***by the end of January 2017.***

2. All counsel agreed that the schedule may have to be revised slightly depending on when the Manitoba Court of Appeal releases its decision on the carriage motion appeal.

3. Counsel for the plaintiffs undertook to schedule the next case management conference as soon as the reasons for decision of the Court of Appeal have been released.

4. The certification motion was scheduled to proceed ***on December 5 to 7, 2017***. Depending upon the decision of the Court of Appeal on the carriage motion those dates may have to be revisited. That issue will be addressed at the next case management conference.



Edmond J.

JGE/ij

Copies of this case management conference memorandum have been forwarded to counsel on November 16, 2016. If there are any errors, omissions or corrections, counsel are to advise immediately.

PROPOSED CERTIFICATION TIMETABLE

Remaining step to be completed	By which party	Date completed by:
Statement of Defence	Defendant	N/A
Certification Motion Materials	Plaintiffs	Jan. 31, 2017
Responding Motion Materials	Defendant	May 31, 2017
Reply Motion Materials	Plaintiffs	June 30, 2017
Cross-examination to be completed by		July 31, 2017
Certification Factum	Plaintiffs	Sept. 15, 2017
Responding Factum	Defendant	Oct. 31, 2017
Reply Factum	Plaintiffs	Nov. 15, 2017
Return of the Motion		Nov/Dec 2017 (3 days)

THIS IS EXHIBIT "29" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Citation: Thompson et al v Minister of Justice of Manitoba et al; Meeches et al v The Attorney General of Canada, 2017 MBCA 71

Date: 20170721
Docket: AI16-30-08675

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre

BETWEEN:

PRISCILLA MEECHES and STEWART GARNETT	
(Plaintiffs) Respondents	***S. N. Rosenbaum*** *and* ***A. Tibbs*** *for the Appellants*
- and -	
THE ATTORNEY GENERAL OF CANADA	***K. M. Baert*** *and* ***C. B. Poltak***
(Defendant) Respondent	*for the Respondents P. Meeches and S. Garnett*
- and -	
BETWEEN:	*No appearance ✓ for the Respondent the Attorney General of Canada*
LYNN THOMPSON, DAVID CHARTRAND and LAURIE-ANNE O'CHEEK	
(Plaintiffs) Appellants	***D. G. Guénette*** *and* ***J. R. Koch*** *for the Respondents Her Majesty the Queen in Right of Manitoba and Her Majesty the Queen in Right of Canada*
- 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	*Appeal heard:* ***January 23, 2017*** *Judgment delivered:* ***July 21, 2017***
(Defendants) Respondents	

On appeal from 2016 MBQB 169

LEMAISTRE JA

Introduction

[1] A practice commonly known as "the 60's scoop" involved removing Aboriginal children from their families and placing them with non-Aboriginal parents. These "children" now wish to claim for damages arising from that practice by way of a class action.

[2] This case is about who should have carriage of the proposed class action. The appellants appeal the decision of the motion judge to stay their action (the Thompson action) in favour of another proposed class proceeding (the Meeches action).

Background

[3] On April 20, 2009, Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek, the plaintiffs in the Thompson action, commenced an action seeking damages from Her Majesty the Queen in Right of Manitoba, as Represented by the Minister of Justice of Manitoba (Manitoba) and Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indian and Northern Affairs of Canada (Canada). They proposed a class proceeding pursuant to *The Class Proceedings Act*, CCSM c C130 (*CPA*) to compensate the putative class members for loss of identity, family, community and culture and for abuse, denigration and humiliation.

[4] On February 4, 2011, they filed an amended claim and on March 13, 2015, they commenced a second action which they called a

replacement claim to correct an issue with service on the defendants. The action commenced in 2009 was eventually discontinued.

[5] The proposed class definition in the Thompson action is as follows:

> All Aboriginal persons . . . 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 dependants and family members, any other subclasses that this Court finds appropriate.

[6] The named defendants in the Thompson action are Manitoba and Canada, and the causes of action include breach of fiduciary duty, negligence and cultural genocide.

[7] A case management conference was scheduled for April 27, 2016, with the consent of the parties to the Thompson action.

[8] On April 20, 2016, Priscilla Meeches and Stewart Garnett, the plaintiffs in the Meeches action, filed a separate claim against the Attorney General of Canada (AG) seeking damages for similar losses. They obtained permission to participate in the case management conference.

[9] The proposed class definition in the Meeches action is as follows:

> [A]ll Indian, non-status Indian, and/or Metis children who were taken from (a) their homes on reserves lying within the boundaries of the [Children's Aid Societies] in Manitoba, or (b) resided within the boundaries of the [Children's Aid Societies] and had not established residence in a place other than a reserve in Manitoba, at or after September 2, 1966, 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.

[10] The only named defendant in the Meeches action is the AG, and the causes of action are breach of fiduciary duty and negligence.

[11] At the case management conference, all parties to both actions agreed that the first step in the process towards certification of a class action ought to be a motion to determine which plaintiffs and corresponding law firms should have carriage of the proposed class proceedings (the carriage motion).

[12] Notwithstanding that agreement, the plaintiffs in the Thompson action filed a motion seeking leave to proceed to certification in order to determine whether one or more class actions could be certified as a class action and, in the alternative, a stay of the Meeches action. The plaintiffs in the Meeches action filed a motion seeking an order appointing their lawyers as counsel for the proposed class action, a stay of the Thompson action and a declaration that no other similar class action may be commenced in Manitoba without leave of the court. These motions were heard together at the carriage motion.

[13] At the carriage motion, the motion judge considered a number of factors and ultimately concluded that the Meeches action would "best serve the interests of the putative class and the policy objectives of the *CPA*" (at para 60). Accordingly, the motion judge ordered:

1. that the Meeches action shall proceed with its counsel, Koskie Minsky LLP and Troniak Law, as the lead counsel in the proposed class proceedings;

2. that the Thompson action is stayed as a proposed class proceeding;

3. that no other class action may be commenced in Manitoba in respect of the facts pleaded in the Meeches action without leave of the court;

4. that leave is granted generally to amend the Meeches statement of claim to address the issue that the proposed members of the class ought to include as many Aboriginal persons affected by the 60's scoop as possible, including the members of the Thompson action; and

5. that there shall be no order of costs on these motions.

[14] The plaintiffs in the Thompson action seek to set aside the motion judge's order and seek an order for carriage in their favour or, alternatively, an order permitting both proposed class actions to proceed. Their grounds of appeal are that the motion judge erred:

1. by adjudicating carriage on the basis of pleadings as they could be amended, rather than on the basis of the record;

2. by undertaking a merit-based assessment of which causes of action would be more likely to succeed at certification or trial and by concluding that, "a more narrowly construed claim against fewer defendants will increase the likelihood of certification" (at para 40);

3. by staying the Thompson action when some of the putative

class members will be excluded as class members in the Meeches action;

4. by relying solely on the pleadings to establish the suitability of the representative plaintiffs in the Meeches action;

5. by taking fairness to the defendants into account;

6. by weighing certification criteria on the carriage motion after finding that these criteria were only to be considered at the certification hearing; and

7. by determining carriage prior to the certification hearing.

[15] Leave to appeal is required to appeal an order certifying, or refusing to certify, a proceeding as a class proceeding (see section 36(4) of the *CPA*). The *CPA* is silent about carriage motions, which are interlocutory motions. The plaintiffs in the Meeches action filed a motion to quash the appeal on the basis that the order under appeal is interlocutory in nature and does not meet the test for leave. This motion was, in my view, properly withdrawn at the hearing. Leave to appeal an interlocutory motion is not required in Manitoba. This appeal is governed by section 89 of *The Court of Queen's Bench Act*, CCSM c C280 (*QBA*) which permits this Court to set aside or vary an order made by the Court of Queen's Bench unless prohibited by statute.

[16] For the reasons that follow, I would dismiss the appeal.

Carriage Motions

[17] The factors to be considered by a judge on a carriage motion were

not disputed. This Court has previously considered class proceedings, but has never considered a carriage motion.

Background

[18] Class action legislation is procedural in nature and allows mass claims to be tried efficiently without creating new substantive rights. See, for instance, *Bisaillon v Concordia University*, 2006 SCC 19 at paras 17-22; *Hollick v Toronto (City)*, 2001 SCC 68 at paras 14-15; and *Hislop v Canada (Attorney General)*, 2009 ONCA 354 at para 57, leave to appeal to SCC refused, 2009 CarswellOnt 6639.

[19] In *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46; *Hollick*; and *Rumley v British Columbia*, 2001 SCC 69, McLachlin CJC reviewed the history and purpose of class proceedings and reiterated the three objectives previously articulated by the Ontario Law Reform Commission: judicial economy, increased access to the courts and modification of the behaviour of actual or potential wrongdoers. See Ontario Law Reform Commission, *Report on Class Actions*, vol 1 (Toronto: Ministry of the Attorney General, 1982) at 117.

Carriage before Certification

[20] Interestingly, the *CPA* is silent on the matter of carriage motions. Section 1 defines a class proceeding as a proceeding that has already been certified. Nevertheless, courts in Manitoba, British Columbia and Ontario have found that class proceedings legislation applies to carriage motions which proceed prior to certification. The courts in Manitoba and British Columbia have agreed that, while technically the legislation does not confer jurisdiction to stay an action pre-certification, it does not remove the

inherent jurisdiction of the court to control its own process. See *Setterington v Merck Frosst Canada Ltd*, 2006 CarswellOnt 506 (Sup Ct J); *Grasby et al v Merck Frosst Canada Ltd et al*; *Hamilton et al v Merck Frosst Canada Ltd et al*; *Rogers et al v Merck Frosst Canada Ltd et al*, 2007 MBQB 97; *Nelson v Merck*; *Harry et al v Merck*, 2006 BCSC 1549; *Joel v Menu Foods Genpar Limited*, 2007 BCSC 1248; and *Whiting v Menu Foods Operating Ltd*, 2007 CarswellOnt 6726 (Sup Ct J).

Applicability of the CPA to Carriage Motions

[21] Courts have also found that sections 12 and 13 of the *CPA*, in addition to court rules and inherent jurisdiction, provide authority for the court to decide carriage motions before an action has been certified as a class proceeding:

> **Court may determine conduct of proceeding**
> **12** The court may at any time make any order that it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.
>
> **Court may stay proceeding**
> **13** The court may at any time stay or sever a proceeding related to the class proceeding on terms the court considers appropriate.

[22] In *Grasby*, for instance, McKelvey J found that, "while the *CPA* does not specifically deal with the issue of pre-certification proceedings, the reason behind the legislation nonetheless lends itself to its applicability to such motions" (at para 16). She agreed that, "[t]he goal of the *CPA* is one of judicial economy and access to justice and should result in cases being handled in the most just, expeditious and inexpensive means possible"

(*ibid*), and she held that these goals encompass pre-certification matters. See also *Briones v National Money Mart Company et al*, 2016 MBQB 213 at para 7.

[23] Notwithstanding that the principles and objectives of the *CPA* support such proceedings, the Court in *Grasby* also cited sections 38 and 94 of the *QBA*, as well as rr 1.04(1) and 6.01 of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, in addition to the Court's inherent jurisdiction, as providing jurisdiction to order a carriage motion to proceed prior to certification (see paras 21-24). See also *Nelson*; *Murray v Alberta (Calgary Health Region)*, 2007 ABQB 231; and *VitaPharm Canada Ltd v F Hoffmann-LaRoche Ltd*, 2000 CarswellOnt 4681 (Sup Ct J), wherein similarly worded legislation was interpreted in the same fashion.

Carriage Factors

[24] The parties agreed that *VitaPharm* is the leading case regarding factors to be considered on a carriage motion. The Court in *VitaPharm* held that it is important to be mindful of the policy objectives of class proceedings legislation when considering carriage and that the "main criterion" for determining carriage is "what resolution is in the best interests of all putative class members while at the same time fair to the defendants" (at para 48). Drawing largely upon American jurisprudence and Herbert B Newberg & Alba Conte, *Newberg on Class Actions*, 3rd ed (Shepard's/McGraw-Hill, 1992), the Court enumerated the following factors to be considered in determining carriage (at para 49):

(i) the nature and scope of the causes of action advanced;

(ii) the theories advanced by counsel;

(iii) the state of each class action, including preparation;

(iv) the number, size and extent of involvement of the proposed representative plaintiffs;

(v) the relative priority of commencing the class action (i.e. filing date); and

(vi) the resources and experience of counsel.

[25] Courts in Ontario have consistently followed the *VitaPharm* factors. See *Gorecki v Canada (Attorney General)*, 2004 CarswellOnt 1266 (Sup Ct J); *Genier v CCI Capital Canada Ltd*, 2005 CarswellOnt 1141 (Sup Ct J); and *Locking v Armtec Infrastructure*, 2013 ONSC 331.

[26] In *Mancinelli v Barrick Gold Corporation*, 2016 ONCA 571, Strathy CJO, writing for the Court, recently affirmed *VitaPharm* as the seminal carriage decision and reiterated the main criteria for determination: the policy objectives of the *CPA* (access to justice, judicial economy and behaviour modification of defendants), the best interests of all putative class members and fairness to the defendants (see para 13). He confirmed the six factors from *VitaPharm* as being factors for consideration, but described the list as non-exhaustive and found that other factors may be relevant depending on the circumstances (see para 17).

[27] Courts in Ontario have considered additional factors deemed relevant to the circumstances: funding, the definition of class membership, the definition of class period, joinder of defendants, the plaintiff and defendant correlation, the prospect of certification, the prospect of success against the defendants and the inter-relationship of class actions in more than one jurisdiction. See *Smith v Sino-Forest Corporation*, 2012 ONSC 24; and *Kowalyshyn v Valeant Pharmaceuticals International, Inc*, 2016 ONSC

3819. Recently, there has been a trend of downplaying the factors relating to counsel and of focussing more on the nature and scope of the causes of action. See *Sharma v Timminco Ltd*, 2009 CarswellOnt 6583 (Sup Ct J) and *Smith*.

[28] The *VitaPharm* factors have been applied in carriage decisions in Saskatchewan, Manitoba and British Columbia. See *Grasby* and *Richard v British Columbia*; *AW and DW (Litigation Guardian of) v British Columbia*, 2004 BCCA 337, where the British Columbia Court of Appeal accepted the *VitaPharm* factors as "useful considerations" (at para 21). Saskatchewan has also commented favourably on the additional factors referred to in *Kowalyshyn*. The courts in Newfoundland and Labrador have adjudicated carriage motion disputes on a factor-based approach but have not yet explicitly endorsed the *VitaPharm* factors. See, for example, *Pardy et al v Bayer Inc-Class Actions Act*, 2003 NLSCTD 109 at paras 12-13.

[29] I would endorse the *VitaPharm* approach, as expanded in *Smith* and explained in *Setterington*, *Locking* and *Joel* which, in my view, best serves the policy objectives of the *CPA*.

The Motion Judge's Decision

[30] The motion judge considered the overriding principles (the policy objectives of the *CPA*, the best interests of all putative class members and fairness to the defendants) and the *VitaPharm* factors to determine who should have carriage of the proposed class proceedings. He considered the differences in the proposed class definitions between the two actions and found that the proposed class in the Meeches action was not "fundamentally flawed" (at para 37), as argued by the plaintiffs in the Thompson action, nor

did it intentionally exclude others with a potential claim regarding "the 60's scoop". The motion judge was aware that proposed members of the Thompson class could potentially be excluded from the proposed class proceedings because the definition of the proposed class members in the Meeches action is narrower. However, he examined the requirements for certification in section 4 of the *CPA*, and he noted that the issue of class definition will be considered more carefully at the certification hearing.

[31] The motion judge also considered the differences in the causes of action and the defendants named in the two claims. He found that the Thompson action includes a number of causes of action, some of which were "novel and potentially problematic" and which would "not serve to secure the just, most expeditious and least expensive determination of the proposed class proceeding" (at para 30). The motion judge preferred the theory of the Meeches claim because of its narrower focus and its fewer defendants. The motion judge was of the view that the prospects for certification of the Meeches action were greater than the Thompson action because of its narrower focus and because it was based on an action which had already been certified in Ontario. After conducting a qualitative analysis, the motion judge determined that, "the best interests of the putative class members while ensuring fairness to the defendants favours the approach adopted in the Meeches action" (at para 34).

[32] The motion judge addressed the suitability of the proposed representative plaintiffs in both actions and found this to be a neutral factor in his analysis. He also considered the work done in each of the two actions and determined that both actions were at relatively the same state of preparation. However, the motion judge expressed concern about the

seven-year delay from the time the first Thompson action was filed in 2009 until the request for a case management conference was made in 2016. He found that there was no reasonable explanation for the delay and that the delay was "not in the best interests of the putative class members and [was] inconsistent with the requirements of the *CPA*" (at para 46).

[33] The motion judge gave little, if any, weight to the fact that the Thompson action was filed before the Meeches action, particularly in light of the failure to advance the Thompson action in a timely manner. Finally, he found that, "the knowledge, expertise, experience and resources of [counsel for the Meeches action] tips the balance slightly in their favour" (at para 56).

Positions of the Parties

Position of the Plaintiffs in the Thompson Action

[34] The plaintiffs in the Thompson action argue that the motion judge determined that the class definition in the Meeches action was deficient (as evidenced by the order granting leave to amend the statement of claim to include as many persons as possible) and that he erred by considering how the pleadings could be amended to broaden the class, rather than on the basis of the record. They also argue that the class definition in the Meeches action is too narrow and that it is incapable of being expanded to include all of the members of the putative class in the Thompson action.

[35] They assert that the motion judge went too far in assessing the merits of each cause of action and that a "simpler and leaner" claim is not a basis to prefer the Meeches action.

[36] Finally, the plaintiffs in the Thompson action submit that the motion judge improperly relied on the statement of claim in the absence of any evidence regarding the suitability of the plaintiffs in the Meeches action as representative plaintiffs when deciding the motion; that he should not have determined carriage prior to the certification hearing; and that he erred by taking fairness to the defendants into account and by weighing criteria relevant to certification on the carriage motion.

Position of the Plaintiffs in the Meeches Action

[37] The plaintiffs in the Meeches action argue that the decision of the motion judge is a highly discretionary decision in the case management context and that it is entitled to considerable deference, particularly in this case where the law and the factors governing a carriage motion were not in dispute. They argue that the motion judge properly applied the two over-arching considerations of the best interests of the class and fairness to the defendants and ultimately decided the carriage motion on the basis of the key factors relevant to these proceedings.

Positions of Canada and Manitoba

[38] Canada did not submit argument at the appeal.

[39] Manitoba argues that the motion judge did not commit palpable and overriding error in determining the issue of carriage prior to certification.

Standard of Review

[40] The decision of the motion judge granting carriage of the action to

the plaintiffs in the Thompson action involved a weighing and balancing of factors and the management of the proceedings and is, therefore, a discretionary decision. Such a discretionary decision is entitled to deference unless the motion judge erred in principle by misdirecting himself on the law or the facts or his decision was so clearly wrong as to amount to an injustice. See *Perth Services Ltd v Quinton et al*, 2009 MBCA 81 at paras 22-28; and *Soldier v Canada (Attorney General)*, 2009 MBCA 12 at paras 24-25.

[41] The parties agree that the motion judge considered the correct law. The issue on appeal is whether the motion judge committed palpable and overriding error in the application of the law to the facts, in weighing the applicable factors, or whether the decision was so clearly wrong as to amount to an injustice.

Analysis

[42] The motion judge reviewed both proposed class proceedings including the class definitions, the causes of action and the remedies sought. He considered the applicable legislation and case law and found that determining the carriage motion prior to certification was in the best interests of the putative class, fair to the defendants and consistent with the policy objectives of the *CPA* of access to justice and judicial economy.

[43] The motion judge relied on the *VitaPharm* factors, as expanded in *Smith* and explained in *Setterington*, *Locking* and *Joel*. He found that the nature and scope of the causes of action, the case theories, the state of each action including the seven-year delay in the Thompson action, the resources and experience of counsel and the prospects of certification, when considered in the context of the overriding principle of determining what is

in the best interests of the putative class members having regard to the policy objectives of the *CPA* and fairness to the defendants, favoured granting carriage to the Meeches action (see paras 20, 28, 34, 38, 56). He also found that allowing both actions to proceed to a certification hearing would "unnecessarily complicate the process . . . and would not be in the best interests of the putative class" (at para 61).

[44] In reaching these conclusions, the motion judge considered the Ontario Superior Court decision in *Brown v Canada (Attorney General)*, 2013 ONSC 5637, where a more focussed claim, similar to the Meeches claim, was certified and the certification order was upheld on appeal. See *Brown v Canada (Attorney General)*, 2014 ONSC 6967.

[45] While the plaintiffs in the Thompson action allege that the motion judge erred, in my view, they have not demonstrated any error in principle or palpable and overriding error that would allow this Court to intervene, nor have they demonstrated that the order is unjust. There are, however, three grounds of appeal which warrant further comment.

1. Exclusion of Class Members

[46] The primary focus of the argument of the plaintiffs in the Thompson action was protection of the class. The motion judge's order prevents the plaintiffs in the Thompson action from advancing a class proceeding on the facts pled in the Meeches action without leave. The plaintiffs in the Thompson action argue that the class in the Meeches action is too narrow because it focusses only on children who were apprehended pursuant to the Canada-Manitoba Child Welfare Agreement dated September 2, 1966 (Agreement) and that there were children who were

apprehended outside of that Agreement. They argue that the motion judge improperly minimized "the single most important distinction between Meeches and Thompson" and that the motion judge ought to have preferred the Thompson action based on class definition.

[47] Even though certification of the Meeches claim, with the existing class definition, will result in the exclusion of individuals who fall within the class definition in the Thompson action, they will not be deprived of access to justice, but they will be required to advance individual claims. The motion judge was cognizant of this issue and, while it is regrettable that there may be individuals who are not included in the putative class proceeding, the motion judge's weighing of this factor is entitled to deference.

2. Manitoba as a Defendant

[48] As noted previously, the Thompson claim includes Manitoba as a defendant whereas the Meeches claim does not. While this may be surprising in the sense that Manitoba was a party to the agreement that forms the basis of the Meeches action, and it was Manitoba Children's Aid Societies which actually removed children from their homes and placed them with families "who did not raise the children in accordance with the Aboriginal person's customs, traditions, and practices", this argument was also considered by the motion judge. On this point, the motion judge said (at para 38):

> However, the possible cause of action based on the manner in which Manitoba implemented the placement of Aboriginal children during the relevant time is difficult to discern on a review of the statement of claim in the Thompson action. Although I am not making a determination on the issue at this

> stage, I have concern that the possible cause of action alleged against Manitoba based on an alleged fiduciary duty owed by Manitoba and an alleged breach of that duty are vague and not clearly pled.

[49] In reaching his decision that, "a more narrowly construed claim against fewer defendants will increase the likelihood of certification and facilitate the expeditious prosecution of the claims of the proposed class members" (at para 40), the motion judge relied on the *Setterington* decision where the Court said that, "The mere inclusion of a multitude of defendants is not sufficient to provide a basis for the preference of one action over another" (at para 18).

[50] The plaintiffs in the Meeches action relied on the pleadings in a similar class action in Ontario. The representative plaintiff in *Brown v Canada (Attorney General)*, 2017 ONSC 251, named the AG as the sole defendant in its action and recently succeeded on a motion for summary judgment. The Court found the AG liable for breaching a common-law duty of care owed to the class members (see para 86). In finding that the AG breached the Canada-Ontario Welfare Services Agreement, the Court said, "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" (at para 38). However, the Court made no finding in terms of Ontario's liability.

[51] In my view, the motion judge was alive to the differences between the two actions regarding the defendants. The plaintiffs in the Thompson action have not demonstrated that he erred in this regard and his decision is entitled to deference.

3. Suitability of the Proposed Representative Plaintiffs

[52] The motion judge found that the proposed representative plaintiffs in both actions may be suitable representative plaintiffs in the proceeding and that, "there is nothing to indicate that the plaintiffs in the Meeches action would do anything other than fairly and adequately represent the interests of the proposed class" (at para 51). The plaintiffs in the Thompson action argue that the motion judge improperly made his decision on the basis of the pleadings rather than evidence. While there were no affidavits from the proposed representative plaintiffs in the Meeches action (as there were for the Thompson action and as one might expect), the motion judge did consider an affidavit from a lawyer from the law firm representing the plaintiffs in the Meeches action in addition to the statement of claim. While minimal and of a hearsay nature, the affidavit did provide some evidence of the suitability of Meeches and Garnett as representative plaintiffs and this ground of appeal does not require appellate intervention.

Costs

[53] The plaintiffs in the Meeches action seek costs in the amount of $25,000 against the law firm representing the plaintiffs in the Thompson action on the basis that section 37(2) of the *CPA* provides that the court has limited discretion to award costs regarding an appeal arising from a class proceeding. They argue that the appeal was unnecessary because the motion judge did not extinguish the ability of the plaintiffs in the Thompson action to proceed with their own claims, that the appeal has increased the costs to the parties and that the appeal has further delayed the proceedings. They also argue that an order for costs ought to serve as a disincentive to future appeals of carriage decisions. The plaintiffs in the Thompson action argue

in response that costs in these circumstances would be punitive and would have a chilling effect on access to justice.

[54] In my view, section 37 of the *CPA* informs the issue of costs in this case, even though the proceeding has not yet been certified, because this is essentially an "appeal arising from a class proceeding". As has already been explained, a carriage motion is a "stage of a class proceeding" to which class proceedings legislation applies.

[55] I am not persuaded that costs should be awarded to the plaintiffs in the Meeches action. Sections 37(1) and 37(2) make it clear that costs should not be awarded absent vexatious, frivolous or abusive conduct, an improper purpose or exceptional circumstances, none of which, in my view, were demonstrated in this case.

Conclusion

[56] In reaching his decision, the motion judge considered the arguments before him and weighed the appropriate factors. The issue is whether the motion judge erred in principle, committed palpable and overriding error in applying and weighing the relevant factors or whether the decision is unjust. In my view, the motion judge committed no error in principle and his decision is certainly not so clearly wrong as to amount to an injustice. I would therefore dismiss the appeal without costs.

JA

I agree: JA

I agree: JA

APPENDIX "A"

The Class Proceedings Act, CCSM c C130

PART 1
INTRODUCTORY PROVISIONS

Definitions

1 In this Act,

"certification order" means an order certifying a proceeding as a class proceeding;

"class proceeding" means a proceeding certified as a class proceeding under Part 2;

"common issues" means

(a) common but not necessarily identical issues of fact, or

(b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

"court", except in sections 36 and 37, means the Court of Queen's Bench;

"defendant" includes a respondent;

"party" means a representative plaintiff or a defendant but does not include individual members of a class or of a subclass;

"plaintiff" includes an applicant;

"representative plaintiff" means a person appointed as a representative plaintiff under section 2, 3 or 6.

PART 2
CERTIFICATION

Member of class may commence proceeding

2(1) One or more members of a class of persons may commence a proceeding in the court on behalf of the members of that class.

Motion for certification by plaintiff

2(2) A person who commences a proceeding under subsection (1) must make a motion to the court for an order

(a) certifying the proceeding as a class proceeding; and

(b) appointing a representative plaintiff.

Timing of motion
2(3) A motion under subsection (2) must be made

(a) within 90 days after the close of pleadings or the noting of a defendant in default; or

(b) with leave of the court, at any other time.

Representative plaintiff not from class
2(4) The court may appoint a person who is not a member of the class as the representative plaintiff only if it is necessary to do so in order to avoid a substantial injustice to the class.

Certification of class proceeding
4 The court must certify a proceeding as a class proceeding on a motion under section 2 or 3 if

(a) the pleadings disclose a cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;

(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues; and

(e) there is a person who is prepared to act as the representative plaintiff who

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and

(iii) does not have, on the common issues, an interest that conflicts with the interests of other class members.

Court may determine conduct of proceeding
12 The court may at any time make any order that it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay proceeding
13 The court may at any time stay or sever a proceeding related to the class proceeding on terms the court considers appropriate.

Appeals
36(1) A representative plaintiff or defendant may appeal without leave to The Court of Appeal from

(a) a judgment on common issues; or

(b) an order under Division 2 of this Part, other than an order that determines individual claims made by class or subclass members.

Leave to appeal
36(2) With leave of a justice of The Court of Appeal, a representative plaintiff or a defendant may appeal to that court from any order

(a) determining an individual claim made by a class or subclass member; or

(b) dismissing an individual claim for monetary relief made by a class or subclass member.

Appeal by class member
36(3) With leave of a justice of The Court of Appeal, a class or subclass member may appeal to that court from any order

(a) determining an individual claim made by that class or subclass member; or

(b) dismissing an individual claim for monetary relief made by that class or subclass member.

Appeal of certification decision
36(4) With leave of a justice of The Court of Appeal, a representative plaintiff or defendant may appeal to The Court of Appeal from

(a) an order certifying or refusing to certify a proceeding as a class proceeding; or

(b) an order decertifying a proceeding.

Right of class member to appeal
36(5) If a representative plaintiff does not appeal or seek leave to appeal as permitted by subsection (1) or (4) within the time limit for bringing an appeal set

under the *Court of Appeal Rules*, or if a representative plaintiff abandons an appeal under subsection (1) or (4), any member of the class or subclass for which the representative plaintiff had been appointed may make a motion to a justice of The Court of Appeal for leave to act as the representative plaintiff for the purpose of subsection (1) or (4).

Deadline for class member
36(6) A motion by a class or subclass member for leave to act as the representative plaintiff under subsection (5) must be made within 30 days after the expiry of the appeal period available to the representative plaintiff or by such other date as the justice may order.

Extension of time limit to appeal
36(7) If leave has been granted to a member of a class or subclass under subsection (5), the time limit for that person to appeal or seek leave to appeal is extended for 30 days after the date leave is extended by The Court of Appeal.

PART 5
COSTS, FEES AND DISBURSEMENTS

Costs
37(1) Subject to this section, no costs may be awarded against any party with respect to any stage of a class proceeding, including a motion for certification under subsection 2(2) or section 3, or any appeal arising from a class proceeding.

Considerations re costs
37(2) The Court of Queen's Bench or The Court of Appeal may only award costs to a party in respect of a motion for certification or in respect of all or any part of a class proceeding or an appeal arising from a class proceeding if

(a) the court considers that there has been vexatious, frivolous or abusive conduct on the part of any party;

(b) the court considers that an improper or unnecessary motion or other step has been made or taken for the purpose of delay or increasing costs or for any other improper purpose; or

(c) the court considers that there are exceptional circumstances that make it unjust to deprive another party of costs.

Assessment of costs
37(3) A court that orders costs under subsection (2) may order that those costs be assessed in any manner that the court considers appropriate.

Class members not liable for costs
37(4) Class members, other than a person appointed as a representative plaintiff, are not liable for costs except with respect to the determination of their own individual claims.

The Court of Queen's Bench Act, CCSM c C280

Stay of proceedings
38 The court, on its own initiative or on motion by a person, whether or not a party, may stay a proceeding on such terms as are considered just.

Appeal to Court of Appeal
89 Unless otherwise provided by statute,

(a) an order made by the court may be set aside in whole or in part or varied; and

(b) a verdict of a jury may be set aside in whole or in part

on appeal to the Court of Appeal.

Multiplicity of proceedings
94 As far as possible, a multiplicity of proceedings shall be avoided.

Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88

General principle
1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Order
6.01(1) Where two or more proceedings are pending in which,

(a) there is a question of law or fact in common;

(b) the relief claimed arises out of the same transaction or occurrence or series of transactions or occurrences; or

(c) for any other reason an order ought to be made under this rule;

the court may order that,

(d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or

(e) any of the proceedings be,

(i) stayed until after the determination of any other of them, or

(ii) asserted by way of counterclaim in any other of them.

Directions
6.01(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay.

THIS IS EXHIBIT "30" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

JUSTICE MATTERS

October 10, 2017

Celeste Poltak
Direct Dial: 416-595-2701
Direct Fax: 416-204-2909
cpoltak@kmlaw.ca

BY FAX

The Honourable Justice James G. Edmond
Justice of the Court of Queen's Bench
Law Courts Building
226-408 York Avenue
Winnipeg, MB R3C 0P9

Dear Justice Edmond:

Re: *Meeches v. Attorney General of Canada*
Court File No. CI 16-01-01540
File No. 16/0555

We write to the Court on consent of the parties to advise that a National Settlement Agreement in Principle has been reached to resolve this matter. As a result, we can confirm that the December 5, 2017 certification motion return dates are no longer necessary and can now be vacated.

Should the Court have any questions arising, we would be pleased to make ourselves available at your Lordship's convenience. We thank the Court in advance for its attention to this matter.

Yours truly,

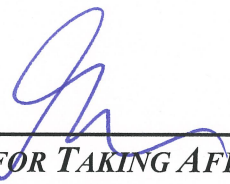
KOSKIE MINSKY LLP

Celeste Poltak
CP:ls

c Catherine Moore, Travis Henderson – Department of Justice Canada
Jonathan Troniak, Eric Troniak, Dennis Troniak – Troniak Law
Kirk Baert, Garth Myers – Koskie Minsky LLP

KM-3002526v1

THIS IS EXHIBIT "31" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Action No. QBG 1642 /11

IN THE COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL DISTRICT OF REGINA

Between:

LYNN THOMPSON and VALERY LONGMAN

Plaintiffs,

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS OF CANADA;

Defendant.

Brought under the *Class Actions Act*, S.S. 2001 c. C-12.01

STATEMENT OF CLAIM

NOTICE TO DEFENDANT

1 The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court unless:

- within 20 days if you were served in Saskatchewan;
- within 30 days if you were served elsewhere in Canada or the United States of America; or
- within 40 days if you were served outside Canada and the United States of America;

(excluding the day of service) you serve a Statement of Defence on the plaintiff and file a copy thereof in the office of the local registrar of the Court for the judicial centre above-named.

2 In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

3 This Statement of Claim is to be served within six months from the date on which it is issued.

4 This Statement of Claim is issued at the above named judicial centre the 22nd day of August, 2011.

D. Local Registrar
(LS)

I. PARTIES

(1) Plaintiffs

(1) Lynn Thompson

1. The Plaintiff, Lynn Thompson ("Thompson"), resides in Saskatoon, Saskatchewan.

(2) Valery Longman

2. The Plaintiff, Valery Longman ("Longman"), resides in Regina, Saskatchewan.

(2) Defendant

3. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs for Canada, has an office at 10 Wellington Street, North Tower, Gatineau, Quebec, K1A 0H4 ("Canada").

II. CLASS

4. Some of the Class Members, are "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

5. The Plaintiffs and all Class Members are "Aboriginals" as defined by the *Constitution Act*, 1982, s.35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

6. Beginning in 1962 , Canada entered into an arrangement with the Saskatchewan Department of Social Welfare whereby Canada delegated Indian child welfare services to Saskatchewan social services. Canada was required by Treaties between Canada and First Nations and long standing practice to provide child welfare services to Indians. Saskatchewan social services provided a variety of child welfare services to Indian communities and Canada agreed to reimburse the Saskatchewan Department of Social Welfare for each Indian child in care. The transfer payments made by Canada to Saskatchewan were calculated based on the number of Indian children per day for which it had the responsibility of maintenance and supervision.

7. In the language of the 1960s, Indians were distinguished from so called half breeds or Métis and each of these groups, Indians and Métis, were distinguished once again from non-status Indians. All are Aboriginals. Aboriginal children who were not Indians often lived in communities where they maintained Indian culture or Métis culture. When they lived in mainstream Canadian society, they, nonetheless, valued their beliefs and culture.

8. The assimilation of Indian children largely brought about through the Residential School System was continued through the delegation of Indian child welfare services to Saskatchewan. The goal of assimilating Indian children into mainstream Canadian society led to the obliteration of the culture, language, and religion of Indian members of the Class.

9. Saskatchewan, through Saskatchewan social services, treated Indian children in the same way that they treated other Aboriginal children which, whether the children were Indian or not, led to and continued the obliteration of the culture, language, and religion of all Members of the Class. The removal and assimilation, and the program of adopting Aboriginal children out to non aboriginal families led to the obliteration of the culture, language, and religion of Members of the Class. The adoption out of Aboriginal children into non aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to Members of the Class and all Members of the Class have in common the result of all or many of these kinds of wrongdoing which were visited upon the Plaintiffs and Members of the Class as a result of the conduct and programs of Saskatchewan which, in the case of Indian Members of the Class, occurred with Saskatchewan acting as the agent and delegate of Canada.

10. The Plaintiffs bring this action on their own behalf, and on behalf of a proposed class of similarly situated residents of Saskatchewan, and elsewhere in Canada, to be further defined in the Plaintiff's application for class certification. The Plaintiffs plead and rely on the *Class Actions Act*, S.S. 2001 c. C-12.01

III. PARTICULARS

A. The Plaintiffs' Claims

(I) Lynn Thompson

(a) abducted

11. Thompson was born in 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).

12. 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.

13. 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 Matheson. By that time she had already resided in at least 8 foster homes. At that time she was moved to Winnipeg and placed in the care of the Matheson family.

14. Thompson lived with the Matheson family with her sister, Donna, for approximately one year, at which time Children's Aid of Manitoba forcibly removed Thompson from that home for no particular reason. Her adoptive father tried in vain to get Children's Aid of Manitoba to return Thompson to her adoptive home, but Children's Aid refused and gave no reason for their choice.

15. Thompson was moved through several foster homes throughout the Winnipeg area and was then later sent to Ontario, where Thompson 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.

(b) abused

16. During the time that Thompson 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. A BB gun was also pointed at her head and fired directly into her ear drums causing damage to her ears. Thompson would run away and sleep by the train tracks under the evergreen trees whenever the abuse would start.

17. Rather than monitoring Thompson's care, as they should have done, 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 Thompson from her adoptive family and she was eventually sent back to Manitoba.

18. 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.

19. 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.

20. 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.

21. 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.

(c) injuries

22. As a consequence of the physical abuse she endured Thompson has countless scars on her arms.

23. Thompson requires plastic surgery on her arms as a result of the severe abuse that she suffered as a child. 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.

24. Thompson has suffered cultural injuries, for instance a loss of her native identity due to the fact that she was adopted by a white family in Ontario. Thompson further lost her ability to speak her native tongue which is Anishnabe (also known as Ojibway).

25. Thompson still 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.

26. Thompson further 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) Valery Longman

(a) abducted

27. Longman was a resident of the north end of Regina, Saskatchewan (Regent Park) from the time of her birth until three years of age when the Province of Saskatchewan permanently removed her from the care of her parents without reason. All seven children in Longman's family were removed by the Province of Saskatchewan without reason.

28. Before the age of three Longman had been temporarily placed in several different foster homes where she suffered abuse.

29. From 1973 onwards, Longman was placed in the care of the Exner family, which operated a foster home in Regina, Saskatchewan. One of Longman's sisters, Mary, was also placed in the Exner family foster home. Both sisters suffered sexual abuse.

(b) abused

30. Longman was fondled and touched in a sexual manner from the time she was three years of age at the Exner foster home in Regina. Longman's foster parents degraded all things aboriginal including native culture, the native race, the native languages, and treated the foster children in a discriminatory manner, differently from how their natural born caucasian children were treated. From a young age Longman was taught that she was inferior.

31. Longman was severely beaten. She was hit over the head with various items including bottles. Longman's foster father had the habit of punching the children and on several occasions caused Longman to get a bleeding nose. Further, Longman's three foster brothers, Gary, Donald, and Leonard Exner sexually abused her until she was 17 years of age.

32. Longman was forced to perform oral sex on all three brothers, Gary Exner being the worst. At the time she was in grade 5, Longman was forced to perform oral sex on one of the brothers. In addition, when she was 17 years of age she was instructed to go to one of the brothers' homes and do some "work", at which time that brother, Gary Exner, again forced her to perform oral sex and molested her. Gary Exner was approximately 18 years of age at that time.

33. Longman was forced to pray and adopt the religious beliefs of her white Christian foster family. After suffering a bloody beating, at age four, she was ordered to pray in a corner by the Exners.

34. She was forced to perform various chores, which the non-aboriginal children did not have to perform, take on a paper route, and then give the money over to her adoptive parents. Longman was forced to clean the family's dishes while standing on a stool, because she was too

short, from three years of age. In effect, the Exners exploited Longman for their own personal economic gain and treated Longman as slave labour. Longman was effectively treated like a slave in that she was forced to labour for the financial benefit of the Exner family.

35. Further, Longman was forced to give up her aboriginal name during this time. She was instructed to go by the name Exner from the time she was three years old until the time she was 17 years old when she last resided with the Exner foster family.

36. Longman went to the Regina Police Department in 1995 to report the sexual abuse that she had suffered from the time she was three years old, until the time she was eighteen years old, at the hands of the three Exner brothers, and the physical abuse that she had suffered at the hands of the Exner foster parents. The Regina police refused to press charges and did not provide a reason for that failure. The lack of willingness on the part of the Regina police to thoroughly investigate the allegations and file charges against the Exner family further compounded Longman's suffering as she felt that the wrongdoing to her was being unreasonably dismissed as a result of her status as a low-income Aboriginal resident of Regina.

37. On other occasions Longman and her sister had reported the abuses occurring at the Exner foster home to the Province of Saskatchewan, but they did nothing. Longman's pleas for some sort of justice fell on deaf ears.

(c) injuries

38. Longman suffered severe physical and mental trauma and experienced a loss of culture and a loss of sense of self-worth as a result of the physical, psychological, and sexual abuse to which she was subjected when she was resident with the Exner foster family. She incurred an economic loss as a result of being exploited and forced to hand over the proceeds of her labour to the Exner family.

39. The sexual abuse that occurred at the hands of Longman's three brothers, affected Longman's ability to have normal sexual relations with men.

40. Longman suffers from Schizophrenia caused by stresses in her life.

41. Between 1997 and 2008 Longman attended counseling for the abuse to which she was subjected by the Exners.

42. The Exners are withholding savings bonds registered in her name but the authorities will do nothing to recover these bonds for her.

(d) AIM

43. Both Plaintiffs and members of the Class were adopted out to non Aboriginal families as a part of the program of Canada and Alberta to 'remove the Indian from the Indian' or make Aboriginal children into caucasian adults. The colour of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be 'white adults'.

44. This program was known as the Adopt Indian Métis program, "AIM".

45. Canada advertised on Canadian television and in other Canadian media and in American media for parents to adopt an Indian or Metis child. The Adopt Indian Metis program in the 1990's and currently, became known within the Aboriginal community as "the 60's scoop" or "Lost Boys".

46. AIM, the program of taking Aboriginal children and adopting them out to white families was a badly misconceived wrongful program of Canada that visited profound and permanent psychological wrongdoing upon Thompson, Longman and the Class.

47. Members of the Class all have in common that they suffered common but not identical abuse, suffered common but not identical damage, suffered that damage and abuse as a result of being taken and adopted out as a part of AIM.

B. Defandant's Acts, Omissions, Knowledge, and Intent

48. At all material times Canada was responsible for the development and management of AIM, the program designed to forcibly remove Aboriginal children from their families and assimilate them into the mainstream caucasian population. This was frequently done in an arbitrary and wanton manner without reason or cause.

49. Canada put AIM into effect through collaboration with the provinces and territories in Canada.

50. Canada is liable *inter alia* to the Class for:

a. Sexual abuse visited upon them;

b. Physical abuse visited upon them;

c. Cultural abuse and systematic attempts to abduct Aboriginal children from their natural homes;

d. Cutting the Class off from their families;

e. Destroying the sense of self worth of the Class;

f. Reducing the capacities to parent and maintain normal marital and family ties of the Class;

g. Permitting the circumstances which resulted in the physical abuse to which the Class were subject;

h. Failing to provide adequate care for the Class as children and provide for their needs;

i. Holding the Class in foster homes and placing them in adoptive families without the prior consent of their parents;

j. Depersonalizing and demeaning the Class by generally referring to them by their given white name rather than their Aboriginal names;

k. Cutting the Class 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

l. Ridiculing the Class and discriminating against them on the basis of their native backgrounds;

51. Placing the Class in circumstances where sexual and physical abuse and psychological trauma were part of the program of reforming Aboriginal children into caucasian adults with the result that the individual wrongdoing of adoptive parents was thought to be a part of this reforming and not corrected by Canada or even acknowledged and known by Canada.

52. Canada, in conjunction with the provinces and territories in Canada, led in the development of AIM, led in the advertising and marketing of AIM to get adoptive parents, and Canada is responsible for its own conduct and vicariously responsible for its agents.

53. Canada was not permitted to delegate its responsibility to Indian children.

54. Canada, through its advertising and marketing program and developing AIM, also wrongfully impacted upon the lives of non-Indian children, and Indian children within the Class of Aboriginal children were wrongfully impacted by the conduct of Canada.

55. The Class were not permitted to engage in Aboriginal cultural or religious activities. They were not permitted to engage in Aboriginal games. They were not permitted to communicate with their non adopting family members. They were not permitted to speak their Aboriginal languages. Losing their Aboriginal languages, Class Members are cut off in a generational way from their parents and grandparents. AIM in part succeeded in its wrongful intent.

56. The Class were further subject to disparaging comments and innuendo from foster parents, their adoptive families, and others who were involved in the abduction and forced adoption of the Class.

57. The Class, 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 Aboriginal were worthless.

58. As a result of these tortious acts by Canada, the Class Members 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.

59. 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 Canada, the particulars of which include, but are not limited to the following:

a. Permitting unqualified individuals to hire servants, agents and employees to administer and operate foster homes;

b. Permitting unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuse;

c. Failure to protect the Class from harm;

d. Failure in general to take proper and reasonable steps to prevent injury to the physical health and mental well-being and moral safety of the Class while the Class were resident at foster homes, and when they were adopted by non-Aboriginal families;

e. Having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the Class as a good parent should; and

f. The cause of the sexual assaults and surrounding circumstances were or ought to have been within the knowledge of Canada and the sexual and physical assaults would not have occurred but for the negligence of Canada and the AIM program.

60. Canada's agents were paid to operate foster homes and Canada's agents were paid to coordinate the adoption of the Class.

61. Canada was under a positive fiduciary duty to protect the Class from injuries to their

person, physical, or mental health, or morals, and Canada knew. or ought to have known that the Class would suffer damages, if Canada failed to carry out this duty.

62. Canada is directly liable for the conduct and negligence of its servants and agents.

63. Canada is vicariously liable for the conduct of the servants and agents of Saskatchewan.

64. Canada is vicariously liable for the actions and negligence of any governmental agency, charitable organization, or other organization that contracted with either Canada or others to whom Canada 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.

65. In the alternative, the Class claim that the cause of the physical and sexual assaults and surrounding circumstances were within the knowledge and control of Canada and the physical and sexual assaults would not have occurred but for the negligence of Canada.

66. As a result of the physical and sexual assaults and emotional and mental abuse, the Class 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. Physical trauma;
g. Emotional trauma;
h. Psychological trauma;
i. Personality change;
j. Loss of confidence;

k. Decreased social ability

l. Insomnia;

m. Fatigue;

n. Decreased enjoyment;

o. Pain and suffering;

p. Loss of enjoyment of life;

q. Susceptibility to addictions; and

r. Inability to obtain proper education or employment.

67. The Class members have sustained and will continue to sustain pain and suffering, loss of enjoyment of life, and loss of amenities. The Class are unable to participate in many different types of recreational, social, athletic, educational, and employment activities to the extent to which the Class would have participated in such activities had the wrongdoing not occurred.

68. As a further result of the wrongdoing the class have undergone and will continue to undergo therapy, counseling, hospitalization, rehabilitation, and other forms of treatment.

69. The Class will also incur further expenses, including expenses for mediation, therapy, counseling, hospitalization, rehabilitation, medication, and other forms of medical treatment and care, the particulars of which expenses are not yet within their knowledge at this time.

70. The Class 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.

71. Canada's actions were in contravention of the treaties between Canada and the First Nations to which the Indian Class Members belonged and this conduct affected all Class Members.

72. This conduct was in contravention of the United Nations *Convention on the Prevention*

and Punishment of the Crime on Genocide, particularly Article (2)(3) thereof to which Canada was a signatory.

73. The Class are all members of the peoples intended by the United Nations *Convention on the Prevention and Punishment of the Crime on Genocide* to be protected and the planned and systemic assimilation into caucasian society through forced adoption is in contravention of that convention.

74. Canada breached their duty to the Class 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*.

75. In particular, the arbitrary and wanton manner in which Canada treated the Class illustrates that the right of the Class to equality before the law and protection of the law was 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*.

76. The behaviour of Canada and its servants constitutes a number of criminal offences including, assault, battery, kidnaping, sexual assault, and sexual exploitation. In particular, the forcible removal of Aboriginal children from Aboriginal communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

77. Canada's conduct was egregious, made all the worse because Canada owes a special duty to Indians and Aboriginals.

78. The Class claims aggravated, punitive, and exemplary damages from Canada.

79. As a result of the actions and negligence of Canada, the Class have suffered damages and losses which are not yet known to them.

80. Damages should be aggregated.

81. Canada was under a positive fiduciary duty to protect the Class from injury to their person, physical and mental health, and morals, and Canada knew, or ought to have known, that the Class would suffer damages if Canada failed to carry out their fiduciary duty.

C. Causation

82. The acts, omissions, wrongdoings and breaches of legal duty and obligations of Canada has caused or materially contributed to the Class suffering injury, economic loss and damages.

D. Damages

83. The Class 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 Canada.

E. Aggravated, Punitive and Exemplary Damages

84. As a result of Canada's deceitful conduct, acts, omissions, wrongdoings, and breaches of legal duties and obligations of Canada, the Class has suffered injury and economic loss and damages.

85. Canada has demonstrated that a cavalier and arbitrary approach was taken with respect to the rights of the Class and with respect to the obligations of Canada towards the Class.

86. At all material times the conduct of Canada as set forth above was malicious, deliberate, and oppressive towards the Class and Canada and its servants and delegated agents conducted themselves in a willful, wanton, and reckless manner as set forth above.

87. Canada's 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.

88. As a result of the aforesaid acts, omissions, wrongdoings, and breaches of legal duties and obligations by Canada, the Class have sustained substantial injury, economic loss, and damages and are entitled to awards of aggravated, punitive, and exemplary damages.

IV. RELIEF SOUGHT

89. The Plaintiff acts as a representative of the Class of all persons, who have suffered injury, economic loss, and damages as a result of Canada's acts, omissions, wrong doings, and breaches of legal duties and obligations, including but not limited to, sexual abuse, physical abuse, cultural genocide, tortious liability, causing personal injury and harm, breach of duty of care, breach of fiduciary duty and obligations, negligence, and failure to fulfill their statutory and common law duties and obligations. **WHEREFORE THE PLAINTIFFS, ON THEIR OWN BEHALF, AND ON BEHALF OF THE CLASS, CLAIM FOR THE FOLLOWING RELIEF, ON A JOINT AND SEVERAL BASIS, AGAINST CANADA.**

(1) an Order certifying this action as a multi-jurisdictional class action and appointing a representative Plaintiff on behalf of a class of persons, including all persons and their estates:

(a) who were forcibly removed from Aboriginal homes, families, or communities as a minor as part of a governmentally authorized program and were placed in adoptive families or foster homes;

(2) an Order for an aggregate monetary award respecting all or any part of a Defendant's liability to Class Members including an Order that the Class share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class Members pursuant to Sections 31 and 34 of *The Class Actions Act*, S.S. 2001 c. C-12.01, as amended.

(3) general and special damages for the Class in amounts to be determined at trial, including:

(a) on the elections of the Plaintiff and Class, 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.

(4) aggravated damages;

(5) exemplary and punitive damages;

(6) nominal damages as an aggregate monetary award;

(7) symbolic damages as an aggregate monetary award;

(8) pre-judgment interest;

(9) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at Regina, Saskatchewan, on the 22nd day of August, 2011.

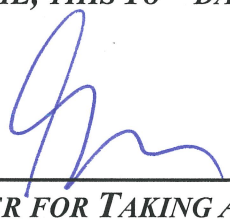
MERCHANT LAW GROUP LLP

Per: _____

E.F. ANTHONY MERCHANT, Q.C.
Solicitor for the Plaintiffs

This document was delivered by:
MERCHANT LAW GROUP, LLP
Barristers and Solicitors
2401 Saskatchewan Drive
Regina, Saskatchewan, S4P 4H8
Telephone: (306) 359-7777
Fax: (306) 522-3299
Attention: E.F. Anthony Merchant, Q.C.

THIS IS EXHIBIT "32" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

COURT FILE NUMBER QBG 2635/14

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE REGINA

PLAINTIFF MAGGIE BLUE WATERS also know as MAGGIE NELSON

DEFENDANTS HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (as represented by the MINISTER OF Indian AFFAIRS AND NORTHERN DEVELOPMENT OF CANADA and the ATTORNEY GENERAL OF CANADA) AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN (as represented by THE MINISTER OF SOCIAL SERVICES OF SASKATCHEWAN and the ATTORNEY GENERAL OF SASKATCHEWAN)

Brought under *The Class Actions Act*

STATEMENT OF CLAIM

NOTICE TO DEFENDANTS

1. The plaintiff may enter judgment in accordance with this Statement of Claim or such judgment as may be granted pursuant to the Rules of Court unless, in accordance with paragraph 2, you:

(a) serve a Statement of Defence on the plaintiff; and

(b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

- within 20 days if you were served in Saskatchewan;
- within 30 days if you were served elsewhere in Canada or in the United States of America;
- within 40 days if you were served outside Canada and the United States of America

3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult his lawyer as to his rights.

4. This Statement of Claim is to be served within six months from the date on which it is issued.

5. This Statement of Claim is issued at the above-named judicial centre the 17 day of December, 2014.

(LS)

Local Registrar

To: The Attorney General of Canada

Department of Justice
Saskatchewan Regional Office
10th Floor, 123 - 2nd Avenue South
SASKATOON, SK S7K 7E6

And to: The Attorney General of Saskatchewan
800 - 1874 Scarth Street
REGINA SK S4P 4B3

I. THE PARTIES

A. The Defendants

1. Her Majesty the Queen, in right of Canada, is represented by the Attorney General of Canada and by the Minister of Indian and Northern Affairs for Canada, pursuant to s.23 of *The Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50.

2. Her Majesty the Queen, in right of Saskatchewan, is represented by the Attorney General of Saskatchewan and by the Minster of Social Services of Saskatchewan pursuant to s.14 of *The Proceedings Against the Crown act*, R.S.S. c P-27, 1978.

B. The Plaintiff

3. Maggie Blue Waters, is an individual who resides in Viscount, Saskatchewan ("**Waters**").

C. The Class

4. The Plaintiff, and some of the Class Members, are "**Indians**" as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

5. The Plaintiff and all Class Members are "**Aboriginals**" as defined by the *Constitution Act*, 1982, s.35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

6. Beginning in 1962, Canada entered into an arrangement with Saskatchewan Child Welfare, whereby Canada delegated Indian child welfare services to Saskatchewan Child Protection. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Saskatchewan Child Protection provided a variety of child welfare services to Indian communities and Canada agreed to reimburse Saskatchewan Child Protection for each Indian child in care. The transfer payments made by Canada to Saskatchewan Child Services were calculated based on the number of Indian children per day for which it had the responsibility of maintenance and supervision.

7. In the language of the 1960s, Indians were distinguished from half breeds or Métis and each of these groups, Indians and Métis, were distinguished once again from non-status Indians. All are Aboriginals. Aboriginal children who were not Indians often lived in communities where they maintained Indian culture or Métis culture. When they lived in mainstream Canadian society, they, nonetheless, valued their beliefs and culture.

8. The assimilation of Indian children that was largely brought about through the Residential School System was continued through the delegation of Indian Child Protection Services to Saskatchewan. The goal of assimilating Indian children into mainstream Canadian society led to the obliteration of the culture, language, and religion of Indian members of the class.

9. Saskatchewan, through Saskatchewan Child Protection Services, treated Indian children in the same way that they treated other Aboriginal children which, whether the children were Indian or not, led to and continued the obliteration of the culture, language, and religion of all Members of the class. The removal and assimilation, and the program of adopting Aboriginal children out to non Aboriginal families led to the obliteration of the culture, language, and religion of Members of the class. The adoption out of Aboriginal children into non Aboriginal families resulted in the physical, sexual, and emotional abuse, and psychological abuse and trauma to Members of the Class and all Members of the Class have in common the result of all or many of these kinds of wrongdoing which were visited upon the Plaintiff and Members of the Class as a result of the conduct and programs of Child Protection Services which, in the case of Indian Members of the Class, occurred with Saskatchewan acting as the agent and delegate of Canada.

10. The Plaintiff pleads and relies on *The Class Actions Act, S.S. 2001, c. C-12.01*. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class of all Aboriginal persons (including their estates) that were forcibly removed from homes, families, or communities as a minor as part of a governmentally authorized program and were placed in adoptive families or foster homes (the **"Class"** or **"Class Members"**).

11. The Plaintiff, in common with the Class, were removed from their families or communities as children, and suffered injuries due to the Defendants' breach of their fiduciary obligations, their duty of care and cultural genocide, and their dependants and family members, in Saskatchewan and elsewhere in Canada.

II. PARTICULARS OF THE CLAIM

A. Plaintiff's Harms

(a) abducted

12. Waters was born at Montreal Lake, Saskatchewan on August 19, 1957 and originates from the William Charles Indian Band, which is part of the Cree nation.

13. From the time she was born, until she was approximately 4 years old, Waters was resident at Montreal Lake, Saskatchewan. Waters was taken from Montreal Lake, Saskatchewan by the missionaries at Timber Bay Day School at 4 years old without her parents permission. She was abducted as part of the Adopt Indian Metis program. As soon as she arrived at the Timber Bay Day School, her picture was taken and was placed in various Saskatchewan newspapers for adoption purposes. It was hoped that she would be placed into a Christian family.

14. The Plaintiff was eventually adopted at age 5, on June of 1962, by the family of Gordon and Edna Nelson of Viscount, Saskatchewan. This was done with the aid of social workers from Prince Albert, Saskatchewan.

15. Waters lived with the Nelson family for approximately 11 years, when she eventually left the home at age 15. The home was a home belonging to a Christian family.

16. Waters, then at age 15 began acting out and was sent to a bible school to help her control her lifestyle after being suspended from Viscount High School for numerous infractions of bad behaviour.

(b) AIM

17. Waters, and members of the Class, were adopted out to non-Aboriginal families as a part of the program of Canada and Saskatchewan to 'remove the Indian from the Indian' or make Aboriginal children into Caucasian adults. The color of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be 'white adults'.

18. This program was known as the Adopt Indian Métis program, "AIM".

19. Canada and Saskatchewan advertised on Canadian television and in other Canadian media and in American media for parents to adopt an Indian or Métis child. The Adopt Indian Métis program in the 1990s and currently, became known within the Aboriginal community as "the 60s Scoop" or "Lost Boys".

20. AIM, the program of taking Aboriginal children and adopting them out to white families was a badly misconceived wrongful program that visited profound and permanent psychological and physical wrongdoing upon Waters and the Class.

(c) Abuse

21. During the time that Waters was resident with that family in Viscount, Saskatchewan, she suffered severe sexual abuse and was treated as inferior given her Aboriginal status. Waters, after arriving at the home at age 5, began being fondled by the adoptive father Mr. Gordon Nelson.

22. Waters was then graduated to oral sex by the adoptive father, and sometime at the age of 10 years old, was raped by the adoptive father and became his sexual partner as full sexual intercourse occurred on a regular basis.

23. Waters would be raped regularly in the dairy barn, then in a graveyard, and then when she turned 13 he began worrying about getting her pregnant. He began taking precautions to prevent a pregnancy.

24. Waters, at age 15, began to struggle with her identity, and would run away, drinking and smoking. She was subsequently suspended from Viscount Central School.

25. She was then placed in the Outlook Lutheran Collegiate Bible Institute, and was there until age 17. She was treated as a Christian with no cultural education.

(d) Injuries

26. Waters suffered severe sexual abuse and mental trauma. Other Members of the Class suffered severe physical abuse and mental trauma and sexual abuse. Waters and Members of the Class experienced a loss of culture and lack of self-worth as a result of the physical and psychological abuse and for other Members of the Class the sexual abuse. Waters could never feel that she belonged with her adoptive parents, particularly since she felt that they only viewed her as a problem rather than their child. Water' adoptive parents, and all adoptive parents were a part of the wrongful plan of Canada and Saskatchewan within.

27. Waters and Members of the Class did not develop proper parenting skills due to their upbringing in abusive families. Members of the Class share in common difficulties parenting children and Waters has had difficulties parenting her two children due to the severe emotional and psychological trauma she suffered in her adoptive family. Class Members, having been taken from their Aboriginal roots, did not have any connection with their Aboriginal communities or any communities, to support them and teach them how to be loving parents.

28. Waters suffered through drug addiction in her 30's due to the profound sense of alienation and loss she experienced as a youth. It was only after she was able to find her culture, father, and extended family that she stopped abusing drugs and attended post secondary education. Class Members have in common the usual use of drugs and alcohol due to a sense of alienation and loss suffered while in this process of reforming them from being Aboriginal

29. At 30 years of age Waters began to use cocaine in Parksville, British Columbia. Waters has two children, a son age 36 and a daughter age 38.

(e) injuries

30. Waters requires counseling as a result of the severe abuse that she suffered as a child at the hands of her adoptive parents. She 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 abused by the adoptive father.

31. Waters has suffered cultural injuries, for instance a loss of her native identity, due to the fact that she was adopted by a white family in Saskatchewan. Waters further lost her ability to speak her native tongue which is the Cree TH dialect.

32. Waters still has a lot of anger for her adoptive father in the province of Saskatchewan. She is distressed by the fact that he was able to cause so much havoc in her life, and never had to face criminal charges for what he did.

33. Waters further 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. The adoptive father use to tell her that it was god's will to have sex with her, and that is what Indian girls are for.

34. Waters did not become a registered Indian within the meaning of *Indian Act*, R.S.C. 1985, c. I-5 until the 1980's, shortly after living on Vancouver Island where she met some elders in British Columbia from the Okanagan Indian Band. She is now a registered member of the Cree William Charles Indian band from Montreal Lake Saskatchewan.

B. Defendants' Acts, Omissions, Knowledge, and Intent

35. At all materials times, the Defendants were responsible for the development and management of programs designed to forcibly remove Aboriginal children from their families and assimilate them into the mainstream Caucasian population. This was frequently done in an arbitrary and wanton manner without reason or cause.

36. The Defendants therefore played a supervisory and oversight role with respect to these programs.

37. The Defendants breached their duty to the Plaintiff 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*.

38. In particular, the arbitrary and wanton manner in which the Defendants treated the Plaintiff illustrates that the right of the Plaintiff 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*.

39. The Defendant is liable to the Plaintiff for, *inter alia*:

a. Sexual abuse visited upon them;

b. Physical abuse visited upon them;

c. Cultural abuse and systematic attempts to abduct native children from their natural homes;

d. Cutting the Plaintiff off from their families;

e. Destroying the Plaintiff's sense of self worth;

f. Reducing the Plaintiff's capacities to parent and maintain normal marital and family ties;

g. Permitting the circumstances which resulted in the physical abuse to which the Plaintiff was subject;

h. Failing to provide adequate care for the Plaintiff as children and provide for their needs;

i. Holding the Plaintiff in foster homes and placing them in adoptive families without the prior consent of their parents;

j. Depersonalizing and demeaning the Plaintiff by generally referring to her by her given white name rather than her Aboriginal name;

k. Cutting the Plaintiff off from her family and holding her in foster homes and subjecting her to adoption procedures against the will of her family and against their own will; and

l. Ridiculing her and discriminating against her on the basis of her native background;

40. The behaviour of the Defendants and their servants constitute a number of criminal offences including, assault, battery, kidnaping, sexual assault, and sexual exploitation. In particular, the forcible removal of Aboriginal children from Aboriginal communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

41. The Plaintiff was not permitted to engage in First Nations cultural or religious activities. She was not permitted to engage in First Nations games. She was not permitted to communicate with family members on a regular basis. She was not permitted to speak her First Nations languages.

42. The Plaintiff was further subjected to disparaging comments and innuendo from foster parents, her adoptive family and others who were involved in the abduction and forced adoption of the Plaintiff.

43. 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 the Defendant Government of Canada was a signatory, the Plaintiff 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.

44. The Plaintiff and her culture were denigrated. The Plaintiff, through a combination of sexual, physical and mental abuse, was made to feel meaningless and without capacity or self worth. She was made to believe that her culture and all things "Indian" were worthless.

45. The First Nations culture of the Plaintiff was taken from her when she was adopted by white families. She lost much of her culture in an organized cultural genocide imposed upon her by the Defendants and the Defendants' agents and servants.

46. As a result of these tortious acts by the Defendants, she has lost her traditional ways of living and has lost the traditional parenting skills that she would have acquired had she not been forcibly removed from her parents.

47. The Plaintiff lost her sense of family. She was cut off from her biological family through forced adoptions and through placement in various foster homes.

48. The Plaintiff has 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 tortuous acts by the Defendants, the Plaintiff lost her culture and traditional ways of living including traditional parenting skills that she would have acquired had she not been forcibly removed from her parents.

49. The Plaintiff further claims 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, the particulars of which include, but are not limited to the following:

a. Permitting unqualified individuals to hire servants, agents and employees to administer and operate foster homes;

b. Permitting unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuse;

c. Failure to protect the Plaintiff from harm;

d. Failure in general to take proper and reasonable steps to prevent injury to the Plaintiff's physical health and mental well-being and moral safety while the Plaintiff was resident at foster homes, and when she was adopted by non-Aboriginal families;

e. Having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the Plaintiff as a good parent should; and

f. The cause of the sexual assaults and surrounding circumstances were or ought to have been within the knowledge of the Defendants and the sexual and physical assaults would not have occurred but for the negligence of the Defendants.

50. The Defendants' agents were paid to operate foster homes and the Defendants' agents were paid to coordinate the adoption of Aboriginal children.

51. The Defendants were under a positive fiduciary duty to protect the Plaintiff from injuries to her person, physical or mental health or morals, and the Defendants knew or ought to have known that the Plaintiff would suffer damages if the Defendants failed to carry out this duty.

52. The Plaintiff claims, and the Defendants are vicariously liable for the actions and negligence of any governmental agency, charitable organization 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.

53. In the alternative, the Plaintiff claims 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.

54. As a result of the physical and sexual assaults and emotional and mental abuse, the Plaintiff sustained serious, lasting and permanent physical 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. Inability to obtain proper education or employment.

55. The Plaintiff has sustained and will continue to sustain pain and suffering, loss of enjoyment of life, and loss of amenities. The Plaintiff is unable to participate in many different types of recreational, social, athletic, educational and employment activities to the extent to which the Plaintiff would have participated in such activities had the physical and sexual assaults not occurred.

56. As a further result of the physical and sexual assaults, and emotional and mental abuse, the Plaintiff has undergone and will continue to undergo therapy, counseling, hospitalization, rehabilitation, and other forms of treatment.

57. The Plaintiff will also incur further expenses, including expenses for mediation, therapy, counseling, hospitalization, rehabilitation, medication, and other forms of medical treatment and care, the particulars of which expenses are not yet within their knowledge at this time.

58. The Plaintiff has 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.

59. The Plaintiff claims that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for the Plaintiffs and the rights of the Plaintiff. The Plaintiff further claims 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 Plaintiff.

60. The Plaintiff further claims that they are entitled to aggravated, punitive, and exemplary damages from the Defendants.

61. The Plaintiff further claims that as a result of the actions and negligence of the Defendants, the Plaintiff has suffered damages and losses which are not yet known to them.

62. The Defendants were under a positive fiduciary duty to protect the Plaintiff from injury to her person, physical and mental health and morals, and that the Defendants knew or ought to have known, that the Plaintiff would suffer damages if the Defendants failed to carry out their fiduciary duty.

C. Causation

63. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendants have caused or materially contributed to the Plaintiff suffered injury, economic loss and damages.

D. Damages

64. The Plaintiff has 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.

E. Aggravated, Punitive and Exemplary Damages

65. As a result of the Defendants' deceitful conduct, acts, omissions, wrongdoings and breaches of legal duties and obligations of the Defendants, the Plaintiff has suffered injury and economic loss and damages.

66. The Defendants have demonstrated that a cavalier and arbitrary approach was taken with respect to the rights of the Plaintiff and with respect to the obligations of the Defendants towards the Plaintiff.

67. At all material times the conduct of the Defendants as set forth above was malicious, deliberate and oppressive towards the Plaintiff and the Defendants conducted themselves in a willful, wanton and reckless manner as set forth above.

68. 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.

69. As a result of the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations by the Defendants, the Plaintiff has sustained substantial injury, economic loss and damages and are entitled to awards of aggravated, punitive and exemplary damages.

III. THE RELIEF SOUGHT

70. The Plaintiff, as a representative of the class of all persons, that have suffered injury, economic loss, and damages as a result of the Defendants' acts, omissions, wrong doings, and breaches of legal duties and obligations, including but not limited to, sexual abuse, physical

abuse, cultural genocide, tortuous liability, causing personal injury and harm, breach of duty of care, breach of fiduciary duty and obligations, negligence, and failure to fulfill their statutory and common law duties and obligations.

WHEREFORE THE PLAINTIFF ON BEHALF OF HERSELF AND THE CLASS, CLAIMS FOR THE FOLLOWING RELIEF, ON A JOINT AND SEVERAL BASIS, AGAINST THE DEFENDANTS:

(1) an Order certifying this action as a multi-jurisdictional class action and appointing representative Plaintiff on behalf of a Class of Aboriginal persons (including their estates) that were forcibly removed from homes, families, or communities as a minor as part of a governmentally authorized program and were placed in adoptive families or foster homes (the "**Class**" or "**Class Members**");

(2) an Order for an aggregate monetary award respecting all or any part of a Defendant's 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 pursuant to Sections 31 and 34 of *The Class Actions Act*, S.S. 2001 c. C-12.01, as amended.

(3) general and special damages for the Class in amounts to be determined at trial, including:

(a) on the elections of the Plaintiff 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.

(4) aggravated damages;

(5) exemplary and punitive damages;

(6) nominal damages as an aggregate monetary award;

(7) symbolic damages as an aggregate monetary award;

(8) pre-judgment interest on the foregoing sums, pursuant to Subsection 5(1) and Section 6 of *The Pre-Judgment Interest Act*, S.S. 1984-85-86, c. P-22.2;

(9) costs of this action on a solicitor and his/her own client, or substantial indemnity basis; and

(10) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at the City of Regina, in the Province of Saskatchewan, on the 17th day of December, 2014.

Per: _____
MERCHANT LAW GROUP LLP
Solicitor for the Plaintiffs

CONTACT INFORMATION AND ADDRESS FOR SERVICE

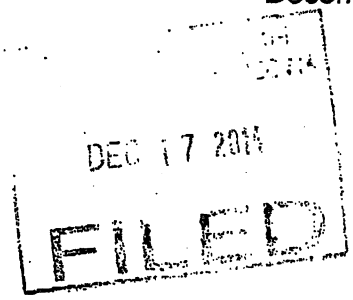
Name of firm:	Merchant Law Group LLP
Name of lawyer in charge of file:	E. F. Anthony Merchant, Q.C. Roch Dupont Linh Pham
Address of legal firms:	2401 Saskatchewan Drive Regina, Saskatchewan S4P 4H8
Telephone number:	306-359-7777
Fax number:	306-522-3299

MERCHANT
LAW GROUP LLP

2401 SASKATCHEWAN DRIVE REGINA CANADA S4P 4H8 TELEPHONE 306 359-7777 FACSIMILE 306 522-3299
VICTORIA • VANCOUVER • CALGARY • EDMONTON • REGINA • SASKATOON • MOOSE JAW • WINNIPEG • ST. CATHARINES • TORONTO • MONTREAL • NEW YORK

December 17, 2014

Court of Queen's Bench
2425 Victoria Ave.
Regina, SK
S4P-4W6



Dear Court Clerk:

RE: Filing new statement of claim class action

I enclose 2 copies of the Statement of Claim along with the $100.00 filing fee.

I kindly request one copy be filed with the Court, and the other copy returned to us.

Thank you.

Yours truly,

Roch Dupont, BSC, B.A., J.D.,LLB, LLL
MERCHANT LAW GROUP LLP
100 - 2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
Toll Free: 1-888-567-7777
rdupont@merchantlaw.com

MERCHANT
LAW GROUP LLP

THIS IS EXHIBIT "33" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

QBG 2635 of 2014 - *Maggie Blue Waters v R* - J.C.R.

E.F. Anthony Merchant, Q.C., and Linh Pham, for the plaintiff, Maggie Blue Waters

FIAT - September 27, 2016 - Popescul C.J.Q.B.

[1] Pursuant to s. 4(2) of *The Class Actions Act*, SS 2001, c C-12.01, I hereby designate Justice T.J. Keene to consider the certification application.

C.J.Q.B.
M.D. POPESCUL

THIS IS EXHIBIT "34" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

COURT FILE NUMBER: QBG2487/16

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE: **REGINA**

PLAINTIFF: **SIMON ASH**

DEFENDANT: **ATTORNEY GENERAL OF CANADA**

Proceeding under *The Class Actions Act*

STATEMENT OF CLAIM

NOTICE TO DEFENDANT

1. The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:

(a) serve a Statement of Defence on the plaintiff; and

(b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

(a) 20 days if you were served in Saskatchewan;

(b) 30 days if you were served elsewhere in Canada or in the United States of America;

(c) 40 days if you were served outside Canada and the United States of America.

3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4. This Statement of Claim is to be served within 6 months from the date on which it is issued.

5. This Statement of Claim is issued at the above-named judicial centre on the 7 day of October, 2016.

Court Seal

SEAL

W. Seed
Dy. Local Registrar

Local Registrar

TO:

ATTORNEY GENERAL OF CANADA
PRAIRIE REGIONAL OFFICE – SASKATOON
DEPARTMENT OF JUSTICE CANADA
123-2ND AVENUE S., 10TH FLOOR
SASKATOON, SASKATCHEWAN
S7K 7E6
TELEPHONE: 306-975-4756
FAX: 306-975-4030

STATEMENT OF CLAIM

1. The Plaintiff claims:

(a) An order certifying this proceeding as a Class Proceeding pursuant to *The Class Actions Act* and appointing the Plaintiff as Representative Plaintiff for the Class;

(b) A declaration that the Defendant breached its fiduciary duties to the Plaintiff and the Class by reason of the events described in this action;

(c) A declaration that the Defendant breached its common law duties of care owed to the Plaintiff and the Class by reason of the events described in this action;

(d) Damages for breach of fiduciary duty and negligence in the amount of $200 million or any such amount that this Honourable Court deems appropriate;

(e) Punitive damages in the amount of $50 million;

(f) Pre-judgment interest pursuant to the *Pre-judgment Interest Act*, S.S. 1984-85-86, c. P-22.2 and post-judgment interest pursuant to *The Executions Act*, R.S.S. 1978, c. E-12;

(g) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;

(h) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 36 of *The Class Actions Act*; and

(i) Such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The term "Sixties Scoop" refers to the Canadian practice, generally beginning in the 1960s and continuing until the late 1980s or early 1990s, of taking ("scooping up") children of Aboriginal peoples in Canada from their families for placing in foster homes or adoption with non-Aboriginal parent(s).

3. As a result, these "scooped" children lost their identity as Aboriginal persons and suffered, *inter alia*, mentally, emotionally, spiritually, and physically. They were deprived of their status and other Aboriginal-related monetary benefits under the *Indian Act* and related legislation and policies, which the Defendant then retained on account of the scoop. Aboriginal communities describe the Sixties Scoop as destructive to their culture.

4. In Saskatchewan, this practice was largely dictated by a bilateral agreement executed in or around January 1960 between Canada and the Province of Saskatchewan ("the Canada-Saskatchewan Child Welfare Agreement"). Under this Agreement, *inter alia*, Children's Aid Societies ("CAS") in Saskatchewan scooped Aboriginal children from their homes for foster placement in, and/or adoption with, non-Aboriginal homes. In exchange, Canada reimbursed Saskatchewan for per diem costs of providing these services for Aboriginal children in Saskatchewan.

5. By virtue of this practice in Saskatchewan, the Defendant (or "Canada") breached its fiduciary duties and common law duties of care that it owed to the vulnerable, child, Aboriginal Plaintiff and Class Members throughout the applicable Class Period.

THE PARTIES

6. The proposed Representative Plaintiff on behalf of the Class is Simon Ash. Mr. Ash was born on September 16, 1974 in North Battleford, Saskatchewan as part of the Saulteaux First Nation. He was taken from his birth parents, placed in foster care with non-Aboriginal parents, and then adopted out to non-Aboriginal parents in or about 1976.

7. The Plaintiff resides in Saskatchewan and has suffered the consequences of the Defendant's breach of fiduciary obligation and common law duty of care.

8. The Defendant, the Attorney General of Canada, represents Her Majesty the Queen in Right of Canada.

THE CLASS

9. The Proposed Class is composed of all Indian, non-status Indian, and/or Métis children who were taken from within the boundaries of reserves in Saskatchewan, or outside thereof, at or after January 1, 1960, 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.

CANADA'S FIDUCIARY DUTY TO THE CLASS MEMBERS

10. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal peoples in Canada.

11. The Defendant has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 91(24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

12. By virtue of its constitutional obligations, the Defendant has an ongoing obligation of consultation on matters relevant to Aboriginal interests. There is an expressed and implied undertaking by Canada to protect the best interests of Aboriginal persons at all times.

13. Moreover, the Defendant's fiduciary duty is compounded even further by the fact that the Class Members were vulnerable Aboriginal children when taken from their Aboriginal homes, and accordingly, by virtue of entering into the Canada-Saskatchewan Child Welfare Agreement, the Defendant assumed even further responsibility for the supply of all the necessities of life to Class Members, *in loco parentis*, during the Class Period.

14. Canada's constitutional obligations, in conjunction with the *Indian Act* and related legislation and policies, the common law, and the honour of the Crown, 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, which is fundamental to the security, welfare and survival of Aboriginal persons, as well as to safeguard their benefits derived from their rightful status as Aboriginals.

15. The Defendant's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued notwithstanding the Canada-Saskatchewan Child Welfare Agreement.

CANADA'S COMMON LAW DUTY OF CARE TO THE CLASS MEMBERS

16. The Defendant owes a duty of care to all Class Members. By virtue of, *inter alia*, the Canada-Saskatchewan Child Welfare Agreement, Canada created, planned, established, operated, financed, supervised, controlled and regulated the provision of child welfare services in Saskatchewan to the Aboriginal child Class Members.

17. Canada knew or ought to have known of the impropriety of policies in respect of Aboriginal children under the Canada-Saskatchewan Child Welfare Agreement, and the negligent operation of such policies, including the failure to ensure that the child welfare programs were administered appropriately to Aboriginal children, such as by adoption and/or permanent foster care in non-Aboriginal homes, failing which might foreseeably cause harms to the Aboriginal Class Members. This is especially so given that the persons affected were, by nature, vulnerable children.

18. Proximity between the Defendant and the Aboriginal Class Members is supplemented further by the acknowledged fiduciary duty in existence between them in respect of specific interests. Moreover, Canada assumed an obligation towards Aboriginal peoples regarding the provision of Saskatchewan child welfare programs to them by virtue of the Canada-Saskatchewan Child Welfare Agreement.

19. A duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act to the receiver.

CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS

20. During the Class Period, the Defendant breached its fiduciary duty and/or common law duty of care by the following acts or omissions, including but not limited to:

(a) Canada illegitimately delegated its non-delegable duties in respect of the vulnerable Aboriginal child Class Members;

(b) Canada failed to ensure that an appropriate child welfare program for Aboriginal children was delivered in Saskatchewan when Canada proceeded to illegitimately delegate its obligations to the Aboriginal child Class Members;

(c) Canada failed to properly monitor and properly oversee the provision of funding it made to Saskatchewan with respect to the child welfare programs for Aboriginal children, knowing that their operation was in conflict with its fiduciary duty and common law duty of care;

(d) Canada failed to intervene and prevent the provision of child welfare services in consequence of which the Class Members were deprived of their Aboriginal culture and/or identity;

(e) Canada failed to ameliorate the harmful effects of the child welfare services on Aboriginal persons in Saskatchewan for which it provided funding;

(f) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal children when they were placed in non-Aboriginal homes;

(g) Canada failed to 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;

(h) Canada failed to assure that Aboriginal children would be provided with services that could enable them to be aware of and exercise their treaty and other related rights and benefits as Aboriginal persons during the period of their placement in non-Aboriginal homes;

(i) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal persons and treaty and other related rights and benefits available to them

when they left their non-Aboriginal homes or entered their age of majority, failing which the Class Members could not reclaim, or had difficulty reclaiming, their status and concordant benefits;

(j) Canada failed to assure the healthy development, childhood, and family and community life of the vulnerable Aboriginal child Class Members;

(k) Canada failed to consult with Saskatchewan Indian Bands and other necessary Aboriginal stakeholders in respect of the provision of funding for child welfare practices and policies to Aboriginal children that it knew were in conflict with its duty to protect the cultural identity and treaty and other related status and rights of Aboriginal persons; and

(l) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of cultural assimilation.

21. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada provided funding to Saskatchewan to ensure that the province's child welfare legislation would extend to Aboriginal children. As Canada knew, the Canada-Saskatchewan Child Welfare Agreement did not provide protection for the cultural identity and treaty and other related status and rights of vulnerable Aboriginal children within the child welfare system in Saskatchewan.

22. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiff and the Class Members.

23. Canada turned a blind eye to the Class Members, when it knew, or reasonably should have known, that the Class Members would thereby individually and collectively lose their cultural identity, lose their protected treaty and other related status and related monetary and non-monetary benefits, and would suffer other harms described herein.

24. The provision of funding through the Canada-Saskatchewan Child Welfare Agreement did not absolve Canada from the duty to take reasonable steps to prevent vulnerable Aboriginal children from, *inter alia*, losing their Aboriginal cultural identity and treaty and other related status and benefits, as a by-product of the child welfare policies implemented in Saskatchewan.

THE PLAINTIFF'S EXPERIENCES

25. Simon Ash was born on September 16, 1974 in North Battleford, Saskatchewan as part of the Saulteaux First Nation. His birth last name was Moccasin. He was taken from his birth parents in

January 1975. The Royal Canadian Mounted Police came to his home with social services looking for his father. They coerced his mother into signing a paper relinquishing custody of Simon. As a result, he was also separated from his brother Jason, who was also later scooped.

26. Mr. Ash was first placed in foster care with a number of different non-Aboriginal parents, including a French family. He suffered abuses during this time.

27. After approximately 1.5 years in the foster system, Mr. Ash was adopted by a family in North Battleford. They were Roman Catholic. He suffered from a poor experience in his adoptive family. He never felt like he was loved or respected. His adoptive parents drank almost every night. He was introduced to alcohol on a regular basis at a very young age. He developed and suffered from problems with alcohol for the majority of his life.

28. Mr. Ash suffered routine emotional, mental, physical and spiritual abuse by his adoptive parents. They actively prohibited his engaging in any Aboriginal culture, customs, or identity in any way. He suffered from a great deal of discrimination growing up in a non-Aboriginal community.

29. Mr. Ash was not raised in respect of his Aboriginal identity, culture, customs and background in any way. He felt like he was brainwashed. There was no acknowledgement of who Mr. Ash was in the home. He faced confusion and identity issues. He was taught to forget who he was and to hate himself. He was taught how to hate other people.

30. Mr. Ash did not have any contact with his biological mother until 1992. He never met his biological father who passed away in 1998. As Mr. Ash began to learn and engage more with his Aboriginal identity, his adoptive parents pushed him away. He no longer has any relationship with them.

31. Mr. Ash was deprived of his Aboriginal identity, culture, customs and background, as well as his Aboriginal status and related benefits derived therefrom. He was deprived of his family relationships and has struggled to pass down his Aboriginal identity, culture, customs and background to his children. He is now a teacher, but he has lived a troubled life, including past addictions. For years, he has struggled with emotional issues, including anxiety, depression, suicidal ideations, low self-esteem, and feelings of unworthiness.

DAMAGES SUFFERED BY CLASS MEMBERS

32. As a consequence of the negligence and breach of fiduciary duty by the Defendant and its agents for whom the Defendant is vicariously liable, the Class Members, including the Plaintiff, suffered injury and damages, including but not limited to:

(a) mental, emotional, and spiritual abuse and suffering;

(b) physical abuse and suffering;

(c) sexual abuse and suffering;

(d) deprivation of Aboriginal culture, customs, traditions, language, and spirituality;

(e) deprivation of Aboriginal identity;

(f) deprivation of status and related monetary and non-monetary benefits for Aboriginal persons;

(g) deprivation of reserve land on which to reside and join an Aboriginal community;

(h) forced cultural assimilation;

(i) deprivation of family and familial relations;

(j) deprivation of a healthy development and childhood;

(k) deprivation of one's ability to pass one's culture and identity on to one's children;

(l) loss of self-esteem and self-worth;

(m) social dysfunctionality and alienation from family, spouses and children;

(n) impaired capacity for employment and to earn income;

(o) the need for psychological, psychiatric and medical treatment as a result of the above; and

(p) pain and suffering

PUNITIVE AND EXEMPLARY DAMAGES

33. The Plaintiff pleads that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread mental, emotional, and physical abuse, or potential therefore, perpetrated upon Class Members that occurred during the Class Period. Despite this knowledge, Canada entered into the Canada-Saskatchewan Child Welfare Agreement and proceeded to operate under it in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

34. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. Canada breached its fiduciary duties and common law duties of care owed to the Class Members.

35. Over a lengthy period, the Plaintiff and Class Members were treated in a manner that could only result in aggravated and increased, *inter alia*, mental, emotional, spiritual, and physical suffering for a vulnerable population. The effects of Canada's actions have violated the Class Members' rights and have irreparably altered the paths of their lives.

36. Full particulars respecting Class composition and the effects of the Sixties Scoop on the Class Members are within Canada's knowledge, control and possession.

DISGORGEMENT

37. For decades, on account of the Sixties Scoop in Saskatchewan, Class Members were deprived of their status and the Aboriginal-related monetary benefits that are concordant with said status. As a result, the Defendant failed to provide its required services to these Aboriginal persons as compared to that received elsewhere in Canada, where the same fiduciary duty was and is owed by the Defendant to Aboriginal persons. Accordingly, the Defendant should be required to disgorge monetary benefits that it inequitably acquired on account of its breach of fiduciary duty, plus compound interest.

38. The Plaintiff pleads and relies upon the:

(a) *The Class Actions Act*, S.S. 2001, c. C-12.01;

(b) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); and

(c) Common law.

39. The Plaintiff proposes that this action be tried in the City of Regina, in the Province of Saskatchewan.

DATED at the First Nation of Poundmaker, Saskatchewan, this 6th day of October, 2016.

Per: _____

KOSKIE MINSKY LLP
SUNCHILD LAW
Lawyers for the Plaintiff

CONTACT INFORMATION AND ADDRESS FOR SERVICE

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889

Celeste Poltak
Tel: 416-595-2701
Fax: 416-204-2909

Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

SUNCHILD LAW
P.O. Box 1408
Battleford, SK S0M 0E0

Eleanore Sunchild
Tel: 306-937-6154
Fax: 306-937-6110

KM-2384777v2

This is **Exhibit "A"** referred to in the Affidavit of Service.
SWORN BEFORE ME at the First Nation of Poundmaker in the Province of Saskatchewan this 11th day of October, A.D. 2016.

A Commissioner for Oaths in and for the Province of Saskatchewan
Being a Solicitor

THIS IS EXHIBIT "35" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

October 13, 2016

Celeste Poltak
Direct Dial: 416-595-2701
Direct Fax: 416-204-2909
cpoltak@kmlaw.ca

VIA FAX (306-787-7160)

The Honourable Chief Justice M.D. Popescul
Court of Queen's Bench of Saskatchewan
2425 Victoria Avenue
Regina, SK S4P 4W6

Dear Chief Justice Popescul:

Re: *Blue Waters v. Saskatchewan et al.*, QB No. 2635/14

It has recently come to our attention that on September 27, 2016, Your Honour assigned Mr. Justice T.J. Keene to case manage the *Blue Waters* putative class proceeding commenced by the Merchant Law Group ("MLG"). It is our understanding that the first case management conference date has not yet been scheduled in that action. We write to request that our consortium be given notice of any case management attendances going forward so that we may make arrangements to attend for the following reasons.

Issuance of *Ash v. Canada*, QB No. 2487/16

On October 6, 2016, our consortium, which consists of Sunchild Law in Saskatchewan, and Koskie Minsky LLP in Toronto, issued and served its Statement of Claim in *Ash v. Canada*, QB No. 2487/16. This claim concerns a proposed class action regarding generally the same Saskatchewan "Sixties Scoop" subject matter as that in the proposed *Blue Waters* class action.

We wish to advise Your Honour that should we be permitted to attend and give submissions at the first case management conference in the *Blue Waters* action, when it is scheduled, our consortium plans to raise our intention to bring a carriage motion in respect of these proposed class actions.

Procedural background to the *Blue Waters* action

It is our understanding that on August 22, 2011, the Merchant Law Group ("MLG") issued its Statement of Claim in a case styled *Thompson v. Canada et al.*, QB No. 1642/11, containing very similar allegations pertaining to the Sixties Scoop in Saskatchewan. Nothing took place in the *Thompson* action until January 29, 2014, when MLG re-filed the same Statement of Claim that had been filed in August 2011. A year later, on January 9, 2015, MLG purported to file a discontinuance of the *Thompson* claim. We are not aware of any steps having been taken to have the *Thompson* action certified as a class proceeding over its approximate five (5) years on the docket.

On December 17, 2014, prior to its purported discontinuance of its *Thompson* claim, MLG issued its Statement of Claim in *Blue Waters v. Saskatchewan et al.*, QB No. 2635/14, which again entailed allegations pertaining to the Sixties Scoop in Saskatchewan. The *Blue Waters* claim was served on January 12, 2015. MLG filed an Amended Statement of Claim in the *Blue Waters* action on June 28, 2016.

KOSKIE MINSKY

It was not until August, 29, 2016, that MLG requested that a case management judge be appointed in the *Blue Waters* action. Your Honour appointed Justice Keene as case management judge on September 27, 2016.

Proceeding to the first case management conference in the *Blue Waters* action

It is our understanding that to date in the *Blue Waters* action, no date has been set for the first case management conference to be heard, no timetable for certification has been established, and no certification materials have been filed.

We respectfully request that we be given notice of the impending case management conference in the *Blue Waters* action so that we may make submissions on a schedule leading to a carriage motion on an expedited basis. We request that such a date be determined as soon as possible, given the vulnerable and elderly composition of the proposed class.

Under the circumstances, it appears a carriage motion is necessary to decide which proceeding should be permitted to go forward and which proceeding ought to be stayed. 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,

KOSKIE MINSKY LLP

Celeste Poltak
CP:sm

cc.

The Hon. Mr. Justice T.J. Keene (fax 306-778-8581) – Court of Queen's Bench for Saskatchewan
Kirk M. Baert (kmbaert@kmlaw.ca) / Scott Robinson (srobinson@kmlaw.ca) – Koskie Minsky
Eleanore Sunchild (eleanore@sunchildlaw.com) – Sunchild Law
Roch Dupont (rdupont@merchantlaw.com) / Tony Merchant (tmerchant@merchantlaw.com) – Merchant Law Group
Paul Vickery (paul.vickery@justice.gc.ca) / David Culleton (david.culleton@justice.gc.ca) – Justice Canada
Alan Jacobson (alan.Jacobson@gov.sk.ca) – Saskatchewan Justice

THIS IS EXHIBIT "36" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

October 31, 2016

Kirk M. Baert *
Direct Dial:416-595-2117
Direct Fax:416-204-2889
kmbaert@kmlaw.ca

VIA FAX (Blanche Jamieson - 306-778-8581)

The Honourable Mr. Justice T.J. Keene
Court of Queen's Bench of Saskatchewan
121 Lorne Street W.
Swift Current, SK, Canada S9H 0J4

Dear Justice Keene:

Re: First case management conference in *Blue Waters v. Saskatchewan et al.*, QB No. 2635/14

We write to Your Lordship in your capacity as case management judge in the *Blue Waters* action, as assigned on September 27, 2016, and in respect of the first case management conference which, to our understanding, has not yet been scheduled in the action.

On October 6, 2016, our consortium, which consists of Sunchild Law in Saskatchewan, and Koskie Minsky LLP in Toronto, issued and served its Statement of Claim in ***Ash v. Canada*, QB No. 2487/16**. A copy of this Statement of Claim is attached to this letter. This claim concerns a proposed class action regarding generally the same Saskatchewan "Sixties Scoop" subject matter as that in the proposed *Blue Waters* class action.

On October 13, 2016, our consortium wrote to Chief Justice Popescul requesting that we be given notice of any case management attendances going forward so that we may make arrangements to attend. We are now following up in this respect with Your Lordship to determine whether any case management attendance has since been scheduled..

We wish to advise Your Lordship that at the first case management conference, when it takes place, our consortium plans to raise our intention to bring a carriage motion in respect of these proposed class actions.

Procedural background to the *Blue Waters* action

It is our understanding that on August 22, 2011, the Merchant Law Group ("MLG") issued its Statement of Claim in a case styled *Thompson v. Canada et al.*, QB No. 1642/11, containing very similar allegations pertaining to the Sixties Scoop in Saskatchewan. Nothing took place in the *Thompson* action until January 29, 2014, when MLG re-filed the same Statement of Claim that had been filed in August 2011. A year later, on January 9, 2015, MLG purported to file a discontinuance of the *Thompson* claim. It is unclear whether this discontinuance was in accordance with s. 38(1) of *The Class Actions Act*, S.S. 2001, c. C-12.01, failing which the *Thompson* action should be spoken to in tandem with the *Blue Waters* and *Ash* matters discussed herein. We are not aware of any steps having been taken to have the *Thompson* action certified as a class proceeding over its approximately five (5) years on the docket.

KOSKIE MINSKY

Meanwhile, on December 17, 2014, prior to its purported discontinuance of its *Thompson* claim, MLG issued its Statement of Claim in *Blue Waters v. Saskatchewan et al.*, QB No. 2635/14, which again entailed allegations pertaining to the Sixties Scoop in Saskatchewan. The *Blue Waters* claim was served on January 12, 2015. MLG filed an Amended Statement of Claim in the *Blue Waters* action on June 28, 2016. It was not until August 29, 2016 that MLG requested that a case management judge be appointed in the *Blue Waters* action. Chief Justice Popescul appointed Your Lordship as case management judge on September 27, 2016.

It is our understanding that to date in the *Blue Waters* action, no date has been set for the first case management conference to be heard, no timetable for certification has been established, and no certification materials have been filed.

We respectfully request that our consortium be permitted to attend and give submissions at the first case management conference before Your Lordship, the date for which is yet to be determined. We request that such a date be determined as soon as possible, given the vulnerable and elderly composition of the proposed class. We also request that all future correspondence concerning these matters be copied to our consortium's attention.

The carriage motion ought to be the first motion heard

At the first case management conference, when scheduled, submissions should be heard to set a schedule leading up to a carriage motion on an expedited basis.

This Court has broad discretion under sections 14 and 15 of *The Class Actions Act*, S.S. 2001, c. C-12.01 to award carriage and to stay any related proceeding on such terms as it considers appropriate.

In keeping with precedent in the common law provinces, the carriage motion ought to be the first order of business heard by the Court in a class action, with certification to follow only once the carriage issue has been finally determined.[1] It is impossible for the proposed class action to proceed towards certification and potential resolution for the class, until the case that will proceed, and in effect, the class counsel that will advance it, is determined by the Court.

Our consortium has standing to challenge carriage in these proposed class actions. Unlike in Quebec, but similar to the other common law provinces, there is no "first to file" rule for carriage in class actions in Saskatchewan. Accordingly, it is not relevant that MLG's *Blue Waters* claim was issued first.

There is general agreement in common law Canada that carriage motions should serve three objectives: (a) the best interests of the putative class; (b) promotion of the objectives of class proceedings legislation; and (c) fairness to the defendants.[2] To date, common law provinces have generally employed these qualitatively applicable factors to determine carriage awards:

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[1] For example, see *Grasby v. Merck Frosst Canada Ltd.*, 2007 MBQB 97; *Thompson et al. v. Minister of Justice of Manitoba et al.*, 2016 MBQB 169.

[2] For example, for appellate authority in Canada in this respect, see *Locking v. Armtec Infrastructure Inc.*, 2013 ONSC 331 (Div. Ct.) at paras. 7-9.

1. the nature and scope of the causes of action advanced;
2. the theories advanced by counsel as being supportive of the claims advanced;
3. the prospects of certification;
4. the state of each class action, including preparation;
5. the attributes of the proposed representative plaintiffs;
6. the relative priority of commencing the class action;
7. the resources and experience of counsel;
8. the presence of any conflicts of interest;
9. a costs indemnity and funding;
10. the definition of class membership;
11. the definition of class period;
12. the joinder of defendants;
13. the plaintiff and defendant correlation; and
14. the fee/consortium agreement.[3]

These factors, among others, may be relevant to a potential carriage determination in respect of the two proposed class actions discussed herein.

To facilitate expeditious access to justice for the putative class, many of whom are elderly and vulnerable individuals who have been deprived of their day in court for far too long, and in keeping with the goal of judicial economy in class actions, it is our consortium's position that the hearing of the carriage motion in these matters ought to be expedited, returnable within 45-60 days of the first case management conference, the date for which, as we understand it, has yet to be set. We believe that one full day of hearing should be sufficient.

Please contact our consortium should you have any further questions. We look forward to addressing these issues further at the first case management conference.

Yours truly,

KOSKIE MINSKY LLP

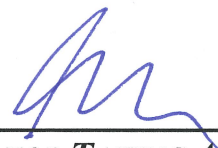
Kirk M. Baert
KMB:sm
cc.

Celeste Poltak (cpoltak@kmlaw.ca) / Scott Robinson (srobinson@kmlaw.ca) – Koskie Minsky
Eleanore Sunchild (eleanore@sunchildlaw.com) – Sunchild Law
Roch Dupont (rdupont@merchantlaw.com) / Tony Merchant (tmerchant@merchantlaw.com) – Merchant Law Group
Paul Vickery (paul.vickery@justice.gc.ca) / David Culleton (david.culleton@justice.gc.ca) – Justice Canada
Alan Jacobson (alan.Jacobson@gov.sk.ca) – Saskatchewan Justice

---

[3] For example, see *Smith v. Sino-Forest Corp.*, 2012 ONSC 24 at para. 17; *Wilson v. LG Chem Ltd.*, 2014 ONSC 1875 at para. 18.

THIS IS EXHIBIT "37" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Lori Seto

From:	McDonald, Bev JU <Bev.McDonald@gov.sk.ca>
Sent:	November-08-16 2:16 PM
To:	Kirk M. Baert; 'Eleanore Sunchild'; Jacobson, Alan JU; 'Tony Merchant'; rdupont@merchantlaw.com; thor.kristiansen@justice.gc.ca; david.culleton@justice.gc.ca
Cc:	Morris, Michael JU; Casey Churko; 'Anthony Tibbs'; 'Norman Rosenbaum'; Heather Cabral; Lori Seto; Celeste Poltak; Scott Robinson; Susan Bourassa
Subject:	RE: Maggie Blue Waters vs Queen (QBG 2635/14) & Simon Ash vs Queen (QBG 2487/16)

Counsel

It appears everyone is available on November 16th @9:00 a.m. (Sask time) for a conference call with Justice Keene. I am enclosing the instructions for our call in telephone conference:

Please dial in the appropriate number and enter the pass code when prompted. Please wait on the line until the moderator has joined the call.

306 -781-5995 (inside of Saskatchewan)

1-866-296-5646 (outside of Saskatchewan)

Participant code is 216504

Thank you for your anticipated co-operation in this matter.

Bev McDonald

Government of Saskatchewan

Local Registrar

Court Services, Ministry of Justice

2425 Victoria Avenue

Regina, Canada S4P 4W6

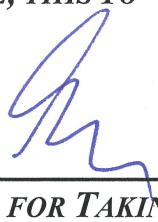
Bus: (306) 787-8363

Cell: (306) 527-7309

Fax: (306) 787-7217

E-Mail: bev.mcdonald@gov.sk.ca

THIS IS EXHIBIT "38" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Judicial Centre of Regina
Maggie Blue Waters vs Queen **QBG 2634/14**
Simon Ash vs Queen **QBG 2487/16**

DATE	*NATURE OF ORDER*	*JUDGE*
November 16, 2016	Tony Merchant, Q.C. for Pltf Blue Waters Celeste Poltak, Scott Robinson & Eleanore Sunchild for Pltf Ash Michael Morris for Provincial Government David Culleton for Federal Government Conference call proceeds. The carriage hearing for both matters is scheduled to commence at 1:00 p.m. on March 2, 2017 and to continue on March 3, 2017 @10:00 a.m. if necessary. Ms. Poltak is to serve and file her carriage motion and supporting materials by 4:00 p.m. on January 5, 2017. Mr. Merchant is to serve and file his motion and supporting material by 4:00 p.m. on January 5, 2017. Questioning shall be completed by all parties by 4:00 p.m. on January 30, 2017. Briefs are to be exchanged and filed on or before 4:00 p.m. on February 10, 2017. All reply briefs are to be exchanged and filed by 4:00 p.m. on February 24, 2017. Local Registrar	Keene, J

THIS IS EXHIBIT "39" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

MAGGIE BLUE WATERS v HER MAJESTY THE QUEEN
SIMON ASH V HER MAJESTY THE QUEEN

J.C.R. KEENE, J.
QBG 2634 of 2014
QBG 2487 of 2016 MARCH 1, 2017

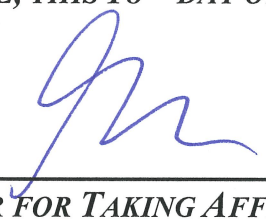
Tony Merchant, Q.C. for the plaintiff, Maggie Blue Waters
Celeste Poltak, Scott Robinson and Eleanore Sunchild for the plaintiff, Simon Ash
Michael Morris for the Provincial Government
David Culleton for the Federal Government

The Manitoba carriage application in Thompson et al v Her Majesty the Queen in Right of Manitoba, as represented by the Minister of Justice of Manitoba et al and the companion case of Meeches et al v the Attorney General of Canada, combined under the citation of 2016 MBQB 169, and heard before Mr. Justice Edmond appears virtually identical to the carriage application before me. Justice Edmond's judgement was delivered on August 24, 2016. The decision was appealed and the Manitoba Court of Appeal heard argument in January 2017 and the court reserved its decision. While the Manitoba Court of Appeal's decision is not binding on this Court, I still wish to have the benefit of that court's decision before proceeding further. Therefore this carriage application is adjourned *sine die* pending the deliverance of that judgment. I direct that once the Manitoba Court of Appeal has delivered its decision then counsel shall contact the Regina Local Registrar and ask that a telephone conference call be set up with the court and all the parties to schedule a new date for the carriage application and the application to strike the affidavit of Mr. Pitak.

In the meantime, I direct that no further briefs or affidavits shall be filed without leave of the court. There shall be no further steps taken regarding either QB 2634/2014 or QBG 2487/2016 without leave of the court. Further, any correspondence shall be sent to the Regina Local Registrar and not directly to myself. Additionally the court requests that counsel not file duplicate materials. One court filing is sufficient.

J.

THIS IS EXHIBIT "40" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

IN THE COURT OF APPEAL FOR SASKATCHEWAN

Between:

COURT FILE NUMBER QBG 2635/14

MAGGIE BLUE WATERS also known as JOANNE NELSON

Respondent (Plaintiff/Applicant)

— and —

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (as represented by the MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT OF CANADA and the ATTORNEY GENERAL OF CANADA) AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN (as represented by THE MINISTER OF SOCIAL SERVICES IN SASKATCHEWAN and the ATTORNEY GENERAL OF SASKATCHEWAN)

Respondent (Defendants/Respondents)

Brought under *The Class Actions Act*

COURT FILE NUMBER QBG 2487/16

SIMON ASH

Appellant (Plaintiff/Applicant)

— and —

ATTORNEY GENERAL OF CANADA

Respondent (Defendants/Respondents)

Proceeding under *The Class Actions Act*

NOTICE OF APPEAL

TAKE NOTICE:

1. THAT Simon Ash, the above named Appellant, hereby appeals to the Court of Appeal from the decision of the Honourable Mr. Justice Keene (the "chambers judge") issued on the 1st day of March, 2017 (the "Decision");

2. THAT the whole of the Decision is being appealed;

3. THAT the source of the Appellant's right of appeal and the court's jurisdiction to entertain the appeal is:

    a. Section 7(2)(a) of *The Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1;

    b. Section 6 of *The Court of Appeal Rules*, Sask. Gaz., April 18, 1997;

    c. The Decision is final as it effects an indefinite stay of the proposed class proceedings *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16; and

    d. Leave to appeal is not required;

4. THAT the appeal is taken upon the following grounds:

    a. The proposed class proceedings *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16 concern the "Sixties Scoop" in Saskatchewan;

    b. There has already been considerable delay and prejudice imposed upon the putative class members as a result of the case history of *Blue Waters v. Saskatchewan et al.*, QBG 2635/14;

    c. The claim in *Ash v. Canada*, QBG 2487/16 was issued on October 7, 2016 and has been litigated as expeditiously as possible since commencement;

    d. The carriage applications between proposed class proceedings *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16 were set down by the chambers judge at a case conference between the parties on November 16, 2016, scheduled to be heard in Regina on March 2-3, 2017;

e. A timetable was imposed by the chambers judge leading up to the hearing of the carriage applications, given their urgency;

f. On March 1, 2016, at the request of the chambers judge, a case management conference occurred;

g. The chambers judge indicated at the March 1, 2017 case management conference call that he wished to adjourn the carriage applications *sine die*, despite there being no request for any adjournment by any party;

h. The chambers judge indicated that he preferred to await the release of the Manitoba Court of Appeal's decision, taken under reserve, in the appeal heard on January 23, 2017 of the Honourable Justice Edmond's order in the Manitoba "Sixties Scoop" carriage motion with attendant reasons reported at *Thompson et al. v. Minister of Justice of Manitoba et al.*, 2016 MBQB 169 (the "Manitoba Appeal"), before hearing the carriage applications between *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16;

i. The chambers judge made it known to the parties that he did not view the hearing of the carriage applications as being urgent in any way, and that he would not be bound by the Manitoba Court of Appeal's decision in any event;

j. The similarities between the Manitoba Sixties Scoop carriage motion and the carriage applications scheduled between *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16 were made known to the chambers judge as far back as the November 16, 2016 case conference;

k. The chambers judge then requested and heard oral submissions from the parties on his proposed *sine die* adjournment;

l. Counsel for various parties maintained that the scheduled carriage applications should still be heard on March 2-3, 2017;

m. Nevertheless, the chambers judge ignored the submissions of the parties and by way of his Decision by fiat dated March 1, 2017, ordered the following:

i. That the carriage applications previously set down on November 16, 2016 and fully briefed in anticipation of their hearing on March 2-3, 2017 between actions numbered QBG 2635/14 and QBG 2487/16, are adjourned *sine die*;

ii. That upon the release of the decision in the Manitoba Appeal, counsel may contact the Regina Local Registrar and ask for a new date for the carriage applications;

iii. That no further briefs or affidavits shall be filed in QBG 2635/14 or QBG 2487/16 without leave of the Court; and

iv. That no further steps shall be taken in either QBG 2635/14 or QBG 2487/16 without leave of the Court.

n. The chambers judge erred in law by way of the following errors in his Decision:

i. ordering a *sine die* adjournment and indefinite stay of the carriage applications when no party requested such relief, and indeed, the parties expressly requested otherwise;

ii. the *sine die* adjournment and indefinite stay are fundamentally at odds with the critical goals of judicial economy and access to justice in class proceedings;

iii. ordering dispositive relief on the Court's own accord at a case management conference call when not in open court, without any notice to the parties, and without the opportunity or benefit of any written, or prepared oral submissions, from the parties;

iv. failing to follow the established law that carriage applications ought to be heard forthwith;

v. exceeding his jurisdiction as a Court of Queen's Bench judge; and

vi. rendering himself *functus officio*;

o. The chambers judge erred in mixed fact and law by way of the following errors in his Decision:

i. failing to accord appropriate concern for the delay and prejudice, as well as denial of access to justice, inflicted upon the putative aging and vulnerable class members as a result of the *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 case history, such that the carriage applications needed to be heard forthwith; and

ii. failing to discharge his case management powers in the best interests of the putative class members in an effective and responsible manner;

p. *The Court of Appeal Act, 2000*, S.S. 2000, c. C-42.1;

q. *The Court of Appeal Rules*, Sask. Gaz., April 18, 1997; and

r. *The Class Actions Act*, S.S. 2001, c. C-12.01

5. THAT the Appellant requests the following relief:

a. That an order be granted allowing the appeal and setting aside the Decision;

b. That an order be granted directing that the carriage applications between *Blue Waters v. Saskatchewan et al.*, QBG 2635/14 and *Ash v. Canada*, QBG 2487/16 be re-scheduled and heard forthwith on an expedited basis by a new chambers judge;

c. That an order be made allowing the Appellant his costs of the appeal at this Court; and

d. Such further and other relief as this Honourable Court may deem just;

6. THAT the Appellant's address for service is:

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889

Celeste Poltak
Tel: 416-595-2701
Fax: 416-204-2909

Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

SUNCHILD LAW
P.O. Box 1408
Battleford, SK

Eleanore Sunchild
Tel: 306-937-6154
Fax: 306-937-6110

7. THAT the Appellant requests that this appeal be heard at Regina.

DATED at Poundmaker II, Saskatchewan, this 9 day of March, 2017.

Per: _____

KOSKIE MINSKY LLP
SUNCHILD LAW
Lawyers for the Appellant

TO: Respondents:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, SK S4P 4H8

Tony Merchant
Tel: 306-359-7777
Fax: 306-522-3299

Lawyers for the Thompson
and the Blue Waters Plaintiffs

Attorney General of Canada
Prairie Regional Office
Department of Justice Canada
123-2nd Avenue S., 10th Flr.
Saskatoon, SK S7K 7E6

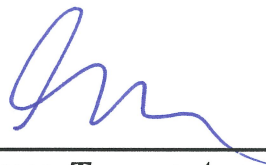
David C. Culleton
Tel: 306-975-6305
Fax: 306-975-6499

Province of Saskatchewan
Ministry of Justice
Civil Law Branch, 9th Flr.
1874 Scarth St.
Regina, SK S4P 4B3

Alan F. Jacobson
Phone: 306-787-1087
Fax: 306-787-9111

Michael J. Morris
Tel: 306-787-7444
Fax: 306-787-0581

THIS IS EXHIBIT "41" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Docket: CACV3039

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN: **(QBG 2635/14)**

MAGGIE BLUE WATERS also known as JOANNE NELSON
Respondent on Appeal/Applicant on Motion
(Plaintiff/Applicant)

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (as represented by the MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT OF CANADA and the ATTORNEY GENERAL OF CANADA) AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN (as represented by THE MINISTER OF SOCIAL SERVICES IN SASKATCHEWAN and the ATTORNEY GENERAL OF SASKATCHEWAN)
Respondent on Appeal/Respondent on Motion
(Defendants/Respondents)

Brought under *The Class Actions Act*

AND BETWEEN: **(QBG 2487/16)**

SIMON ASH
Appellant/Respondent on Motion
(Plaintiff/Applicant)

- and -

ATTORNEY GENERAL OF CANADA
Respondent/Respondent on Motion
(Defendant/Respondent)

Brought under *The Class Actions Act*

NOTICE OF MOTION TO QUASH APPEAL

TAKE NOTICE:

1. THAT Maggie Blue Waters (Respondent on Appeal) intends to apply to the panel presiding on this appeal at the Court of Appeal, 2425 Victoria Avenue, Regina, Saskatchewan on a date to be determined by the Court, for an order:

   (a) quashing the within appeal;

   (b) granting costs of this application and of the appeal generally to the Applicant on a solicitor-client basis; and,

   (c) granting such further and other relief as counsel may advise and this Honourable Court may deem appropriate.

2. THAT the Applicant makes this application on the following grounds:

   (a) the decision under appeal – a temporary adjournment – is an interlocutory decision;

   (b) an appeal may be taken from an interlocutory decision only if leave to appeal has been sought and granted: *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, s. 8;

   (c) leave to appeal the decision has not been sought or granted;

   (d) this Honourable Court has no jurisdiction with which to receive or consider the appeal; and

(e) such further and other grounds as counsel may advise and this Honourable Court may consider.

3. THAT the following material will be relied upon in support of this motion:

(a) this notice of motion, with proof of service thereof;

(b) the Affidavit of Lenitta Covill, sworn May 18, 2017;

(c) Applicant's Memorandum of Fact and Law (Motion to Quash Appeal), dated May 18th, 2017;

(d) the pleadings and proceedings herein, including the Appeal Book prepared and filed on behalf of the Appellant, Simon Ash;

(e) such further and other material as counsel may advise and this Honourable Court may accept.

DATED AT Regina, Saskatchewan, this 18th day of May, 2017.

MERCHANT LAW GROUP LLP

E.F. ANTHONY MERCHANT, Q.C.

ORIGINAL TO the Registrar, Court of Appeal

TO: **Koskie Minsky LLP**
900-20 Queen Street West
Toronto ON M5H 3R3

Attn: Kirk M. Baert <kmbaert@kmlaw.ca>
Celeste Poltak <cpoltak@kmlaw.ca>
Scott Robinson <srobinson@kmlaw.ca>
Tel: (416) 595-2701
Fax: (416) 204-2909
Co-Counsel for Simon Ash, Appellant on Appeal/Respondent on Motion

TO: **Sunchild Law**
PO Box 1408
Battleford SK S0M 0E0

Attn: Eleanore Sunchild <eleanore@sunchildlaw.com>
Tel: (306) 937-6154
Fax: (306) 937-6110
Co-Counsel for Simon Ash, Appellant on Appeal/Respondent on Motion

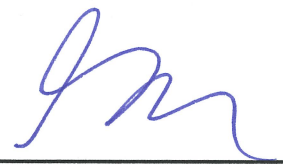
TO: **Ministry of Justice (Civil Law Division)**
900 - 1874 Scarth Street
Regina SK S4P 4B3

Attn: Michael J. Morris <Michael.Morris@gov.sk.ca>
Tel: (306) 787 7444
Fax: (306) 787 0581
Counsel for the Government of Saskatchewan in QBG 2635 of 2014, Respondent

TO: **Justice Canada (Prairie Region)**
123 2nd Ave S., 10th Flr
Saskatoon SK S7K 7E6

Attn: David C. Culleton <david.culleton@justice.gc.ca>
Tel: (306) 975-6305
Fax: (306) 975-6499
Counsel for Attorney General of Canada, Respondent

THIS IS EXHIBIT "42" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

July 24, 2017

Kirk M. Baert *
** Practicing through a professional corporation*
Direct Dial: 416-595-2092
Direct Fax: 416-204-2889
kmbaert@kmlaw.ca

Email or Fax

The Honourable Mr. Justice T.J. Keene
Court of Queen's Bench of Saskatchewan
121 Lorne Street W.
Swift Current, SK, Canada S9H 0J4

Dear Justice Keene:

Re: *Ash v. Attorney General of Canada*, QB No. 2487/16
File No. 16/2002

Enclosed is a copy of the decision of the Manitoba Court of Appeal dated July 20 awarding carriage of the Sixties Scoop case to Koskie Minsky LLP and its co-counsel and staying the action brought by the Merchant Law Group.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:st
Enclosure

c Celeste Poltak / Garth Myers – Koskie Minsky
Eleanore Sunchild– Sunchild Law
Thor Kristiansen, David Culleton, Catherine Moore, Travis Henderson – Justice Canada
Michael Morris – Saskatchewan Justice
Roch Dupont / Tony Merchant– Merchant Law Group
David Klein

KM-2916435v1

Citation: Thompson et al v Minister of Justice of Manitoba et al; Meeches et al v The Attorney General of Canada, 2017 MBCA 71

Date: 20170721
Docket: AI16-30-08675

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre

BETWEEN:

PRISCILLA MEECHES and STEWART GARNETT	
(Plaintiffs) Respondents	***S. N. Rosenbaum** and **A. Tibbs** for the Appellants*
- and -	
THE ATTORNEY GENERAL OF CANADA	***K. M. Baert** and **C. B. Poltak** for the Respondents P. Meeches and S. Garnett*
(Defendant) Respondent	
- and -	
BETWEEN:	*No appearance ✓ for the Respondent the Attorney General of Canada*
LYNN THOMPSON, DAVID CHARTRAND and LAURIE-ANNE O'CHEEK	
(Plaintiffs) Appellants	***D. G. Guénette** and **J. R. Koch** for the Respondents Her Majesty the Queen in Right of Manitoba and Her Majesty the Queen in Right of Canada*
- 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	*Appeal heard: **January 23, 2017** Judgment delivered: **July 21, 2017***
(Defendants) Respondents	

On appeal from 2016 MBQB 169

LEMAISTRE JA

Introduction

[1] A practice commonly known as "the 60's scoop" involved removing Aboriginal children from their families and placing them with non-Aboriginal parents. These "children" now wish to claim for damages arising from that practice by way of a class action.

[2] This case is about who should have carriage of the proposed class action. The appellants appeal the decision of the motion judge to stay their action (the Thompson action) in favour of another proposed class proceeding (the Meeches action).

Background

[3] On April 20, 2009, Lynn Thompson, David Chartrand and Laurie-Anne O'Cheek, the plaintiffs in the Thompson action, commenced an action seeking damages from Her Majesty the Queen in Right of Manitoba, as Represented by the Minister of Justice of Manitoba (Manitoba) and Her Majesty the Queen in Right of Canada, as Represented by the Minister of Indian and Northern Affairs of Canada (Canada). They proposed a class proceeding pursuant to *The Class Proceedings Act*, CCSM c C130 (*CPA*) to compensate the putative class members for loss of identity, family, community and culture and for abuse, denigration and humiliation.

[4] On February 4, 2011, they filed an amended claim and on March 13, 2015, they commenced a second action which they called a

replacement claim to correct an issue with service on the defendants. The action commenced in 2009 was eventually discontinued.

[5] The proposed class definition in the Thompson action is as follows:

> All Aboriginal persons . . . 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 dependants and family members, any other subclasses that this Court finds appropriate.

[6] The named defendants in the Thompson action are Manitoba and Canada, and the causes of action include breach of fiduciary duty, negligence and cultural genocide.

[7] A case management conference was scheduled for April 27, 2016, with the consent of the parties to the Thompson action.

[8] On April 20, 2016, Priscilla Meeches and Stewart Garnett, the plaintiffs in the Meeches action, filed a separate claim against the Attorney General of Canada (AG) seeking damages for similar losses. They obtained permission to participate in the case management conference.

[9] The proposed class definition in the Meeches action is as follows:

> [A]ll Indian, non-status Indian, and/or Metis children who were taken from (a) their homes on reserves lying within the boundaries of the [Children's Aid Societies] in Manitoba, or (b) resided within the boundaries of the [Children's Aid Societies] and had not established residence in a place other than a reserve in Manitoba, at or after September 2, 1966, 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.

[10] The only named defendant in the Meeches action is the AG, and the causes of action are breach of fiduciary duty and negligence.

[11] At the case management conference, all parties to both actions agreed that the first step in the process towards certification of a class action ought to be a motion to determine which plaintiffs and corresponding law firms should have carriage of the proposed class proceedings (the carriage motion).

[12] Notwithstanding that agreement, the plaintiffs in the Thompson action filed a motion seeking leave to proceed to certification in order to determine whether one or more class actions could be certified as a class action and, in the alternative, a stay of the Meeches action. The plaintiffs in the Meeches action filed a motion seeking an order appointing their lawyers as counsel for the proposed class action, a stay of the Thompson action and a declaration that no other similar class action may be commenced in Manitoba without leave of the court. These motions were heard together at the carriage motion.

[13] At the carriage motion, the motion judge considered a number of factors and ultimately concluded that the Meeches action would "best serve the interests of the putative class and the policy objectives of the *CPA*" (at para 60). Accordingly, the motion judge ordered:

1. that the Meeches action shall proceed with its counsel, Koskie Minsky LLP and Troniak Law, as the lead counsel in the proposed class proceedings;

2. that the Thompson action is stayed as a proposed class proceeding;

3. that no other class action may be commenced in Manitoba in respect of the facts pleaded in the Meeches action without leave of the court;

4. that leave is granted generally to amend the Meeches statement of claim to address the issue that the proposed members of the class ought to include as many Aboriginal persons affected by the 60's scoop as possible, including the members of the Thompson action; and

5. that there shall be no order of costs on these motions.

[14] The plaintiffs in the Thompson action seek to set aside the motion judge's order and seek an order for carriage in their favour or, alternatively, an order permitting both proposed class actions to proceed. Their grounds of appeal are that the motion judge erred:

1. by adjudicating carriage on the basis of pleadings as they could be amended, rather than on the basis of the record;

2. by undertaking a merit-based assessment of which causes of action would be more likely to succeed at certification or trial and by concluding that, "a more narrowly construed claim against fewer defendants will increase the likelihood of certification" (at para 40);

3. by staying the Thompson action when some of the putative

class members will be excluded as class members in the Meeches action;

4. by relying solely on the pleadings to establish the suitability of the representative plaintiffs in the Meeches action;

5. by taking fairness to the defendants into account;

6. by weighing certification criteria on the carriage motion after finding that these criteria were only to be considered at the certification hearing; and

7. by determining carriage prior to the certification hearing.

[15] Leave to appeal is required to appeal an order certifying, or refusing to certify, a proceeding as a class proceeding (see section 36(4) of the *CPA*). The *CPA* is silent about carriage motions, which are interlocutory motions. The plaintiffs in the Meeches action filed a motion to quash the appeal on the basis that the order under appeal is interlocutory in nature and does not meet the test for leave. This motion was, in my view, properly withdrawn at the hearing. Leave to appeal an interlocutory motion is not required in Manitoba. This appeal is governed by section 89 of *The Court of Queen's Bench Act*, CCSM c C280 (*QBA*) which permits this Court to set aside or vary an order made by the Court of Queen's Bench unless prohibited by statute.

[16] For the reasons that follow, I would dismiss the appeal.

Carriage Motions

[17] The factors to be considered by a judge on a carriage motion were

not disputed. This Court has previously considered class proceedings, but has never considered a carriage motion.

Background

[18] Class action legislation is procedural in nature and allows mass claims to be tried efficiently without creating new substantive rights. See, for instance, *Bisaillon v Concordia University*, 2006 SCC 19 at paras 17-22; *Hollick v Toronto (City)*, 2001 SCC 68 at paras 14-15; and *Hislop v Canada (Attorney General)*, 2009 ONCA 354 at para 57, leave to appeal to SCC refused, 2009 CarswellOnt 6639.

[19] In *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46; *Hollick*; and *Rumley v British Columbia*, 2001 SCC 69, McLachlin CJC reviewed the history and purpose of class proceedings and reiterated the three objectives previously articulated by the Ontario Law Reform Commission: judicial economy, increased access to the courts and modification of the behaviour of actual or potential wrongdoers. See Ontario Law Reform Commission, *Report on Class Actions*, vol 1 (Toronto: Ministry of the Attorney General, 1982) at 117.

Carriage before Certification

[20] Interestingly, the *CPA* is silent on the matter of carriage motions. Section 1 defines a class proceeding as a proceeding that has already been certified. Nevertheless, courts in Manitoba, British Columbia and Ontario have found that class proceedings legislation applies to carriage motions which proceed prior to certification. The courts in Manitoba and British Columbia have agreed that, while technically the legislation does not confer jurisdiction to stay an action pre-certification, it does not remove the

inherent jurisdiction of the court to control its own process. See *Setterington v Merck Frosst Canada Ltd*, 2006 CarswellOnt 506 (Sup Ct J); *Grasby et al v Merck Frosst Canada Ltd et al*; *Hamilton et al v Merck Frosst Canada Ltd et al*; *Rogers et al v Merck Frosst Canada Ltd et al*, 2007 MBQB 97; *Nelson v Merck*; *Harry et al v Merck*, 2006 BCSC 1549; *Joel v Menu Foods Genpar Limited*, 2007 BCSC 1248; and *Whiting v Menu Foods Operating Ltd*, 2007 CarswellOnt 6726 (Sup Ct J).

Applicability of the CPA to Carriage Motions

[21] Courts have also found that sections 12 and 13 of the *CPA*, in addition to court rules and inherent jurisdiction, provide authority for the court to decide carriage motions before an action has been certified as a class proceeding:

> **Court may determine conduct of proceeding**
> **12** The court may at any time make any order that it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.
>
> **Court may stay proceeding**
> **13** The court may at any time stay or sever a proceeding related to the class proceeding on terms the court considers appropriate.

[22] In *Grasby*, for instance, McKelvey J found that, "while the *CPA* does not specifically deal with the issue of pre-certification proceedings, the reason behind the legislation nonetheless lends itself to its applicability to such motions" (at para 16). She agreed that, "[t]he goal of the *CPA* is one of judicial economy and access to justice and should result in cases being handled in the most just, expeditious and inexpensive means possible"

(*ibid*), and she held that these goals encompass pre-certification matters. See also *Briones v National Money Mart Company et al*, 2016 MBQB 213 at para 7.

[23] Notwithstanding that the principles and objectives of the *CPA* support such proceedings, the Court in *Grasby* also cited sections 38 and 94 of the *QBA*, as well as rr 1.04(1) and 6.01 of the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, in addition to the Court's inherent jurisdiction, as providing jurisdiction to order a carriage motion to proceed prior to certification (see paras 21-24). See also *Nelson*; *Murray v Alberta (Calgary Health Region)*, 2007 ABQB 231; and *VitaPharm Canada Ltd v F Hoffmann-LaRoche Ltd*, 2000 CarswellOnt 4681 (Sup Ct J), wherein similarly worded legislation was interpreted in the same fashion.

Carriage Factors

[24] The parties agreed that *VitaPharm* is the leading case regarding factors to be considered on a carriage motion. The Court in *VitaPharm* held that it is important to be mindful of the policy objectives of class proceedings legislation when considering carriage and that the "main criterion" for determining carriage is "what resolution is in the best interests of all putative class members while at the same time fair to the defendants" (at para 48). Drawing largely upon American jurisprudence and Herbert B Newberg & Alba Conte, *Newberg on Class Actions*, 3rd ed (Shepard's/McGraw-Hill, 1992), the Court enumerated the following factors to be considered in determining carriage (at para 49):

> (i) the nature and scope of the causes of action advanced;
>
> (ii) the theories advanced by counsel;

(iii) the state of each class action, including preparation;

(iv) the number, size and extent of involvement of the proposed representative plaintiffs;

(v) the relative priority of commencing the class action (i.e. filing date); and

(vi) the resources and experience of counsel.

[25] Courts in Ontario have consistently followed the *VitaPharm* factors. See *Gorecki v Canada (Attorney General)*, 2004 CarswellOnt 1266 (Sup Ct J); *Genier v CCI Capital Canada Ltd*, 2005 CarswellOnt 1141 (Sup Ct J); and *Locking v Armtec Infrastructure*, 2013 ONSC 331.

[26] In *Mancinelli v Barrick Gold Corporation*, 2016 ONCA 571, Strathy CJO, writing for the Court, recently affirmed *VitaPharm* as the seminal carriage decision and reiterated the main criteria for determination: the policy objectives of the *CPA* (access to justice, judicial economy and behaviour modification of defendants), the best interests of all putative class members and fairness to the defendants (see para 13). He confirmed the six factors from *VitaPharm* as being factors for consideration, but described the list as non-exhaustive and found that other factors may be relevant depending on the circumstances (see para 17).

[27] Courts in Ontario have considered additional factors deemed relevant to the circumstances: funding, the definition of class membership, the definition of class period, joinder of defendants, the plaintiff and defendant correlation, the prospect of certification, the prospect of success against the defendants and the inter-relationship of class actions in more than one jurisdiction. See *Smith v Sino-Forest Corporation*, 2012 ONSC 24; and *Kowalyshyn v Valeant Pharmaceuticals International, Inc*, 2016 ONSC

3819. Recently, there has been a trend of downplaying the factors relating to counsel and of focussing more on the nature and scope of the causes of action. See *Sharma v Timminco Ltd*, 2009 CarswellOnt 6583 (Sup Ct J) and *Smith*.

[28] The *VitaPharm* factors have been applied in carriage decisions in Saskatchewan, Manitoba and British Columbia. See *Grasby* and *Richard v British Columbia*; *AW and DW (Litigation Guardian of) v British Columbia*, 2004 BCCA 337, where the British Columbia Court of Appeal accepted the *VitaPharm* factors as "useful considerations" (at para 21). Saskatchewan has also commented favourably on the additional factors referred to in *Kowalyshyn*. The courts in Newfoundland and Labrador have adjudicated carriage motion disputes on a factor-based approach but have not yet explicitly endorsed the *VitaPharm* factors. See, for example, *Pardy et al v Bayer Inc-Class Actions Act*, 2003 NLSCTD 109 at paras 12-13.

[29] I would endorse the *VitaPharm* approach, as expanded in *Smith* and explained in *Setterington*, *Locking* and *Joel* which, in my view, best serves the policy objectives of the *CPA*.

The Motion Judge's Decision

[30] The motion judge considered the overriding principles (the policy objectives of the *CPA*, the best interests of all putative class members and fairness to the defendants) and the *VitaPharm* factors to determine who should have carriage of the proposed class proceedings. He considered the differences in the proposed class definitions between the two actions and found that the proposed class in the Meeches action was not "fundamentally flawed" (at para 37), as argued by the plaintiffs in the Thompson action, nor

did it intentionally exclude others with a potential claim regarding "the 60's scoop". The motion judge was aware that proposed members of the Thompson class could potentially be excluded from the proposed class proceedings because the definition of the proposed class members in the Meeches action is narrower. However, he examined the requirements for certification in section 4 of the *CPA*, and he noted that the issue of class definition will be considered more carefully at the certification hearing.

[31] The motion judge also considered the differences in the causes of action and the defendants named in the two claims. He found that the Thompson action includes a number of causes of action, some of which were "novel and potentially problematic" and which would "not serve to secure the just, most expeditious and least expensive determination of the proposed class proceeding" (at para 30). The motion judge preferred the theory of the Meeches claim because of its narrower focus and its fewer defendants. The motion judge was of the view that the prospects for certification of the Meeches action were greater than the Thompson action because of its narrower focus and because it was based on an action which had already been certified in Ontario. After conducting a qualitative analysis, the motion judge determined that, "the best interests of the putative class members while ensuring fairness to the defendants favours the approach adopted in the Meeches action" (at para 34).

[32] The motion judge addressed the suitability of the proposed representative plaintiffs in both actions and found this to be a neutral factor in his analysis. He also considered the work done in each of the two actions and determined that both actions were at relatively the same state of preparation. However, the motion judge expressed concern about the

seven-year delay from the time the first Thompson action was filed in 2009 until the request for a case management conference was made in 2016. He found that there was no reasonable explanation for the delay and that the delay was "not in the best interests of the putative class members and [was] inconsistent with the requirements of the *CPA*" (at para 46).

[33] The motion judge gave little, if any, weight to the fact that the Thompson action was filed before the Meeches action, particularly in light of the failure to advance the Thompson action in a timely manner. Finally, he found that, "the knowledge, expertise, experience and resources of [counsel for the Meeches action] tips the balance slightly in their favour" (at para 56).

Positions of the Parties

Position of the Plaintiffs in the Thompson Action

[34] The plaintiffs in the Thompson action argue that the motion judge determined that the class definition in the Meeches action was deficient (as evidenced by the order granting leave to amend the statement of claim to include as many persons as possible) and that he erred by considering how the pleadings could be amended to broaden the class, rather than on the basis of the record. They also argue that the class definition in the Meeches action is too narrow and that it is incapable of being expanded to include all of the members of the putative class in the Thompson action.

[35] They assert that the motion judge went too far in assessing the merits of each cause of action and that a "simpler and leaner" claim is not a basis to prefer the Meeches action.

[36] Finally, the plaintiffs in the Thompson action submit that the motion judge improperly relied on the statement of claim in the absence of any evidence regarding the suitability of the plaintiffs in the Meeches action as representative plaintiffs when deciding the motion; that he should not have determined carriage prior to the certification hearing; and that he erred by taking fairness to the defendants into account and by weighing criteria relevant to certification on the carriage motion.

Position of the Plaintiffs in the Meeches Action

[37] The plaintiffs in the Meeches action argue that the decision of the motion judge is a highly discretionary decision in the case management context and that it is entitled to considerable deference, particularly in this case where the law and the factors governing a carriage motion were not in dispute. They argue that the motion judge properly applied the two over-arching considerations of the best interests of the class and fairness to the defendants and ultimately decided the carriage motion on the basis of the key factors relevant to these proceedings.

Positions of Canada and Manitoba

[38] Canada did not submit argument at the appeal.

[39] Manitoba argues that the motion judge did not commit palpable and overriding error in determining the issue of carriage prior to certification.

Standard of Review

[40] The decision of the motion judge granting carriage of the action to

the plaintiffs in the Thompson action involved a weighing and balancing of factors and the management of the proceedings and is, therefore, a discretionary decision. Such a discretionary decision is entitled to deference unless the motion judge erred in principle by misdirecting himself on the law or the facts or his decision was so clearly wrong as to amount to an injustice. See *Perth Services Ltd v Quinton et al*, 2009 MBCA 81 at paras 22-28; and *Soldier v Canada (Attorney General)*, 2009 MBCA 12 at paras 24-25.

[41] The parties agree that the motion judge considered the correct law. The issue on appeal is whether the motion judge committed palpable and overriding error in the application of the law to the facts, in weighing the applicable factors, or whether the decision was so clearly wrong as to amount to an injustice.

Analysis

[42] The motion judge reviewed both proposed class proceedings including the class definitions, the causes of action and the remedies sought. He considered the applicable legislation and case law and found that determining the carriage motion prior to certification was in the best interests of the putative class, fair to the defendants and consistent with the policy objectives of the *CPA* of access to justice and judicial economy.

[43] The motion judge relied on the *VitaPharm* factors, as expanded in *Smith* and explained in *Setterington*, *Locking* and *Joel*. He found that the nature and scope of the causes of action, the case theories, the state of each action including the seven-year delay in the Thompson action, the resources and experience of counsel and the prospects of certification, when considered in the context of the overriding principle of determining what is

in the best interests of the putative class members having regard to the policy objectives of the *CPA* and fairness to the defendants, favoured granting carriage to the Meeches action (see paras 20, 28, 34, 38, 56). He also found that allowing both actions to proceed to a certification hearing would "unnecessarily complicate the process . . . and would not be in the best interests of the putative class" (at para 61).

[44] In reaching these conclusions, the motion judge considered the Ontario Superior Court decision in *Brown v Canada (Attorney General)*, 2013 ONSC 5637, where a more focussed claim, similar to the Meeches claim, was certified and the certification order was upheld on appeal. See *Brown v Canada (Attorney General)*, 2014 ONSC 6967.

[45] While the plaintiffs in the Thompson action allege that the motion judge erred, in my view, they have not demonstrated any error in principle or palpable and overriding error that would allow this Court to intervene, nor have they demonstrated that the order is unjust. There are, however, three grounds of appeal which warrant further comment.

1. Exclusion of Class Members

[46] The primary focus of the argument of the plaintiffs in the Thompson action was protection of the class. The motion judge's order prevents the plaintiffs in the Thompson action from advancing a class proceeding on the facts pled in the Meeches action without leave. The plaintiffs in the Thompson action argue that the class in the Meeches action is too narrow because it focusses only on children who were apprehended pursuant to the Canada-Manitoba Child Welfare Agreement dated September 2, 1966 (Agreement) and that there were children who were

apprehended outside of that Agreement. They argue that the motion judge improperly minimized "the single most important distinction between Meeches and Thompson" and that the motion judge ought to have preferred the Thompson action based on class definition.

[47] Even though certification of the Meeches claim, with the existing class definition, will result in the exclusion of individuals who fall within the class definition in the Thompson action, they will not be deprived of access to justice, but they will be required to advance individual claims. The motion judge was cognizant of this issue and, while it is regrettable that there may be individuals who are not included in the putative class proceeding, the motion judge's weighing of this factor is entitled to deference.

2. Manitoba as a Defendant

[48] As noted previously, the Thompson claim includes Manitoba as a defendant whereas the Meeches claim does not. While this may be surprising in the sense that Manitoba was a party to the agreement that forms the basis of the Meeches action, and it was Manitoba Children's Aid Societies which actually removed children from their homes and placed them with families "who did not raise the children in accordance with the Aboriginal person's customs, traditions, and practices", this argument was also considered by the motion judge. On this point, the motion judge said (at para 38):

> However, the possible cause of action based on the manner in which Manitoba implemented the placement of Aboriginal children during the relevant time is difficult to discern on a review of the statement of claim in the Thompson action. Although I am not making a determination on the issue at this

> stage, I have concern that the possible cause of action alleged against Manitoba based on an alleged fiduciary duty owed by Manitoba and an alleged breach of that duty are vague and not clearly pled.

[49] In reaching his decision that, "a more narrowly construed claim against fewer defendants will increase the likelihood of certification and facilitate the expeditious prosecution of the claims of the proposed class members" (at para 40), the motion judge relied on the *Setterington* decision where the Court said that, "The mere inclusion of a multitude of defendants is not sufficient to provide a basis for the preference of one action over another" (at para 18).

[50] The plaintiffs in the Meeches action relied on the pleadings in a similar class action in Ontario. The representative plaintiff in *Brown v Canada (Attorney General)*, 2017 ONSC 251, named the AG as the sole defendant in its action and recently succeeded on a motion for summary judgment. The Court found the AG liable for breaching a common-law duty of care owed to the class members (see para 86). In finding that the AG breached the Canada-Ontario Welfare Services Agreement, the Court said, "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" (at para 38). However, the Court made no finding in terms of Ontario's liability.

[51] In my view, the motion judge was alive to the differences between the two actions regarding the defendants. The plaintiffs in the Thompson action have not demonstrated that he erred in this regard and his decision is entitled to deference.

3. Suitability of the Proposed Representative Plaintiffs

[52] The motion judge found that the proposed representative plaintiffs in both actions may be suitable representative plaintiffs in the proceeding and that, "there is nothing to indicate that the plaintiffs in the Meeches action would do anything other than fairly and adequately represent the interests of the proposed class" (at para 51). The plaintiffs in the Thompson action argue that the motion judge improperly made his decision on the basis of the pleadings rather than evidence. While there were no affidavits from the proposed representative plaintiffs in the Meeches action (as there were for the Thompson action and as one might expect), the motion judge did consider an affidavit from a lawyer from the law firm representing the plaintiffs in the Meeches action in addition to the statement of claim. While minimal and of a hearsay nature, the affidavit did provide some evidence of the suitability of Meeches and Garnett as representative plaintiffs and this ground of appeal does not require appellate intervention.

Costs

[53] The plaintiffs in the Meeches action seek costs in the amount of $25,000 against the law firm representing the plaintiffs in the Thompson action on the basis that section 37(2) of the *CPA* provides that the court has limited discretion to award costs regarding an appeal arising from a class proceeding. They argue that the appeal was unnecessary because the motion judge did not extinguish the ability of the plaintiffs in the Thompson action to proceed with their own claims, that the appeal has increased the costs to the parties and that the appeal has further delayed the proceedings. They also argue that an order for costs ought to serve as a disincentive to future appeals of carriage decisions. The plaintiffs in the Thompson action argue

in response that costs in these circumstances would be punitive and would have a chilling effect on access to justice.

[54] In my view, section 37 of the *CPA* informs the issue of costs in this case, even though the proceeding has not yet been certified, because this is essentially an "appeal arising from a class proceeding". As has already been explained, a carriage motion is a "stage of a class proceeding" to which class proceedings legislation applies.

[55] I am not persuaded that costs should be awarded to the plaintiffs in the Meeches action. Sections 37(1) and 37(2) make it clear that costs should not be awarded absent vexatious, frivolous or abusive conduct, an improper purpose or exceptional circumstances, none of which, in my view, were demonstrated in this case.

Conclusion

[56] In reaching his decision, the motion judge considered the arguments before him and weighed the appropriate factors. The issue is whether the motion judge erred in principle, committed palpable and overriding error in applying and weighing the relevant factors or whether the decision is unjust. In my view, the motion judge committed no error in principle and his decision is certainly not so clearly wrong as to amount to an injustice. I would therefore dismiss the appeal without costs.

JA

I agree: JA

I agree: JA

APPENDIX "A"

The Class Proceedings Act, CCSM c C130

PART 1
INTRODUCTORY PROVISIONS

Definitions

1 In this Act,

"certification order" means an order certifying a proceeding as a class proceeding;

"class proceeding" means a proceeding certified as a class proceeding under Part 2;

"common issues" means

(a) common but not necessarily identical issues of fact, or

(b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

"court", except in sections 36 and 37, means the Court of Queen's Bench;

"defendant" includes a respondent;

"party" means a representative plaintiff or a defendant but does not include individual members of a class or of a subclass;

"plaintiff" includes an applicant;

"representative plaintiff" means a person appointed as a representative plaintiff under section 2, 3 or 6.

PART 2
CERTIFICATION

Member of class may commence proceeding

2(1) One or more members of a class of persons may commence a proceeding in the court on behalf of the members of that class.

Motion for certification by plaintiff

2(2) A person who commences a proceeding under subsection (1) must make a motion to the court for an order

(a) certifying the proceeding as a class proceeding; and

(b) appointing a representative plaintiff.

Timing of motion
2(3) A motion under subsection (2) must be made

(a) within 90 days after the close of pleadings or the noting of a defendant in default; or

(b) with leave of the court, at any other time.

Representative plaintiff not from class
2(4) The court may appoint a person who is not a member of the class as the representative plaintiff only if it is necessary to do so in order to avoid a substantial injustice to the class.

Certification of class proceeding
4 The court must certify a proceeding as a class proceeding on a motion under section 2 or 3 if

(a) the pleadings disclose a cause of action;

(b) there is an identifiable class of two or more persons;

(c) the claims of the class members raise a common issue, whether or not the common issue predominates over issues affecting only individual members;

(d) a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues; and

(e) there is a person who is prepared to act as the representative plaintiff who

(i) would fairly and adequately represent the interests of the class,

(ii) has produced a plan for the class proceeding that sets out a workable method of advancing the class proceeding on behalf of the class and of notifying class members of the class proceeding, and

(iii) does not have, on the common issues, an interest that conflicts with the interests of other class members.

Court may determine conduct of proceeding
12 The court may at any time make any order that it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay proceeding
13 The court may at any time stay or sever a proceeding related to the class proceeding on terms the court considers appropriate.

Appeals
36(1) A representative plaintiff or defendant may appeal without leave to The Court of Appeal from

(a) a judgment on common issues; or

(b) an order under Division 2 of this Part, other than an order that determines individual claims made by class or subclass members.

Leave to appeal
36(2) With leave of a justice of The Court of Appeal, a representative plaintiff or a defendant may appeal to that court from any order

(a) determining an individual claim made by a class or subclass member; or

(b) dismissing an individual claim for monetary relief made by a class or subclass member.

Appeal by class member
36(3) With leave of a justice of The Court of Appeal, a class or subclass member may appeal to that court from any order

(a) determining an individual claim made by that class or subclass member; or

(b) dismissing an individual claim for monetary relief made by that class or subclass member.

Appeal of certification decision
36(4) With leave of a justice of The Court of Appeal, a representative plaintiff or defendant may appeal to The Court of Appeal from

(a) an order certifying or refusing to certify a proceeding as a class proceeding; or

(b) an order decertifying a proceeding.

Right of class member to appeal
36(5) If a representative plaintiff does not appeal or seek leave to appeal as permitted by subsection (1) or (4) within the time limit for bringing an appeal set

under the *Court of Appeal Rules*, or if a representative plaintiff abandons an appeal under subsection (1) or (4), any member of the class or subclass for which the representative plaintiff had been appointed may make a motion to a justice of The Court of Appeal for leave to act as the representative plaintiff for the purpose of subsection (1) or (4).

Deadline for class member
36(6) A motion by a class or subclass member for leave to act as the representative plaintiff under subsection (5) must be made within 30 days after the expiry of the appeal period available to the representative plaintiff or by such other date as the justice may order.

Extension of time limit to appeal
36(7) If leave has been granted to a member of a class or subclass under subsection (5), the time limit for that person to appeal or seek leave to appeal is extended for 30 days after the date leave is extended by The Court of Appeal.

PART 5
COSTS, FEES AND DISBURSEMENTS

Costs
37(1) Subject to this section, no costs may be awarded against any party with respect to any stage of a class proceeding, including a motion for certification under subsection 2(2) or section 3, or any appeal arising from a class proceeding.

Considerations re costs
37(2) The Court of Queen's Bench or The Court of Appeal may only award costs to a party in respect of a motion for certification or in respect of all or any part of a class proceeding or an appeal arising from a class proceeding if

(a) the court considers that there has been vexatious, frivolous or abusive conduct on the part of any party;

(b) the court considers that an improper or unnecessary motion or other step has been made or taken for the purpose of delay or increasing costs or for any other improper purpose; or

(c) the court considers that there are exceptional circumstances that make it unjust to deprive another party of costs.

Assessment of costs
37(3) A court that orders costs under subsection (2) may order that those costs be assessed in any manner that the court considers appropriate.

Class members not liable for costs
37(4) Class members, other than a person appointed as a representative plaintiff, are not liable for costs except with respect to the determination of their own individual claims.

The Court of Queen's Bench Act, CCSM c C280

Stay of proceedings
38 The court, on its own initiative or on motion by a person, whether or not a party, may stay a proceeding on such terms as are considered just.

Appeal to Court of Appeal
89 Unless otherwise provided by statute,

(a) an order made by the court may be set aside in whole or in part or varied; and

(b) a verdict of a jury may be set aside in whole or in part

on appeal to the Court of Appeal.

Multiplicity of proceedings
94 As far as possible, a multiplicity of proceedings shall be avoided.

Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88

General principle
1.04(1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Order
6.01(1) Where two or more proceedings are pending in which,

(a) there is a question of law or fact in common;

(b) the relief claimed arises out of the same transaction or occurrence or series of transactions or occurrences; or

(c) for any other reason an order ought to be made under this rule;

the court may order that,

(d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or

(e) any of the proceedings be,

(i) stayed until after the determination of any other of them, or

(ii) asserted by way of counterclaim in any other of them.

Directions
6.01(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay.

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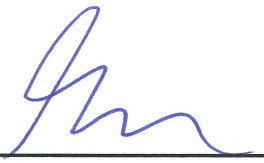
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Court File No.: CACV309

IN THE COURT OF APPEAL FOR SASKATCHEWAN

Between:

COURT FILE NUMBER QBG 2635/14

MAGGIE BLUE WATERS also known as JOANNE NELSON

Respondent (Plaintiff/Applicant)

— and —

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, (as represented by the MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT OF CANADA and the ATTORNEY GENERAL OF CANADA) AND HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN (as represented by THE MINISTER OF SOCIAL SERVICES IN SASKATCHEWAN and the ATTORNEY GENERAL OF SASKATCHEWAN)

Respondent (Defendants/Respondents)

Brought under *The Class Actions Act*

COURT FILE NUMBER QBG 2487/16

SIMON ASH

Appellant (Plaintiff/Applicant)

— and —

ATTORNEY GENERAL OF CANADA

Respondent (Defendants/Respondents)

Proceeding under *The Class Actions Act*

NOTICE OF ABANDONMENT

TAKE NOTICE:

THAT the Appellant hereby abandons this appeal concerning the order of the Honourable Justice Mr. Keene dated March 1, 2017.

August 17, 2017

Kirk M. Baert
Tel: 416-595-2902
Fax: 416-204-2889
Celeste Poltak
Tel: 416-595-2701
Fax: 416-204-2909

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Eleanore Sunchild
Tel: 306-937-6154
Fax: 306-937-6110

SUNCHILD LAW
P.O. Box 1408
Battleford, SK

Lawyers for the Ash Plaintiffs

TO:

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, SK S4P 4H8

Tony Merchant
Tel: 306-359-7777
Fax: 306-522-3299

Lawyers for the Thompson and the Blue Waters Plaintiffs

Attorney General of Canada
Prairie Regional Office
Department of Justice Canada
123-2nd Avenue S., 10th Flr.
Saskatoon, SK S7K 7E6

David C. Culleton
Tel: 306-975-6305
Fax: 306-975-6499

Province of Saskatchewan
Ministry of Justice
Civil Law Branch, 9th Flr.
1874 Scarth St.
Regina, SK S4P 4B3

Alan F. Jacobson
Phone: 306-787-1087
Fax: 306-787-9111

Michael J. Morris
Tel: 306-787-7444
Fax: 306-787-0581

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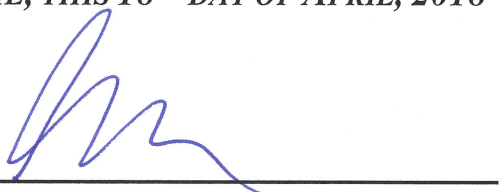

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Blue Waters . vs. AG et al **FILE NO. QBG 2635/14**

DATE	*NATURE OF ORDER*	*JUDGE*
August 22, 2017	Conference call Tony Merchant Kirk M. Baert, Celeste Poltak, & Garth Myers Laura Mazenc for Provincial Gov't Dave Culleton for Federal Gov't Mr. Merchant's new Application for Abuse will be heard at the same time as the Carriage Application. Set aside 2 days to be arranged by the Local Registrar in consultation with Counsel and the Court. Mr. Merchant will be served and filed updated brief on the Carriage Application by September 29, 2017 at 4:00 pm. Any reply briefs will be served and filed by October 13, 2017 at 4:00 pm. No further Affidavits on the Carriage Motion are to be filed without further order of the Court. Mr. Merchant is to serve and file any Affidavit's on the Abuse Application by September 15, 2017 at 4:00 pm and the other parties will have 30 days to serve & file replies. Deputy Local Registrar	Keene, J.

THIS IS EXHIBIT "45" REFERRED TO IN THE
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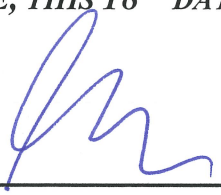
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Lori Seto

From: McDonald, Bev JU <Bev.McDonald@gov.sk.ca>
Sent: August-23-17 10:58 AM
To: Kirk M. Baert
Cc: Celeste Poltak; Culleton, David; Morris, Michael JU; Mazenc, Laura JU; Garth Myers; Lori Seto; Tony Merchant; Lenitta Covill; Casey Churko; Norman Rosenbaum
Subject: RE: Blue Waters vs Saskatchewan, et al (QBG 2635/14)

Counsel

This will confirm the above matter has been scheduled for Wednesday, November 15th & Thursday, November 16, 2017 commencing @10:00 a.m. at the Court of Queen's Bench, 2525 Victoria Avenue, Regina, Saskatchewan. This will be an in person hearing.

Bev

THIS IS EXHIBIT "46" REFERRED TO IN THE
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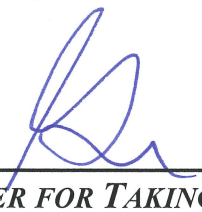

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

STEPHEN BRONSTEIN LAW PROFESSIONAL CORP

Barrister & Solicitor
Member of the British Columbia, Saskatchewan and Quebec Bars

Suite 500 – 777 West Broadway
Vancouver, B.C. Canada V5Z 4J7
Telephone: (604) 739-7920
Facsimile: (604) 739-7983
Toll Free Telephone: (877) -739-7920

September 8, 2017

Via Faxes: (416) 204 – 2889 & (306) 937-6110

Our File No: SK-2611

Koskie Minsky LLP
900-20 Queen St. West
Toronto ON, M5H 3R3

Attention: Kirk M. Baert

Sunchild Law
PO Box 1408
Battleford, SK, S0M 0E0

Attention: Eleanore Sunchild

RE: Simon Ash v. Attorney General of Canada QBG 2487/16
Carriage of Motion: November 15 and 16, 2017, Regina, SK.

Dear Sir and Madam:

We are the lawyers for Gary Pelletier and Herb Schultz in the matter of *Gary Pelletier and Herb Schultz v. Attorney General of Canada,* QBG 631 of 2017.

We have been informed that a Carriage Motion is scheduled for November 15 and 16, 2017 between your law firms and Merchant Law Group LLP.

We request you to kindly provide us with copies of the materials that you have filed or intend to file in support of your Carriage Motion.

Yours truly,

Bronstein & Company

Per:

Jai Singh
JS/ni

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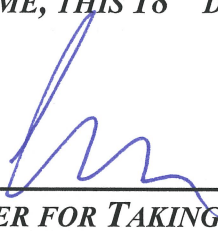

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

JUSTICE MATTERS

September 14, 2017

Celeste Poltak
Direct Dial: 416-595-2701
Direct Fax: 416-204-2909
cpoltak@kmlaw.ca

BY EMAIL
Bev.McDonald@gov.sk.ca

The Honourable Mr. Justice T.J. Keene
Court of Queen's Bench of Saskatchewan
121 Lorne Street W.
Swift Current, SK S9H 0J4

Dear Justice Keene:

Re: *Ash v. Canada*, QB No. 2487/16
***Blue Waters v. Canada*, QB No. 2635/14**
File No. 16/2002

We write on agreement and consent of the Plaintiffs in the above-mentioned actions, *Ash v. Canada* and *Blue Waters v. Canada et al.*, and the carriage motion currently scheduled to be heard by your Lordship in Regina on November 15 and 16, 2017. Plaintiffs' counsel in these competing actions can advise the Court that these November 2017 motions dates may be vacated at the moment and adjourned *sine die*. The attendant timetable which the Court approved on August 22, 2017 leading up to the return of the motions has also now become moot and unnecessary.

Should the court have any questions arising, counsel would be pleased to make themselves available at the Court's convenience.

Yours truly,

Yours truly,

KOSKIE MINSKY LLP

Celeste Poltak
CP:ls

c Eleanore Sunchild– Sunchild Law
Thor Kristiansen, David Culleton, Catherine Moore, Travis Henderson – Justice Canada
Roch Dupont / Tony Merchant– Merchant Law Group
Kirk Baert / Garth Myers – Koskie Minsky

KM-2933425v1

THIS IS EXHIBIT "48" REFERRED TO IN THE
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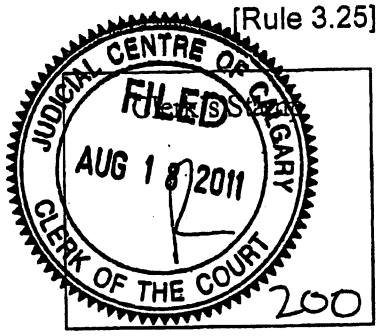
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Form 10
[Rule 3.25]



COURT FILE NUMBER	1101 11452
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	PETER CHRISTOPHER VAN NAME
DEFENDANTS	HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS OF CANADA; HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE ATTORNEY GENERAL and MINISTER OF JUSTICE OF ALBERTA.
DOCUMENT	**STATEMENT OF CLAIM**

SCO
NO AMOUNT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

MERCHANT LAW GROUP LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
E.F. Anthony Merchant, Q.C.
Telephone: (306) 359-7777
Facsimile: (306) 522-3299
File No.

8/18/2011 4:05:13 PM
DOCUMENT #: 1101-11452
QUEENS BENCH FEES $200.00
TOTAL $200.00
CHEQUE $200.00
Item count: 1
Trans:274848
CM
03-0001004-0001001

NOTICE TO DEFENDANTS

You are being sued. You are the defendants.

Go to the end of this document to see what you can do and when you must do it.

1. This is a claim under the *Class Proceedings Act*.S.A. 2003, c. C-16.5.

2. The Plaintiff, Peter Christopher Van Name ("Van Name" or the "Plaintiff") resides in Fort Mckay, Alberta.

3. The Defendant, Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian and Northern Affairs for Canada, has an office at 10 Wellington Street, North Tower, Gatineau, Quebec, K1A 0H4 ("Canada").

4. The Defendant, Her Majesty the Queen in Right of Alberta, as represented by the Attorney General and Minister of Justice of Alberta, has an office at 9833-109 Street, Edmonton, Alberta, T5K 2E8 ("Alberta").

II. CLASS

5. The Plaintiff, and some of the Class Members, are "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

6. The Plaintiff and all Class Members are "Aboriginals" as defined by the *Constitution Act*, 1982, s.35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

7. Beginning in 1962, Canada entered into an arrangement with Alberta Child Welfare whereby Canada delegated Indian child welfare services to Alberta Child Protection. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Alberta Child Protection provided a variety of child welfare services to Indian communities and Canada agreed to reimburse Alberta Child

Protection for each Indian child in care. The transfer payments made by Canada to Alberta Child Services were calculated based on the number of Indian children per day for which it had the responsibility of maintenance and supervision.

8. In the language of the 1960s, Indians were distinguished from half breeds or Métis and each of these groups, Indians and Métis, were distinguished once again from non-status Indians. All are Aboriginals. Aboriginal children who were not Indians often lived in communities where they maintained Indian culture or Métis culture. When they lived in mainstream Canadian society, they, nonetheless, valued their beliefs and culture.

9. The assimilation of Indian children that was largely brought about through the Residential School System was continued through the delegation of Indian Child Protection Services to Alberta. The goal of assimilating Indian children into mainstream Canadian society led to the obliteration of the culture, language, and religion of Indian members of the class.

10. Alberta, through Alberta Child Services, treated Indian children in the same way that they treated other Aboriginal children which, whether the children were Indian or not, led to and continued the obliteration of the culture, language, and religion of all Members of the class. The removal and assimilation, and the program of adopting Aboriginal children out to non Aboriginal families led to the obliteration of the culture, language, and religion of Members of the class. The adoption out of Aboriginal children into non Aboriginal families resulted in the physical, sexual, and emotional abuse, and psychological abuse and trauma to Members of the Class and

all Members of the Class have in common the result of all or many of these kinds of wrongdoing which were visited upon the Plaintiff and Members of the Class as a result of the conduct and programs of Child Protection Services which, in the case of Indian Members of the Class, occurred with Alberta acting as the agent and delegate of Canada.

11. The Plaintiff brings this action on his own behalf, and on behalf of a proposed class of similarly situated residents of Alberta, and elsewhere in Canada, to be further defined in the Plaintiff's application for class certification. The Plaintiff pleads and relies on the Class Proceedings Act, S.A. 2003, c. C-16.5

III. PARTICULARS

A. Plaintiff's Harms

(a) *abducted*

12. The Plaintiff, Peter Christopher Van Name, was born in Edmonton, Alberta on August 28th, 1971. His mother, Irene Flett, gave him the name Dwayne Flett when he was born. Both his mother and father are Indians.

13. Van Name's mother was unmarried and sixteen years old when he was born. He was immediately taken from her at birth. Alberta's social services department placed him in foster care until he was three months old.

14. When Van Name was three months old, he was placed with his adoptive parents in Haddonfield, New Jersey. His adoptive parents were of European descent and wealthy. His adoptive father owned and still owns a manufacturing business in New Jersey. His father and mother have three other adopted children who were younger than the Plaintiff.

(b) *aim*

15. Van Name and members of the class were adopted out to non Aboriginal families as a part of the program of Canada and Alberta to 'remove the Indian from the Indian' or make Aboriginal children into Caucasian adults. The colour of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be 'white adults'.

16. This program was known as the Adopt Indian Métis program, "AIM".

17. Canada and Alberta advertised on Canadian television and in other Canadian media and in American media for parents to adopt an Indian or Métis child. The Adopt Indian Métis program in the 1990s and currently, became known within the Aboriginal community as "the 60s Scoop" or "Lost Boys".

18. AIM, the program of taking Aboriginal children and adopting them out to white families was a badly misconceived wrongful program that visited profound and permanent psychological and physical wrongdoing upon Van Name and the class.

(c) *abused*

19. While Van Name lived with his adoptive parents, he was severely physically abused. Both his adoptive mother and father abused him on an almost daily basis. They were the only parents he knew as a child and they would hit him with belts, spoons, sticks, open hand and closed fist.

20. Van Name recalls that the worst beatings were the ones he received with the belt, because they would leave red welts on his back, buttocks, and legs.

21. Van Name saw these beatings as normal when he was a child. He thought that other children were disciplined in this way and did not realize until he became older that he had been physically abused.

22. Van Name's adoptive parents did not explain any aspect of his Aboriginal background. He had no knowledge growing up of where he had come from. His parents were Christians and took Van Name to church every Sunday with them.

23. When he refused to wear the formal clothes they wanted him to wear he would inevitably get a beating from one or both of his adoptive parents. Sometimes his adoptive siblings would beg him to just do as he was asked and wear the clothes to avoid another violent scene.

24. When Van Name was a child, his parents sent him to a psychologist on a weekly basis. Van Name did not know it at the time, but his parents later told him that they were worried that he had Fetal Alcohol Syndrome (FAS) because his mother was Aboriginal.

25. Far from being developmentally delayed, Peter Van Name did well in school. He excelled in maths and sciences. These subjects came easily to him and this surprised his adoptive parents.

26. When he was a child, Van Name did not even know that he was Aboriginal. His younger brother was Korean, so he thought that maybe he was of Asian descent.

27. Van Name cried for his mother at night and almost every night particularly after he would get a beating from his adoptive father. His brother would beg him to stop crying for fear that one or both of them would get

another beating.

28. Van Name remembers being beaten by both of his adoptive parents, but his father was the disciplinarian and would beat him more often than his adoptive mother.

29. The Plaintiff grew older and stronger. He found that he excelled in sports and enjoyed basketball, football, baseball, soccer, and golf. By the time he was in the eighth grade he was six feet tall and he knew that he was physically strong. On one occasion he punched his father who had tried to hit him and he struck his mother when she tried to give him a beating.

30. After Van Name fought back, his adoptive parents talked of sending him away to Valley Forge Military Academy. For whatever reason, they decided not to send him to Valley Forge and sent him to Residential School instead. Van Name attended Valley View School in North Brookfield, Massachusetts. It was an all boys' school.

31. Van Name remembers that his parents took him to Valley View School and had a meeting with the school administrators. He recalls that they referred to him as a "problematic Indian" or a problem.

32. Residential School was the first place that Van Name learned anything about being Aboriginal. This is where he developed his street smarts. He was yelled at frequently by staff, but the abuse that he suffered was mainly physical, student on student abuse. He learned to fight and would often get into fights with the other students at Valley View.

33. When Van Name went to Valley View he began to really struggle with

his identity. He remembers one student telling him that he didn't know anything about where he was from or who he was. He was sixteen years old at the time, and he realized that it was true that he did not know anything about his background or what it meant to be an Aboriginal person.

34. The Plaintiff attended Residential School from June 1986 to June 1989. He finished high school in Haddonfield, New Jersey in 1990 after briefly attending Solebury High School in New Hope, Pennsylvania.

35. Beginning in high school and continuing for several years afterward Van Name began to abuse drugs such as cocaine and heroin. His adoptive parents would not let him live with them but paid for a house where he could live in New Jersey.

(d) injuries

36. Van Name suffered severe physical abuse and mental trauma. Other Members of the Class suffered severe physical abuse and mental trauma and sexual abuse. Van Name and Members of the Class experienced a loss of culture and lack of self-worth as a result of the physical and psychological abuse and for other Members of the Class the sexual abuse. Van Name could never feel that he belonged with his adoptive parents, particularly since he felt that they only viewed him as a "problem" rather than their child. Van Name's adoptive parents, and all adoptive parents were a part of the wrongful plan of Canada and Alberta within AIM, which was to change Aboriginal children into Caucasian adults.

37. Van Name and Members of the Class did not develop proper parenting skills due to their upbringing in abusive families. Members of the Class share in common difficulties parenting children and Van Name has had difficulties parenting his three children due to the severe emotional and

psychological trauma he suffered in his adoptive family. Class Members having been taken from their Aboriginal roots, did not have any connection with their Aboriginal communities or any communities, to support them and teach them how to be loving parents.

38. Van Name suffered through drug addiction due to the profound sense of alienation and loss he experienced as a youth. It was only after he was able to find his mother, father, and extended family that he stopped abusing drugs and attended post secondary education. Class Members have in common the usual use of drugs and alcohol due to a sense of alienation and loss suffered while in this process of reforming them from being Aboriginal.

39. Van Name did not become a registered Indian within the meaning of *Indian Act*, R.S.C. 1985, c. I-5 until 1993, shortly after he first met his mother Irene and his father William Tuccaro. He is now a registered member of the Mikisew Cree near Fort Chipewyan, Alberta.

40. Van Name was a bright child and would have excelled in school if it had not been for the severe physical abuse he endured at the hands of his adoptive parents and the confusion he had about his identity and background throughout his childhood.

B. Defandants' Acts, Omissions, Knowledge, and Intent

41. At all material times the Defendants were responsible for the development and management of programs designed to forcibly remove Aboriginal children from their families and assimilate them into the mainstream Caucasian population. This was frequently done in an arbitrary and wanton manner without reason or cause.

42. The Defendants therefore played a supervisory and oversight role with respect to these programs.

43. The Defendants breached their duty to the class 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.*

44. In particular, the arbitrary and wanton manner in which the Defendants treated the class illustrates that the right of the class 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.*

45. The Defendant is liable *inter alia* to the class for:

a. Sexual abuse visited upon them;

b. Physical abuse visited upon them;

c. Cultural abuse and systematic attempts to abduct Aboriginal children from their natural homes;

d. Cutting the class off from their families;

e. Destroying the sense of self worth of the class;

f. Reducing the capacities to parent and maintain normal marital and family ties of the class;

g. Permitting the circumstances which resulted in the physical abuse to which the class were subject;

h. Failing to provide adequate care for the Class as children and provide for their needs;

i. Holding the Class in foster homes and placing them in adoptive families without the prior consent of their parents;

j. Depersonalizing and demeaning the Class by generally

referring to them by their given white name rather than their Aboriginal names;

k. Cutting the Class 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

l. Ridiculing the class and discriminating against them on the basis of their native backgrounds;

46. Placing the class in circumstances where sexual and physical abuse and psychological trauma were part of the program of reforming Aboriginal children into Caucasian adults with the result that the individual wrongdoing of adoptive parents was thought to be a part of this reforming and not corrected by the Defendants or even acknowledged and known by the Defendants.

47. Canada, in conjunction with Alberta and other jurisdictions in Canada, led in the development of AIM, led in the advertising and marketing of aim to get adoptive parents, and Canada is responsible for its own conduct and vicariously responsible for its agent, Alberta.

48. Canada was not permitted to delegate its responsibility to Indian children.

49. Canada, through its advertising and marketing program and developing AIM, also wrongfully impacted upon the lives of non-Indian children, and Indian children within the class of Aboriginal children were wrongfully impacted by the conduct of Canada.

50. The behaviour of the Defendants and their servants constitute a number of criminal offences including, assault, battery, kidnaping, sexual

assault, and sexual exploitation. In particular, the forcible removal of Aboriginal children from Aboriginal communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

51. The class were not permitted to engage in Aboriginal cultural or religious activities. They were not permitted to engage in Aboriginal games. They were not permitted to communicate with their non adopting family members. They were not permitted to speak their Aboriginal languages. Losing their Aboriginal languages, Class Members are cut off in a generational way from their parents and grandparents. AIM in part succeeded in its wrongful intent.

52. The class were further subject to disparaging comments and innuendo from foster parents, their adoptive families, and others who were involved in the abduction and forced adoption of the class.

53. The Defendants' actions were in contravention of the treaties between Canada and the First Nations to which the Indian Members of the class belonged and this conduct affected all Members of the class. This conduct was in contravention of the United Nations *Convention on the Prevention and Punishment of the Crime on Genocide*, particularly Article (2)(3) thereof to which Canada was a signatory. The class are all members of the peoples intended by the United Nations *Convention on the Prevention and Punishment of the Crime on Genocide* to be protected and the planned and systemic assimilation into Caucasian society through forced adoption is in contravention of that convention for the class.

54. The class, 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 Aboriginal were worthless.

55. As a result of these tortious acts by the Defendants, the class 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.

56. The class 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, the particulars of which include, but are not limited to the following:

a. Permitting unqualified individuals to hire servants, agents and employees to administer and operate foster homes;

b. Permitting unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuse;

c. Failure to protect the class from harm;

d. Failure in general to take proper and reasonable steps to prevent injury to the physical health and mental well-being and moral safety of the class while the class were resident at foster homes, and when they were adopted by non-Aboriginal families;

e. Having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the class as

a good parent should; and

f. The cause of the sexual assaults and surrounding circumstances were or ought to have been within the knowledge of the Defendants and the sexual and physical assaults would not have occurred but for the negligence of the Defendants and the AIM program.

57. The Defendants' agents were paid to operate foster homes and the Defendants' agents were paid to coordinate the adoption of the class.

58. The Defendants were under a positive fiduciary duty to protect the Class from injuries to their person, physical or mental health or morals, and the Defendants knew or ought to have known that the class would suffer damages if the Defendants failed to carry out this duty.

59. Canada is directly libel for the conduct and negligence of its servants and agents.

60. Canada is vicariously libel for the conduct of the servants and agents of Alberta.

61. The Defendants are vicariously liable for the actions and negligence of any governmental agency, charitable organization or other organization that contracted with either of 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.

62. In the alternative, the Class 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.

63. As a result of the physical and sexual assaults and emotional and mental abuse, the Class 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. Physical trauma;
g. Emotional trauma;
h. Psychological trauma;
i. Personality change;
j. Loss of confidence;
k. Decreased social ability
l. Insomnia;
m. Fatigue;
n. Decreased enjoyment;
o. Pain and suffering;
p. Loss of enjoyment of life;
q. Susceptibility to addictions; and
r. Inability to obtain proper education or employment.

64. The Class have sustained and will continue to sustain pain and suffering, loss of enjoyment of life, and loss of amenities. The Class are

unable to participate in many different types of recreational, social, athletic, educational and employment activities to the extent to which the Class would have participated in such activities had the wrongdoing not occurred.

65. As a further result of the wrongdoing the clas have undergone and will continue to undergo therapy, counseling, hospitalization, rehabilitation, and other forms of treatment.

66. The Class will also incur further expenses, including expenses for mediation, therapy, counseling, hospitalization, rehabilitation, medication, and other forms of medical treatment and care, the particulars of which expenses are not yet within their knowledge at this time.

67. The Class 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.

68. The class are entitled to aggravated, punitive, and exemplary damages from the Defendants.

69. As a result of the actions and negligence of the Defendants, the class have suffered damages and losses which are not yet known to them.

70. The Defendants were under a positive fiduciary duty to protect the class from injury to their person, physical and mental health and morals, and the Defendants knew, or ought to have known, that the class would suffer damages if the Defendants failed to carry out their fiduciary duty.

C. Causation

71. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendants have caused or materially contributed to the Class suffering injury, economic loss and damages.

D. Damages

72. The Class 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.

E. Aggravated, Punitive and Exemplary Damages

73. As a result of the Defendants' deceitful conduct, acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants, the class have suffered injury and economic loss and damages.

74. The Defendants have demonstrated that a cavalier and arbitrary approach was taken with respect to the rights of the Class and with respect to the obligations of the Defendants towards the Class.

75. At all material times the conduct of the Defendants as set forth above was malicious, deliberate, and oppressive towards the class and the Defendants conducted themselves in a willful, wanton, and reckless manner as set forth above.

76. 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.

77. As a result of the aforesaid acts, omissions, wrongdoings and breaches of legal duties and obligations by the Defendants, the class have sustained substantial injury, economic loss and damages and are entitled to awards of aggravated, punitive and exemplary damages.

IV. RELIEF SOUGHT

78. The Plaintiff acts as a representative of the class of all persons, who have suffered injury, economic loss, and damages as a result of the Defendants' acts, omissions, wrong doings, and breaches of legal duties and obligations, including but not limited to, sexual abuse, physical abuse, cultural genocide, tortious liability, causing personal injury and harm, breach of duty of care, breach of fiduciary duty and obligations, negligence, and failure to fulfill their statutory and common law duties and obligations.

WHEREFORE THE PLAINTIFF, ON HIS OWN BEHALF, AND ON BEHALF OF THE CLASS, CLAIMSFOR THE FOLLOWING RELIEF, ON A JOINT AND SEVERAL BASIS, AGAINST THE DEFENDANTS

(1) an Order certifying this action as a multi-jurisdictional class action and appointing a representative Plaintiff on behalf of a class of persons, including all persons and their estates:

(a) who were forcibly removed from Aboriginal homes, families, or communities as a minor as part of a governmentally authorized program and were placed in adoptive families or foster homes;

(2) an Order for an aggregate monetary award respecting all or any part of a Defendant's liability to Class Members including an Order that the class share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class Members pursuant to Sections 31 and 34 of *The Class Proceedings Act*, S.A. 2003, c. C-16.5,

as amended.

(3) general and special damages for the class in amounts to be determined at trial, including:

(a) on the elections of the Plaintiff and class, 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.

(4) aggravated damages;

(5) exemplary and punitive damages;

(6) nominal damages as an aggregate monetary award;

(7) symbolic damages as an aggregate monetary award;

(8) pre-judgment interest;

(9) costs of this action on a solicitor and his/her own client, or substantial indemnity basis; and

(10) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at the City of Calgary, Alberta, this 18th day of August, 2011 **AND DELIVERED BY Merchant Law Group LLP**, 400-2710 17th Avenue S.E., Calgary, Alberta, T2A 0P6, Phone: (403) 225-7777, Fax: (403) 273-9411.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench of Calgary, Albert, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

Court File No.: 1101-11452

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

PETER CHRISTOPHER VAN NAME

Plaintiffs

-and-

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS AND NORTHERN AFFAIRS OF CANADA, HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA AS REPRESENTED BY THE ATTORNEY GENERAL AND MINISTER OF JUSTICE OF ALBERTA

Defendants

RETURN OF SERVICE UNDER OATH OF OFFICE
AFFIDAVT OF SERVICE

I, RENE BERGERON, sworn Bailiff practicing my profession in the Province of Québec, a member in due course of the Chambre des Huissiers de justice du Québec, having my office at 168 Freeman Road in the City of Gatineau, Province of Quebec, Canada, being under my oath of office DO DECLARE:

THAT I am over-twenty-one years old and not party to this action.

THAT I am a court bailiff, being and Officer of justice duly qualified and authorized by the laws of the Province of Québec to effect service of legal process in and within the limits of the said Province.

THAT I did served on 1st. day of September 2011 at 9:35 a.m. at 10 Wellington in the city of Gatineau, Province of Québec, Canada in order to serve STATEMENT OF CLAIM to MINISTER OF INDIAN AFFAIRS, by delivering to and leaving the aforesaid with JOSIANNE GIBEAULT, assistant administration.

THAT I was able to identify JOSIANNE GIBEAULT for MINISTER OF INDIAN AFFAIRS.

AND I HAVE SIGNED

SWORN BEFORE ME in the City and judicial
District of Hull, in the Province of Quebec, Canada
This 10th. day of November 2011

Lyne Auger #74427 — Pour tous les districts judiciaires du Québec — Commissaire à l'assermentation

LYNE AUGER, no: 74427
Commissioner for taking affidavit

RENE BERGERON,
Bailiff

TRUDEL, FAVREAU
168, Freeman Road Gatineau, Quebec, J8Z 2B5
(819) 595-9262

Form 10
[Rule 3.25]

Clerk's Stamp
CLERK OF THE COURT
FILED
AUG 18 2011
JUDICIAL CENTRE
OF CALGARY

COURT FILE NUMBER 1101-11452

COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	PETER CHRISTOPHER VAN NAME
DEFENDANTS	HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS OF CANADA; HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE ATTORNEY GENERAL and MINISTER OF JUSTICE OF ALBERTA.
DOCUMENT	**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

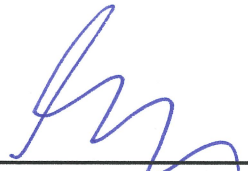
MERCHANT LAW GROUP LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
E.F. Anthony Merchant, Q.C.
Telephone: (306) 359-7777
Facsimile: (306) 522-3299
File No.

NOTICE TO DEFENDANTS

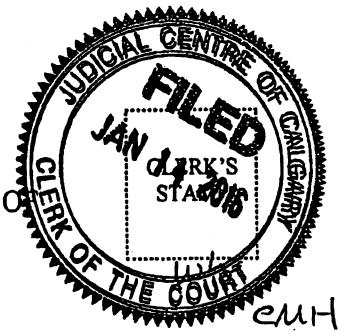
You are being sued. You are the defendants.

Go to the end of this document to see what you can do and when you must do it.

THIS IS EXHIBIT "49" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



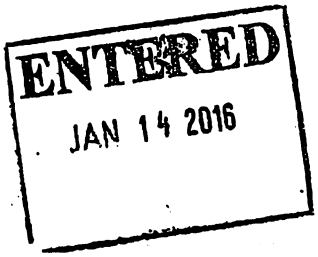
A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS



CMH

ok by Sheila

ACTION NUMBER	1101-11452
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF (APPLICANT)	PETER VAN NAME
DEFENDANTS (RESPONDENTS)	HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA, AS REPRESENTED BY THE MINISTER OF JUSTICE OF ALBERTA and HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF INDIAN AND NORTHERN AFFAIRS OF CANADA



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DOCUMENT #: 1101-11452
INTERLOCUTORY APPLICATIO $50.00
TOTAL $50.00
Debit Car $50.00
Item count: 1
91216 040103025-00100

Brought under the Class Proceedings Act

DOCUMENT **CERTIFICATION APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**MERCHANT LAW GROUP LLP** 2401 Saskatchewan Drive Regina, Saskatchewan, S4P4H8 **RochDupont** Tel: (306) 359-7777 Fax: (306) 522-3299

NOTICE TO RESPONDENTS:

This application is made against you. You are respondents.

You have the right to state your side of the matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	As set and adjourned by the Court from time to time, including under s. 6(1) of the *CPA*

Time:	As set by the Court
Where:	Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB, T2P 5P7
Before:	The Honourable JUSTICE MACLEOD

Go to the end of this document to see what else you can do and when you must do it.

Relief claimed or remedy sought:

1. The applicant seeks an order pursuant to the *Class Proceedings Act*, certifying this action as a class proceeding. The Plaintiff proposes the following terms:

(a) defining the class as follows, or as the Court may deem appropriate:

"all aboriginal persons 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"

(b) if determined by the Court to be appropriate, defining appropriate subclasses;

(c) appointing Peter Van Name as the Representative Plaintiff;

(d) stating the nature of the claims, and the relief claimed, regarding the acts, omissions, wrongdoings, and breaches of legal duties and obligations including but not limited to negligence and breach of fiduciary duty that caused or materially contributed personal injury and purely economic loss and damages to the Class;

(e) certifying the following as common issues:

(1) Whether the Defendants or either of them are liable for the acts or omissions committed by their employees, agents, and servants;
(2) Whether the Defendants or either of them were negligent or systemically negligent in the administration of adoption and foster care services affecting the Class;
(3) Whether the Defendants or either of them discriminated against members of the Class in the manner in which they administered placements and, in particular, the choice of geographic location for said placements;
(4) Whether the Defendants s or either of them systemically abducted or otherwise forcibly removed Class Members from their families;
(5) Whether the Defendants, through their actions, prevented members of the Class from securing benefits and protections afforded to them pursuant to the Indian Act;
(6) Whether the benefits, education, medicine chest, employment opportunities, and all benefits, can be valued on a class wide basis and ordered paid to the class on an aggregated basis.
(7) Whether the Defendants or either of them systematically failed to exercise appropriate care and consideration in determining placement options for those children forcibly removed from their families;
(8) Whether the Defendants or either of them systematically engaged in the forcible removal of Class Members from their communities for the purposes of, or with the effect of, depriving them of exposure to aboriginal customs and traditions;

(9) Whether the Class had a right to the maintenance of and non-interference with their aboriginal cultural traditions, including but not limited to the right to an aboriginal upbringing and parenting, and the extent to which the Defendants infringed on these rights;

(10) Whether Defendants or either of them breached a duty of care owed to the Class to protect them from physical, psychological, and sexual wrongdoing;

(11) Whether the Defendants or either of them knew or ought to have known that failure to exercise a reasonable standard of care and breach of its duties would result in grievous physical, psychological, and sexual harm to the Plaintiff and the Class;

(12) Whether the Defendants or either of them breached their fiduciary duty to the Plaintiff and the Class;

(13) Whether the Defendants or either of them breached their superordinate duty to the Plaintiff and the Class;

(14) Whether the Plaintiff and the Class have sustained damages and, if so, what the appropriate measure of damages should be and whether damages for breach of Charter rights are appropriate in addition and whether these damages can be valued on a class wide basis and ordered paid to the class on an aggregated basis; and

(15) Whether the Defendants or either of them should pay exemplary or punitive damages, and, if so, how much, to whom, and how is it to be distributed.

(f) stating an appropriate manner in which, and the time within which, a class member may opt out;

(g) approving the form and method of notice to be given to the Class to notify them of the certification of this class proceeding;

(h) ordering that the Defendants pay for the cost of any notice;

(i) costs; and

(j) such further orders as this Honourable Court considers appropriate.

Grounds for making this application:

2. The applicant submits that:

(a) the pleadings disclose a cause of action against the Defendants;

(b) there is an identifiable class of two or more persons;

(c) the claims of class members raise common issues respecting this litigation;

(d) a class action will be the preferable procedure for resolving the common issues;

(e) Peter Van Nameis willing to be representative plaintiff and:

(i) will fairly and adequately represent the interests of the class;

(ii) has produced a plan that sets out a workable method of advancing the action;

(iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members

Material or evidence to be relied on:

3. In support of this application will be read the affidavits of the representative plaintiff and experts, the pleadings and proceeding herein including the Statement of Claim, this application, and any and all appropriate and just amendments thereto, and such other materials as have been or subsequently shall be prepared, filed, and served before, during, or after the certification hearing as permitted by the Honourable Case Management Judge.

Applicable rules:

4. This application is made pursuant to Rules 6.3(1) and 6.9(1)(a) of the *Alberta Rules of Court.*

Applicable Acts and Regulations:

5. *Class Proceedings Act*, S.A. 2003, c. C-16.5.

How the application is proposed to be heard or considered:

6. The applicant proposes to appear personally through counsel in Chambers.

December 31

DATED ~~November~~ ___, 2015

MERCHANT LAW GROUP LLP

WARNING

If you do not come to Court either in person or by your team of lawyers, the Court may give the applicant what he wants in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your team of lawyers must attend in Court on the date and time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when this application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

THIS IS EXHIBIT "50" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

MERCHANT
LAW GROUP LLP

2401 SASKATCHEWAN DRIVE REGINA CANADA S4P 4H8 TELEPHONE 306 359-7777 FACSIMILE 306 522-3299
VICTORIA • VANCOUVER • CALGARY • EDMONTON • REGINA • SASKATOON • MOOSE JAW • WINNIPEG • ST. CATHARINES • TORONTO • MONTREAL • NEW YORK

May 31, 2016

Sheila O'Brien
Case Management Coordinator
Court of Queen's Bench
Calgary Courts Centre
601 5th street SW
Calgary Alberta
T2P 5P7

ENTERED
JUN 21 2016

JUDICIAL CENTRE OF CALGARY
FILED
JUN 03 2016
CLERK OF THE COURT

CORRESPONENCE

Dear Ms. O'Brien:

RE: Court File Number: 1101-11452
Peter Christopher Van Name v. Her majesty the Queen et al

I am counsel for the Plaintiffs regarding this matter. Last month we had filed our application for certification for this matter which was served on the defendants. However we had some difficulty to obtain case management dates, as we were asked to apply to have a case management judge assigned to this matter. In a letter dated January 14th, 2015 Madame Justice G.A. Campbel had been appointed as the case management judge regarding this action.

I am writing to request case management dates for this matter so that it may proceed. If there has been another Justice has been appointed please advise. The Defendants Counsel are:

Counsel for the Department of Justice Canada

Wayne Malcolm Schafer
Department of Justice Canada
Prairie region
Epcor Tower
300, 10423-101 Street
Edmonton Alberta
T5H 0E7
Tel: 780-495-4073
Fax: 780-495-2964
email: wayne.schafer@justice.gc.ca

Counsel for the Alberta Justice Legal Services Division is:

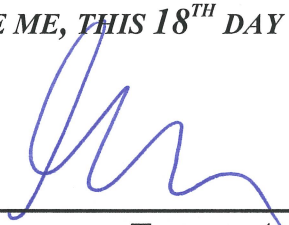
Peter barber
9th Floor Peace Hills Trust Tower
1011-109 Street
Edmonton Alberta
T5J 3S8
tel:780-422-9252
fax: 780-427-1230
email: peter.barber@gov.ab.ca

Yours Truly,

Roch Dupont, BSC, B.A., J.D.,LLB, LLL
MERCHANT LAW GROUP LLP
100 - 2401 Saskatchewan Drive
Regina, Saskatchewan S4P 4H8
Phone: 306-359-7777
Fax: 306-522-3299
Toll Free: 1-888-567-7777
rdupont@merchantlaw.com

MERCHANT
LAW GROUP LLP

THIS IS EXHIBIT "51" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Form 10
[Rule 3.25]

COURT FILE NUMBER	1601-13286
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	**CALGARY**
PLAINTIFF	**SARAH GLENN**
DEFENDANT	**ATTORNEY GENERAL OF CANADA**
DOCUMENT	**STATEMENT OF CLAIM**

Clerk's Stamp

CLERK OF THE COURT
FILED
OCT 06 2016
JUDICIAL CENTRE OF CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

KOSKIE MINSKY LLP
Barristers & Solicitors
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk M. Baert
Tel: 416-595-2117
Fax: 416-204-2889

Celeste Poltak
Tel: 416-595-2701
Fax: 416-204-2909

Scott Robinson
Tel: 416-595-2097
Fax: 416-204-4928

AHLSTROM WRIGHT OLIVER & COOPER LLP
Barristers & Solicitors
Suite 200, 80 Chippewa Road
Sherwood Park, AB T8A 4W6

Steven Cooper
Tel: 780-464-7477
Fax: 780-467-6428

File No: 83005 SLC

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. The Plaintiff claims:

   (a) An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiff as Representative Plaintiff for the Class;

(b) A declaration that the Defendant breached its fiduciary duties to the Plaintiff and the Class by reason of the events described in this action;

(c) A declaration that the Defendant breached its common law duties of care owed to the Plaintiff and the Class by reason of the events described in this action;

(d) Damages for breach of fiduciary duty and negligence in the amount of $200 million or any such amount that this Honourable Court deems appropriate;

(e) Punitive damages in the amount of $50 million;

(f) Pre-judgment interest and post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;

(g) Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiff;

(h) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to section 33 of the *Class Proceedings Act*; and

(i) Such further and other relief as this Honourable Court deems just.

OVERVIEW

2. The term "Sixties Scoop" refers to the Canadian practice, generally beginning in the 1960s and continuing until the late 1980s or early 1990s, of taking ("scooping up") children of Aboriginal peoples in Canada from their families for placing in foster homes or adoption with non-Aboriginal parent(s).

3. As a result, these "scooped" children lost their identity as Aboriginal persons and suffered, *inter alia*, mentally, emotionally, spiritually, and physically. They were deprived of their status and other Aboriginal-related monetary benefits under the *Indian Act* and related legislation and policies, which the Defendant then retained on account of the scoop. Aboriginal communities describe the Sixties Scoop as destructive to their culture.

4. In Alberta, this practice was largely dictated by a bilateral agreement executed on July 1, 1962 between Canada and the Province of Alberta ("the Canada-Alberta Child Welfare Agreement"). Under this Agreement, *inter alia*, Children's Aid Societies ("CAS") in Alberta scooped Aboriginal children from their homes for foster placement in, and/or adoption with, non-Aboriginal homes. In exchange, Canada reimbursed Alberta for per diem costs of providing these services for Aboriginal children in Alberta. This Agreement was supplemented and confirmed at various subsequent points thereon, including in the

"Memorandum of Understanding" codified between Canada and Alberta in 1985 and continuing in force therefrom.

5. By virtue of this practice in Alberta, the Defendant (or "Canada") breached its fiduciary duties and common law duties of care that it owed to the vulnerable, child, Aboriginal Plaintiff and Class Members throughout the applicable Class Period.

THE PARTIES

6. The proposed Representative Plaintiff on behalf of the Class is Sarah Glenn. She was born on January 16, 1967 at Charles Camsell Hospital in Edmonton. She was taken from her birth parents as a newborn in 1967, placed in foster care with non-Aboriginal parents, and then adopted out to non-Aboriginal parents in or about 1968.

7. The Plaintiff resides in Alberta and has suffered the consequences of the Defendant's breach of fiduciary obligation and common law duty of care.

8. The Defendant, the Attorney General of Canada, represents Her Majesty the Queen in Right of Canada.

THE CLASS

9. The Proposed Class is composed of all Indian, non-status Indian, and/or Métis children who were taken from within the boundaries of reserves in Alberta, or outside thereof, at or after July 1, 1962, 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.

CANADA'S FIDUCIARY DUTY TO THE CLASS MEMBERS

10. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal peoples in Canada.

11. The Defendant has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 91(24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

12. By virtue of its constitutional obligations, the Defendant has an ongoing obligation of consultation on matters relevant to Aboriginal interests. There is an expressed and implied undertaking by Canada to protect the best interests of Aboriginal persons at all times.

13. Moreover, the Defendant's fiduciary duty is compounded even further by the fact that the Class Members were vulnerable Aboriginal children when taken from their Aboriginal homes, and accordingly, by virtue of entering into the Canada-Alberta Child Welfare Agreement, the Defendant assumed even further responsibility for the supply of all the necessities of life to Class Members, *in loco parentis*, during the Class Period.

14. Canada's constitutional obligations, in conjunction with the *Indian Act* and related legislation and policies, the common law, and the honour of the Crown, 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, which is fundamental to the security, welfare and survival of Aboriginal persons, as well as to safeguard their benefits derived from their rightful status as Aboriginals.

15. The Defendant's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued notwithstanding the Canada-Alberta Child Welfare Agreement.

CANADA'S COMMON LAW DUTY OF CARE TO THE CLASS MEMBERS

16. The Defendant owes a duty of care to all Class Members. By virtue of, *inter alia*, the Canada-Alberta Child Welfare Agreement, Canada created, planned, established, operated, financed, supervised, controlled and regulated the provision of child welfare services in Alberta to the Aboriginal child Class Members.

17. Canada knew or ought to have known of the impropriety of policies in respect of Aboriginal children under the Canada-Alberta Child Welfare Agreement, and the negligent operation of such policies, including the failure to ensure that the child welfare programs were administered appropriately to Aboriginal children, such as by adoption and/or permanent foster care in non-Aboriginal homes, failing which might foreseeably cause harms to the Aboriginal Class Members. This is especially so given that the persons affected were, by nature, vulnerable children.

18. Proximity between the Defendant and the Aboriginal Class Members is supplemented further by the acknowledged fiduciary duty in existence between them in respect of specific interests. Moreover, Canada assumed an obligation towards Aboriginal peoples regarding the provision of Alberta child welfare programs to them by virtue of the Canada-Alberta Child Welfare Agreement.

19. A duty of care is not eliminated just because the person who has the duty is engaged in what is intended to be an affirmative or beneficial act to the receiver.

CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS

20. During the Class Period, the Defendant breached its fiduciary duty and/or common law duty of care by the following acts or omissions, including but not limited to:

(a) Canada illegitimately delegated its non-delegable duties in respect of the vulnerable Aboriginal child Class Members;

(b) Canada failed to ensure that an appropriate child welfare program for Aboriginal children was delivered in Alberta when Canada proceeded to illegitimately delegate its obligations to the Aboriginal child Class Members;

(c) Canada failed to properly monitor and properly oversee the provision of funding it made to Alberta with respect to the child welfare programs for Aboriginal children, knowing that their operation was in conflict with its fiduciary duty and common law duty of care;

(d) Canada failed to intervene and prevent the provision of child welfare services in consequence of which the Class Members were deprived of their Aboriginal culture and/or identity;

(e) Canada failed to ameliorate the harmful effects of the child welfare services on Aboriginal persons in Alberta for which it provided funding;

(f) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal children when they were placed in non-Aboriginal homes;

(g) Canada failed to 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;

(h) Canada failed to assure that Aboriginal children would be provided with services that could enable them to be aware of and exercise their treaty and other related rights and benefits as Aboriginal persons during the period of their placement in non-Aboriginal homes;

(i) Canada failed to assure that Aboriginal children were made aware of their status as Aboriginal persons and treaty and other related rights and benefits available to them when they left their non-Aboriginal homes or entered their age of majority, failing which the Class Members could not reclaim, or had difficulty reclaiming, their status and concordant benefits;

(j) Canada failed to assure the healthy development, childhood, and family and community life of the vulnerable Aboriginal child Class Members;

(k) Canada failed to consult with Alberta Indian Bands and other necessary Aboriginal stakeholders in respect of the provision of funding for child welfare practices and policies to Aboriginal children that it knew were in conflict with its duty to protect the cultural identity and treaty and other related status and rights of Aboriginal persons; and

(l) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of cultural assimilation.

21. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada provided funding to Alberta to ensure that the province's child welfare legislation would extend to Aboriginal children. As Canada knew, the Canada-Alberta Child Welfare Agreement did not provide protection for the cultural identity and treaty and other related status and rights of vulnerable Aboriginal children within the child welfare system in Alberta.

22. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiff and the Class Members.

23. Canada turned a blind eye to the Class Members, when it knew, or reasonably should have known, that the Class Members would thereby individually and collectively lose their cultural identity, lose their protected treaty and other related status and related monetary and non-monetary benefits, and would suffer other harms described herein.

24. The provision of funding through the Canada-Alberta Child Welfare Agreement did not absolve Canada from the duty to take reasonable steps to prevent vulnerable Aboriginal children from, *inter alia*, losing their Aboriginal cultural identity and treaty and other related status and benefits, as a by-product of the child welfare policies implemented in Alberta.

THE PLAINTIFF'S EXPERIENCES

25. Sarah Beth Kathleen Glenn (nee Lowe) was born on January 16, 1967 at Charles Camsell Hospital in Edmonton. She was taken from her birth parents as a newborn in 1967. Her biological parents were both Cree and members of the Lubicon First Nation in Alberta. Ms. Glenn has never met her biological parents despite efforts to locate them.

26. Ms. Glenn was first placed in foster care with non-Aboriginal parents as an infant.

27. At approximately 16 months old, in or around 1968, Ms. Glenn was adopted by non-Aboriginal parents in Alberta. She was the youngest of four (4) with her three (3) elder siblings being the natural children of her adoptive parents. She was told by her adoptive mother that they wanted a child that was two (2) years younger than their current youngest as there was a two (2) year separation between each of the other children. She was told by her adoptive parents that they requested the government provide them with a "mixed race" child but through some miscommunication they were presented with a full Cree child.

28. Growing up in Alberta, both at school and in the community in which her adoptive family took part, she was the only Aboriginal person. She was not raised in respect of her Aboriginal identity, culture, customs and background in any way. She always felt like an outsider. She felt caught between two worlds. She suffered from a great deal of discrimination growing up in a non-Aboriginal community.

29. She suffered emotional, spiritual, and cultural abuse by her adoptive parents. She was treated much differently by her adoptive parents than their biological children. She was discouraged from seeking any information about her own language and culture. They actively prohibited her from engaging in any Aboriginal culture, customs, or identity in any way. Her adoptive family compelled her to suppress any interest or pursuit of her Aboriginal background. She was not taught anything about her Aboriginal heritage, culture, or language.

30. She experienced racism from her adoptive family and the community. Because she was Aboriginal, she was sent to Alcoholics Anonymous at 18 even though at that point in her life, she was not an alcoholic. She was sent there because her adoptive parents assumed that all Aboriginals would be alcoholics. She was told that she would have a tough life and that she would have to work harder for half as much. She has been estranged from her adoptive family because of their racist attitudes.

31. Ms. Glenn was deprived of her Aboriginal identity, culture, customs and background, as well as her Aboriginal status and related benefits derived therefrom. She was deprived of her family relationships. She spent many years in counselling as a result of her conflict between her biological heritage and her adoptive culture. She suffered from problems with alcohol for most of her adult life but has been sober now for nine (9) years. She now owns her own business, but she has lived a troubled life, including past addictions. For years, she has struggled with emotional issues, including anxiety, suicidal ideations, depression, post-traumatic stress disorder (PTSD) and low self-esteem.

DAMAGES SUFFERED BY CLASS MEMBERS

32. As a consequence of the negligence and breach of fiduciary duty by the Defendant and its agents for whom the Defendant is vicariously liable, the Class Members, including the Plaintiff, suffered injury and damages, including but not limited to:

(a) mental, emotional, and spiritual abuse and suffering;

(b) physical abuse and suffering;

(c) sexual abuse and suffering;

(d) deprivation of Aboriginal culture, customs, traditions, language, and spirituality;

(e) deprivation of Aboriginal identity;

(f) deprivation of status and related monetary and non-monetary benefits for Aboriginal persons;

(g) deprivation of reserve land on which to reside and join an Aboriginal community;

(h) forced cultural assimilation;

(i) deprivation of family and familial relations;

(j) deprivation of a healthy development and childhood;

(k) deprivation of one's ability to pass one's culture and identity on to one's children;

(l) loss of self-esteem and self-worth;

(m) social dysfunctionality and alienation from family, spouses and children;

(n) impaired capacity for employment and to earn income;

(o) the need for psychological, psychiatric and medical treatment as a result of the above; and

(p) pain and suffering

PUNITIVE AND EXEMPLARY DAMAGES

33. The Plaintiff pleads that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread mental, emotional, and physical abuse, or potential therefore, perpetrated upon Class Members that occurred during the Class Period. Despite this knowledge, Canada entered into the Canada-Alberta Child Welfare Agreement and proceeded to operate under it in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

34. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class Members' interests, safety and well-being. Canada breached its fiduciary duties and common law duties of care owed to the Class Members.

35. Over a lengthy period, the Plaintiff and Class Members were treated in a manner that could only result in aggravated and increased, *inter alia*, mental, emotional, spiritual, and physical suffering for a vulnerable population. The effects of Canada's actions have violated the Class Members' rights and have irreparably altered the paths of their lives.

36. Full particulars respecting Class composition and the effects of the Sixties Scoop on the Class Members are within Canada's knowledge, control and possession.

DISGORGEMENT

37. For decades, on account of the Sixties Scoop in Alberta, Class Members were deprived of their status and the Aboriginal-related monetary benefits that are concordant with said status. As a result, the Defendant failed to provide its required services to these Aboriginal persons as compared to that received elsewhere in Canada, where the same fiduciary duty was and is owed by the Defendant to Aboriginal persons. Accordingly, the Defendant should be required to disgorge monetary benefits that it inequitably acquired on account of its breach of fiduciary duty, plus compound interest.

38. The Plaintiff pleads and relies upon the:

(a) the *Class Proceedings Act*, S.A. 2003, c. C-16.5;

(b) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); and

(c) Common law.

39. The Plaintiff proposes that this action be tried in the City of Calgary, in the Province of Alberta.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

THIS IS EXHIBIT "52" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Lori Seto

From: Scott Robinson <srobinson@kmlaw.ca>
Sent: January-19-17 4:56 PM
To: 'tmerchant@merchantlaw.com'; 'Anthony Tibbs'; 'Roch Dupont'; Kirk M. Baert; Celeste Poltak; Scott Robinson; Sue Mineiro; Heather Cabral; Lori Seto; Teri Lynn Bougie; Steven Cooper; Ward K. Branch; 'peter.barber@gov.ab.ca'; 'alethea.leblanc@justice.gc.ca'; 'wayne.schafer@justice.gc.ca'
Subject: Van Name v. Her Majesty; Glenn v. Canada - Carriage Motion - April 11, 2017

Dear parties,

RE: ***Van Name v. Alberta et al.*, Court File No. 1101-11452**

***Glenn v. Canada*, Court File No. 1601-13286**

This email is to confirm Justice Macleod's scheduling today of a carriage motion between these matters **to be heard on April 11, 2017** for one day of argument.

The *Glenn* Plaintiff proposes the same motion timetable as proposed in its letter to the court and parties of today's date, January 19, 2017. The timetable below also provides Justice Macleod with the adequate time by which to receive the motion briefs that he requested on the conference call today.

It is as follows:

Date	Deadline
January 19, 2017	Schedule set for carriage motion
February 17, 2017	Service and file carriage motion(s) and supporting materials
March 10, 2017	Complete questioning on affidavits
March 22, 2017	Exchange briefs of law
March 31, 2017	Exchange of responding briefs of law
April 11, 2017	Hearing of carriage motion (1 day)

Please advise of your consent to this timetable and we will prepare a letter to the court advising of this schedule.

Thanks,

KOSKIE MINSKY
JUSTICE MATTERS

Scott Robinson
Associate
T: +1 416-595-2097 | F: +1 416-204-4928 | E: srobinson@kmlaw.ca
Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3
kmlaw.ca

THIS IS EXHIBIT "53" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Form 10
[Rule 3.25]

COURT FILE NUMBER	1701-04509
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	THOMAS VOGTMANN & TERRY ANNE ENGLISH
DEFENDANT(S)	ATTORNEY GENERAL OF CANADA
DOCUMENT	**STATEMENT OF CLAIM**

CLERK OF THE COURT
Clerk's Stamp
FILED
MAR 31 2017
JUDICIAL CENTRE OF CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Stephen Bronstein Law Professional Corp. Stephen J. Bronstein 500-777 West Broadway, Vancouver, BC V5Z 4J7 CANADA Fax number for service: 604-739-7983 E-mail address for service: Stephen@Bronstein.ca; Jai@Bronstein.ca Tel: 604-739-7920

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

STATEMENT OF FACTS RELIED ON:

1. Plaintiff No. 1 is Thomas Vogtmann who currently resides on the Siksika Nation reserve, Alberta. Plaintiff No. 1 was born on January 2, 1966 and his parents were Ed Yellow Oldwoman and Yvonne(ph) Manyfires. His parents were from the Siksika Nation reserve.

2. Plaintiff No. 2 is Terry Anne English who currently resides in Brocket, Alberta. Plaintiff No. 2 was born on August 7, 1960 and her parents were from the Peigan Indian reserve Pincher Creek, Alberta.

3. The Plaintiffs are filing this class action on their own behalf, and as representative plaintiffs on behalf of all Aboriginal children who are "Indians" in accordance with the *Indian Act*, R.S.C. 1985 c.I-5 (the "**Indian Act**"), and "non-status Indians" and "Metis" under *The Constitution Act*, 1982 being Schedule B to the Canada Act 1982 (UK), 1982, c 11, who were taken away from their reserves in Alberta, or outside thereof, and placed either in foster homes of non-aboriginal families or given up for adoption to non-aboriginal families residing in Canada or outside Canada (the "**Proposed Class**"). They were placed in these non-aboriginal families without the consent, and in some cases without the knowledge, of their biological parents. The Plaintiffs plead and rely on the Class Proceedings Act, SA 2003, c. C-16.5.

4. The Defendant is Her Majesty the Queen in Right of Canada, as represented by the Minister of Indigenous & Northern Affairs Canada, having its office at 10 Wellington Street, Gatineau, QC, K1A 0H4 (Canada).

5. This class action relates to the time period from around 1960 to the early 1980's when the Plaintiffs and members of the Proposed Class were placed in foster care with non-aboriginal families or adopted out to non-aboriginal families (the "**Class Period**"). This Class Period is more commonly known as the "sixties scoop," because it involved the practise of scooping up Aboriginal children from their families without the consent and knowledge of their families.

6. Child care services in relation to Aboriginal people falls within the jurisdiction of Canada and is derived *inter alia* from the treaties entered into between Canada and First Nation communities, subsection 91(24) of *The Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, binding case authorities of the highest courts, and Section 35(1) of *The Constitution Act*, 1982. Prior to the 1950's Canada administered child welfare services for Aboriginal people on reserve. In 1951 Section 88 of the Indian Act was revised to provide that provincial laws of general application applied to "Indians in the province." Hence Section 88 extended the application of general provincial child welfare legislations to all Aboriginal children living on-reserve.

7. The extension of general provincial laws to the Aboriginal people was, however, and has always been subject to a number of important qualifiers, including the requirement that the terms of the applicable provincial laws "must be general in nature and cannot relate exclusively or directly to Indians", because such laws would infringe upon an area of exclusive federal jurisdiction. Further, Canadian court rulings of binding authority, during the time in question, accepted and confirmed that Canada's care and welfare of the Aboriginal people was "a political trust of the highest obligation" and that the political trust relating to the welfare of the Aboriginal people extended to and included their connection to their Aboriginal heritage.

8. Although Canada, sometime in or around 1960, began delegating Aboriginal child welfare services to provincial child welfare departments it retained financial responsibility for the administration of the provincial legislation on reserve. This was done through financial agreements.

9. In Alberta a memorandum of agreement was signed between Canada and the Provincial Government in 1962. This agreement came to be known as the Hunter-Motherwell Agreement (the "**Agreement**"). The Agreement *inter alia* set out who was to pay for social services for "on-reserve Indian" people. Further the Agreement stated that any "Indian" living off the reserve and not employable would be the responsibility of Canada. As a result of the Agreement the Plaintiffs and members of the Proposed Class were apprehended and removed from their Aboriginal families and communities and were placed in non-aboriginal foster or adoptive homes. The Agreement remained in force during the 1960's and the 1970's.

10. Much like its predecessor the Residential School System, the Agreement was predicated on the assimilation of "Indian" children into mainstream Caucasian society. In doing so the Plaintiffs and members of the Proposed Class lost their culture, language and heritage and also lost all family ties. These adoptions and placements in foster care were undertaken without the consent and knowledge of their biological parents. Further the adoption and foster placement of members of the Proposed Class into non-aboriginal families almost always resulted in physical, emotional and psychological abuse and trauma. Many members of the Proposed Class were also sexually abused.

11. Having placed the Plaintiffs and members of the Proposed Class in non-aboriginal foster or adoptive homes, Canada did not at any time inform the Plaintiffs and members of the Proposed Class about their Aboriginal status and also their right and entitlement to Aboriginal-related monetary benefits. Hence the Plaintiffs and members of the Proposed Class had no way of learning about their Aboriginal identity or knowing about the various federal benefits and entitlements due to them because of their status.

Plaintiff No. 1

12. Plaintiff No. 1 was born Edward Fox Yellow Oldwoman. His name was changed to Thomas Vogtmann when he was adopted.

13. Plaintiff No. 1 was around three years old when he and his brother were taken away from the reserve. Initially Plaintiff No. 1 and his brother were placed in foster care for a brief period.

14. Subsequently Plaintiff No. 1 and his brother were adopted by a German family who were at the time residing in Edmonton. After spending a year and a half in Edmonton his adopted parents moved back to Europe where they resided in Switzerland and Germany.

15. Plaintiff No. 1 has never been provided an explanation as to why he was taken away from his biological family.

16. Although Plaintiff No. 1's adopted parents kept his Canadian status and passport they never informed Plaintiff No. 1 about his Aboriginal identity.

17. Plaintiff No. 1 was not at any time informed by his adopted parents or by Canada that he was entitled to certain rights as a result of being an Aboriginal person.

18. Plaintiff No. 1 was also not informed at any time by his adopted parents or Canada that he was eligible for educational benefits and financial entitlements as a result of his Aboriginal status.

19. Plaintiff No. 1 was denied access to his Aboriginal culture, customs and traditions and was lost and confused about his identity.

20. Plaintiff No. 1 lost his language and culture. Plaintiff No. 1's adopted parents spoke German and therefore he had to adjust and learn German in order to communicate with them.

21. Plaintiff No. 1 was denied any opportunity to maintain contact with his biological family and his Aboriginal community.

22. Plaintiff No. 1, in search of his Aboriginal roots, returned to the Siksika Nation reserve when he was 40 years old. However his biological parents were deceased. Hence, he never got to meet them.

23. When Plaintiff No. 1 came back to the Siksika Nation reserve some of the Aboriginal people referred to him as an Indian Apple meaning a white man from inside and a red person from outside.

Plaintiff No. 2

24. Plaintiff No. 2 is from Brocket, Alberta and was born on August 7, 1960. After her biological father passed away in 1963 she was placed in a non-Aboriginal foster home.

25. As a foster child Plaintiff No. 2 was placed with the Miller(ph), Blackmare(ph) and the McFarland(ph) families (the "**Foster Families**").

26. During her placement with each of the Foster Families Plaintiff No. 2 was denied any opportunity to maintain contact with her biological family and her Aboriginal community. The Plaintiff was not allowed to speak in her Aboriginal language and she was denied access to her Aboriginal culture, customs and traditions.

27. Plaintiff No. 2 was made to perform household chores and was treated like a slave. She was made to perform the dirtiest jobs and was whipped by her foster parents.

28. Plaintiff No. 2 lost all connection with her Aboriginal culture, language and heritage.

29. Plaintiff No. 2 is confused in regards to her identity. She was made to frown upon her Aboriginal culture and be ashamed of her identity.

30. Through the different non-aboriginal Foster families that she was placed with during her youth Plaintiff No. 2 was denied information regarding her status as an Aboriginal person and her rights as an Aboriginal person. She was also not provided any information regarding federal benefits and financial entitlements as a status Indian.

31. Plaintiff no. 2 returned to her Aboriginal community when she was 17 years old. Plaintiff No. 2 found it hard to adjust and it was a cultural shock.

Canada's Common Law Duty of Care

32. At all material times Canada was responsible for the care and protection of the Plaintiffs and members of the Proposed Class. This duty of care was confirmed by Canadian court rulings during the time in question. Canadian courts consistently held that Canada's care and welfare of the Aboriginal people was "a political trust of the highest obligation" and further that the political trust relating to the welfare of the Aboriginal people extended to and included Aboriginal people's connection to their Aboriginal heritage.

33. Canada also had a positive duty to consult the First Nation bands. The source of Canada's duty to consult arises from a special and long-standing historical and constitutional relationship between Canada and the Aboriginal people and includes, but is not limited to:

    1) the duty of the Federal Crown inherent within section 91(24) of the Constitution Act, 1867 to provide for the welfare and protection of the Aboriginal peoples of Canada;

    2) the Aboriginal and treaty rights recognized and affirmed by s. 35(1) of the Constitution Act, 1982;

3) the right of all persons under Canadian law to be dealt with by Canada in a manner that is procedurally fair and reasonable and in accordance with the common law procedural and substantive elements of administrative law;

4) Canada's sui generis fiduciary relationship with Aboriginal people requiring Canada, in equity, to consult with and consider the views of the beneficiary, (Aboriginal people), where such circumstances invoke the fiduciary relationship;

5) the "honour of the Crown"; and

6) the analysis to be used when considering the justification of Canada's infringements under s. 35(1) of the Constitution Act, 1982.

Canada's Fiduciary duty

34. Canada owes a fiduciary duty to the Plaintiffs and the members of the Proposed Class as a result of the application of s. 91(24) of the Constitution Act, 1867, s. 35(1) of the Constitution Act, 1982, and court rulings of binding authority. The First Nations family-based system of education, in their language and cultural practice, is a lifelong right and obligation and is protected as an Aboriginal right by virtue of s. 35(1) of the Constitution Act, 1982. In this regard Canada has an on-going obligation of consultation on matters relating to the language and culture of aboriginal people. These Constitutional obligations also require Canada to take steps to monitor, safeguard and secure the interests of the Plaintiffs and members of the Proposed Class in regard to their cultural identity and language, which are fundamental to their security, welfare and survival as Aboriginal people, as well as to safeguard the benefits derived from their rightful status as Aboriginal people.

35. Canada's fiduciary duty in regards to language, as an inherent Aboriginal right guaranteed by section 35(1) of the Constitution Act, 1982, is a non-delegable duty. Thus Canada had a constitutional obligation to consult First Nations bands prior to imposing Provincial welfare laws and the terms of the Agreement on the Plaintiffs and members of the Proposed Class. Canada also had a duty to monitor, safeguard and secure the culture and language of the Plaintiffs and members of the Proposed Class which it failed to do, resulting in the loss of their ability to be educated in their Aboriginal language and cultural practice. Further, Canada had a duty to inform the Plaintiffs and members of the Proposed Class regarding their Aboriginal status and the resulting financial benefits and entitlements.

36. Canada also had a duty to ensure that the child welfare laws and policies of the Province applied equally to the population in general and not exclusively to the Aboriginal people.

Canada's acts and omission resulting in damages

37. Canada at all material times had constitutional obligations and fiduciary and common law duties to act in the best interest of the Plaintiffs and the Proposed Class members.

38. Prior to entering into the Agreement Canada had a duty to consult and obtain the approval of the First Nation bands which it failed to do. As a result of Canada's failure to fulfill its duty and obligation to consult, it was foreseeable that Canada would cause loss or harm to the Plaintiffs and the members of the Proposed Class. Such loss or harm would include the systemic eradication of the Plaintiffs' and Proposed Class members' language and their understanding of their distinctive cultures and traditions including their concept of extended family. Such loss or harm would also include the Plaintiffs and members of the Proposed Class being denied information regarding their Aboriginal identity and status and the loss of their right to educational and financial entitlements under the Indian Act.

39. At all material times, Canada was fully aware of its legal duty to protect the Plaintiffs and members of the Proposed Class from injury, economic loss and damages from the application of the welfare laws of the province and from the enforcement of the Agreement. Canada failed to take any positive steps to protect the Plaintiffs and members of the Proposed Class.

40. Canada, during the Class Period, breached its common law duty of care and its fiduciary duty by the following acts or omissions, including but not limited to:

1) failing to consult the First Nation bands in the Province prior to extending social welfare laws to the Aboriginal people on reserve;
2) failing to consult the First Nation bands in the Province prior to negotiating the terms of the Agreement with the Province;
3) failing to monitor, safeguard and secure the culture and language of the Plaintiffs and members of the proposed class during the application of the Provincial child welfare laws;
4) failing to consult the First Nation bands in the Province prior to imposing the terms of the Agreement on the Plaintiffs and members of the proposed Class;
5) failing to educate the Plaintiffs and members of the Proposed Class in their Aboriginal language and cultural practices during the application of the child welfare laws and Agreement;
6) knowingly accepting and willfully promoting a policy of cultural assimilation;
7) through its agents, systemically removing Aboriginal children from their natural homes without consulting the Indian Bands and /or without the knowledge and/or consent of their biological parents;

8) failing to provide adequate care and protection to the Plaintiffs and members of the Proposed Class with regard to their aboriginal heritage, culture and language when placing them in homes of non-aboriginal foster families and/or adoptive families;

9) failing to provide adequate care and protection to the Plaintiffs and members of the Proposed Class by permitting unqualified and otherwise unsuitable non-aboriginal individuals to act as foster and/or adoptive parents without proper screening and investigation as to the risks of abuse;

10) failing to ensure that the Plaintiffs and members of the Proposed Class were made aware of their status as Aboriginal people when they were placed in non-aboriginal foster or adoptive families;

11) failing to protect the language and culture of the Plaintiffs and members of the Proposed Class as a constitutional and inherent Aboriginal right;

12) failing to instruct the non-Aboriginal foster families and/or adoptive parents to inform the Plaintiff and members of the Proposed Class of their Aboriginal identity and their right to Federal benefits and financial entitlements;

13) exposing the Plaintiffs and members of the Proposed Class to circumstances which resulted in some or all of the following:

a) physical abuse;
b) sexual abuse;
c) exploitation;
d) child labor;
e) destruction of self-worth by ridiculing their aboriginal background and heritage;
f) cultural suppression;
g) loss of sense of family;
h) loss of ability to parent;
i) anxiety;
j) depression;
k) physical trauma;
l) emotional trauma;
m) psychological trauma;
n) personality change;
o) loss of confidence;
p) decreased social ability;
q) insomnia;
r) fatigue;
s) pain and suffering;
t) loss of enjoyment of life;

u) susceptibility to addictions;

v) inability to obtain proper education or employment;

General and special damages

41. As a result of Canada's acts and omissions and above-mentioned breaches of legal duties and obligations the Plaintiffs and members of the Proposed Class suffered real and substantial injuries, including loss of access to federal benefits and entitlements, loss of economic opportunities and earnings and loss of language, culture and identity.

Aggravated, Punitive and Exemplary Damages

42. The Plaintiffs plead that Canada at all material times had complete disregard for the widespread mental, emotional and physical abuse perpetrated upon members of the Proposed Class that occurred during the Class Period due to the application of the Provincial welfare laws and the Agreement.

43. The length of the Class Period and the manner in which the Plaintiffs and members of the Proposed Class were treated resulted in aggravated and increased, *inter alia*, mental, emotional spiritual, and physical suffering. Canada's actions have irreparably impacted and forever changed the lives of the Plaintiff and members of the Proposed Class members.

REMEDY SOUGHT:

44. The Plaintiffs, on their own behalf and on behalf of members of the Proposed Class, claim:

1) an order certifying this action as a class action and appointing the Plaintiffs as the representative plaintiffs pursuant to the *Class Proceedings Act*, SA 2003, c C-16.5;

2) general and special damages in an amount to be proven at trial;

3) aggravated damages in an amount to be proven at trial;

4) exemplary and punitive damages in an amount to be proven at trial;

5) an aggregate monetary award pursuant to s. 30 of the *Class Proceedings Act*, SA 2003, c C-16.5;

6) pre-judgment and post-judgment interest;

7) costs on a solicitor and client basis or alternatively enhanced party/party costs, with full indemnity for disbursements and GST;

c) the costs of administering the plan of distribution of the recovery of this action; and

9) such further reliefs as this Honourable Court may deem just and appropriate.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

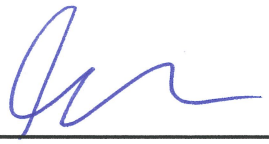
2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

THIS IS EXHIBIT "54" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

STEPHEN BRONSTEIN LAW PROFESSIONAL CORP

Barrister & Solicitor
Member of the British Columbia, Saskatchewan and Quebec Bars

Suite 500 - 777 West Broadway
Vancouver, B.C. Canada V5Z 4J7
Telephone: (604) 739-7920
Facsimile: (604) 739-7983
Toll Free Telephone: (877) -739-7920

April 6, 2017

Our File No: AB-2612

Via Fax

The Honorable Mr. Justice A.D. MacLeod
Court of Queen's Bench of Alberta
Calgary Court Centre
601 – 5th Street South West
Calgary, AB T2P 5P7

Care of Laura Cho

Re: Action No. 1701-04509

Dear Sir:

We filed the above referenced class action on March 31, 2017. Our action raises many of the same issues as those in Action No. 1601-13286 and Action No. 1101-11452. Our proposed class definition overlaps to some extent those in the other two actions.

Our position is that we would like to work co-operatively with the other law firms to advance the actions in court.

We are aware there is a carriage motion scheduled before you on April 11, 2017 between the law firms involved in the other two actions.

If the law firms oppose our participation and the court determines that only one law firm will have carriage of the action then we seek an adjournment to prepare for the carriage motion.

Yours truly,

Stephen J. Bronstein
SB/ni

CC: Koskie Minsky LLP, attention: Celeste Poltak, cpoltak@kmlaw.ca
Ahlstrom Wright Oliver & Cooper LLP, attention: Steven Cooper, fax: (780) 467-6428
Merchant Law Group, attention: Anthony Tibbs, atibbs@merchantlaw.com
Attorney General of Canada, attention: Wayne Schafer, wayne.schafer@justice.gc.ca
Alberta Justice, attention: Peter Barber, peterbarber@gov.ab.ca

THIS IS EXHIBIT "55" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY
JUSTICE MATTERS

April 7, 2017

Celeste Poltak
Direct Dial: 416-595-2701
Direct Fax: 416-204-2909
cpoltak@kmlaw.ca

BY FAX (Laura Cho 1-403-297-7536)

The Honourable Mr. Justice A.D. Macleod
Court of Queen's Bench of Alberta
Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7

Dear Justice Macleod:

Re: Carriage motion scheduled for April 11, 2017
***Van Name v. Alberta et al.*, Court File No. 1101-11452**
***Glenn v. Canada*, Court File No. 1601-13286**

We write to the court in response to correspondence received on April 6, 2017 from Mr. Bronstein, on behalf of the Koskie Minsky-Ahlstrom White consortium so that the court and all parties are aware of our position prior to Tuesday's motions.

We have no intention of working together with Mr. Bronstein on these matters. There is no co-operative arrangement to be had between our consortium and Mr. Bronstein. We also oppose an adjournment of the carriage motions returnable before Your Lordship on Tuesday April 11, 2017. As the court is aware, these motions have been scheduled for some time, all the materials have been filed before you and a request for an adjournment was already denied by the court on March 28, 2017. As all parties and the court are aware, there is urgency associated with the disposition of the motions.

Most importantly, Mr. Bronstein has no standing on either motion or in respect of these matters at all. The filing of his claim on March 31, 2017 in respect of these subject matters itself constitute an abuse of process given that it was filed months after the carriage motion had been scheduled and months after a public announcement was made by Canada suggesting that a negotiated resolution of these matters might well be possible. As a result, we will be asking the court that regardless of who is awarded carriage as between our consortium and Mr. Merchant, Mr. Bronstein's action ought to be permanently stayed and an order made that no further actions touching upon these subject matters may be commenced in Alberta without leave of the court. Without such an order, additional claims by others are sure to be filed in Alberta creating a multiplicity of proceedings that serve no useful purpose.

KOSKIE MINSKY
JUSTICE MATTERS

Yours truly,

KOSKIE MINSKY LLP

Celeste Poltak
CP:ls

cc Stephen Bronstein Law Professional Corporation
Roch Dupont/Tony Merchant/Anthony Tibbs/Evatt Merchant – Merchant Law Group
Wayne Schafer/Alethea LeBlanc – Justice Canada
Ward Branch – Branch MacMaster LLP
Peter Barber – Alberta Justice
Kirk Baert/Scott Robinson – Koskie Minsky LLP
Steven Cooper/Teri Lynn Bougie – Ahlstrom Wright Oliver & Cooper

THIS IS EXHIBIT "56" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

ENTERED

Form 10
[Rule 3.25]

COURT FILE NUMBER	1701-08523
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	VICTOR BIRD AND LEONA PAUL
DEFENDANT(S)	ATTORNEY GENERAL OF CANADA
DOCUMENT	**STATEMENT OF CLAIM**

Clerk's Stamp
JUN 23 2017
S-L

$250.00

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DD WEST LLP Suite 310, 525 11 Ave. S.W. Calgary, Alberta T2R 0C9 Ph: (403) 245-0111 Fax: (403) 245-0115 WILLIAM S. KLYM / BRIAN J. MERONEK, Q.C.

Brought under the *Class Proceedings Act*

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

PARTIES

1. The Plaintiff Victor Bird ("Bird") resides on the Paul First Nation ("Paul Band") in Alberta and is an Indian as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

2. Bird is 47 years old. He is a member of the Paul Band.

3. The Plaintiff, whose birth name is Leona Paul ("Paul"), is a member of the Paul Band and is an Indian as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

4. Paul is 48 years old. She currently resides in Hinton, Alberta.

5. The Defendant is Her Majesty the Queen in Right of Canada as represented by the Attorney General of Canada, pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*.

DEFINITIONS

6. (a) "Aboriginal" means those people as defined in s. 35 of the *Constitution Act*, 1982.

(b) "Bi-lateral Arrangements" means separate written agreements or other arrangements entered into between Canada and several individual provinces, whereby Canada, among other things, provided funding to provinces pertaining to Aboriginal foster and adoptive care to permit Canada to access provincial child welfare services and programs.

(c) "Class Period" means the period commencing in approximately the early 1960s and terminating in the early 1990s.

(d) "Canada" means Her Majesty the Queen in Right of Canada or the Crown.

(e) "Declaration" means the United Nations Declaration on the Rights of Indigenous People, 61/295 adopted by Canada on May 10, 2016.

(f) "Provinces" means the Governments of British Columbia, Alberta and Saskatchewan in their roles as operating child welfare services and programs concerning Aboriginal children.

(g) "Sixties Scoop" or "Displacement" means the involuntary apprehension of Aboriginal children by Canada during the Class Period into non-Aboriginal foster homes or adoptive homes.

CLASS

7. The Proposed Class constitutes those Aboriginals in the Provinces, both status and non-status who, as children, were taken from their Aboriginal families by Canada and/or its agents and placed in non-Aboriginal foster care and/or with non-Aboriginal adoptive parents.

BACKGROUND

8. Commencing in or about the early 1960's, Canada implemented two practices involving the Class, which practices are central to the claim of the Class.

9. Firstly, Canada directly removed, or indirectly had removed, children involuntarily from their Aboriginal homes and had them placed with non-Aboriginal families for adoption. These children were raised without an understanding of their Aboriginal culture, heritage or traditional ways and hence suffered a loss.

10. This practice of Displacement has come to be known, somewhat crudely, as the Sixties Scoop.

11. Secondly, Canada directly removed, or indirectly had removed, children involuntarily from their Aboriginal homes and had them placed in non-Aboriginal group or individual foster homes, subjecting many children to horrific attacks, torture and other forms of abuse, including the types of abuse set out in paragraph 30 below.

12. By virtue of s. 91(24) of the *Constitution Act*, 1867, Canada reserved unto itself exclusive jurisdiction over "Indians and Lands reserved for Indians", which jurisdiction arose from the moment Canada assumed dominion over Aboriginal people.

13. S. 91(24) of the *Constitution Act* historically has been interpreted to include the members of the Class.

14. S. 35 of the *Constitution Act*, 1982 states, in part:

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.
>
> ...
>
> (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

15. Article 1 of the *Declaration* states:

> "Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law".

16. Article 5 of the *Declaration* states:

> "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State".

17. By virtue of s. 88 of the *Indian Act* in 1951 Parliament made all laws of general application from time to time in force in any province applicable to and in respect of Indians in the province.

18. Pursuant to its powers, commencing in or about 1962 Canada entered into Bi-lateral Arrangements with the Provinces to provide, among other things, funding to the Provinces for the purpose of utilizing provincial child welfare services and programs in respect of adoption, and foster care for Aboriginal children.

19. In addition, Canada entered into Bi-lateral Arrangements whereby Canada delegated its obligations, fiduciary or otherwise, to the Provinces to provide foster care facilities for members of the Class and to provide adoption services on a fee for service basis.

DUTIES OF CANADA

20. In assuming exclusive jurisdiction, Canada undertook a fiduciary responsibility towards Aboriginal people.

21. In addition, Canada is bound by the principles of Honour of the Crown requiring, at the very least, a duty of fairness, good faith, political trust and honourable conduct towards Aboriginal people and in particular members of the Class.

22. In light of its adoption of the *Declaration* and by the principle of Honour of the Crown Article 8 (2), the Crown is also bound to provide redress to the Class.

23. By virtue of the Constitution and the Declaration, Canada undertook a positive obligation to provide members of the Class with a safe and nurturing environment in which the traditional values and culture of the Aboriginal people were to be respected, taught and fostered.

24. That positive obligation undertaken by Canada created a fiduciary duty to the members of the Class.

25. The Class, by virtue of its Aboriginal status and the historical protection recognized and affirmed by s. 35 of the *Constitution Act*, was entitled to the protection of culture, heritage and individual well-being in Canada's dealings with the Class.

26. The relationship between Canada and the Class is *sui generis* by virtue of the status of the Class as Aboriginal people and Canada's fiduciary responsibilities with respect to them.

27. Furthermore, Canada had a common law duty of care to consult with the First Nations and Metis people, or their representatives, and receive their consent before entering into and implementing the Bi-Lateral Arrangements for the delegation of child welfare services and programs as stated above.

28. Canada had a further duty of care to make certain that the Class members were made aware of the rights and benefits to which they were entitled.

29. Canada knew, or ought to have known, that by entering into these Bi-Lateral Arrangements and by delegating these child welfare services and programs to third parties, including to the Provinces, Class members would have been denied any opportunity to preserve, maintain and nurture their Aboriginal identity and exercise their Aboriginal and treaty rights.

30. Canada also knew, or ought to have known, that the Displacement of Aboriginal children constituted a serious intrusion into the Aboriginal family relationship that could, and in many cases would, destroy their Aboriginal status.

CANADA'S BREACH OF DUTIES

31. Canada breached its common law, statutory, and/or fiduciary duties towards the Class by, among other things:

a) Illegally delegating its non-delegable duties, powers and obligations towards Aboriginal children to third parties, by entering into the Bi-Lateral Arrangements or otherwise, including with the Provinces;

b) Alternatively in failing to ensure appropriate Bi-Lateral Agreements were drafted, and/or by failing to consult with First Nations, and Metis, or their representatives, during the drafting process and obtaining their consent before their execution;

c) In failing properly, or at all, to oversee, regulate or monitor funding it provided to third parties, including the Provinces, to the extent that such funding was used in ways that breached its fiduciary, statutory and common law duties towards the Class;

d) Failing to insist that all Aboriginal children taken through child welfare frameworks were taken only after consultation with, and the consent of, the relevant First Nations and Metis, including representatives in their respective reserves/territories;

e) Failing to ensure that policies or programs were in place to ensure that all Aboriginal children taken through child and family service systems would have the means to retain their Aboriginal customs, traditions and/or practices;

f) Actively encouraging policies/programs which facilitated the goals of cultural assimilation;

g) Failing to protect Aboriginal children in pursuit of their traditional ways, community attachments, family relationships, culture, support and Aboriginal identity;

h) Allowing Class members to be placed at risk of sexual, physical, mental, emotional abuse and torture in foster or adoptive homes.

32. Specific instances of said abuse and torture included:

a) Battery with a multitude of objects, including, but not limited to, wooden spoons, broom handles, straps, buckles, fan belts, wooden sticks, bull whips, cattle whips, canes, electric cattle prods, barbed wire fencing, and wooden planks;

b) Engaging in acts of torture, such as the gouging out of a foster child's eyeball with the use of a metal spoon, such torture taking place in front of other foster children;

c) Requiring foster children to attend psychiatric hospitals where they were forced to undergo electric shock therapy after being forced to ingest liquid sedatives;

d) Sexual abuse including masturbation, kissing, oral sex, vaginal, anal penetration and gang rape;

e) Abusing and mentally scarring a foster child to such an extent that the child later engaged in serious suicide attempts requiring hospitalization, with one such attempt resulting in the laceration of the brachial artery and self-inflicted wounds, including the carving of a deep swastika in the child's arm;

f) Physically striking a foster child with a closed fist resulting in a broken jaw and requiring surgery to wire the jaw shut;

g) Failing to ensure the sexual integrity of the foster children at the hands of social workers in their cars while transporting the children to and from new homes;

h) Neglecting abandoned children of tender years forcing them to forage for themselves to survive including obtaining food from garbage cans, raiding gardens sharing rabbits.

INJURIES AND DAMAGES

33. As a result of the common law, statutory and fiduciary breaches by Canada and its agents as set out herein, the representative Plaintiffs and Class members suffered injuries and damages, including, but not limited to:

a) Mental, emotional and verbal abuse, and all subsequent suffering and consequential harms, including post-traumatic stress disorder, anxiety, depression and emotional trauma;

b) Physical abuse, oftentimes resulting in serious physical injuries, and all subsequent suffering and consequential harms;

c) Sexual abuse and all subsequent suffering and consequential harms;

d) Loss of birth names;

e) Loss of Aboriginal identity, heritage, spirituality and sense of community;

f) Loss of family relationships;

g) Loss of language;

h) Humiliation, loss of self-esteem, self-worth and a reduced ability to lead healthy and fulfilling lives;

i) Cultural genocide and/or forced cultural assimilation, educational and other marginalization and disorientation;

j) Loss of benefits, including tax breaks, and loss of access to programs and/or monetary and non-monetary benefits afforded to other Aboriginal persons;

k) Alcoholism and/or substance abuse, violence and suicides;

l) Consequential loss of employment due to childhood trauma and their subsequent negative effects;

m) Lack of any professional treatment for the abuses heaped upon them;

n) Inability to appreciate fundamental values and way of life as an Aboriginal person.

PUNITIVE DAMAGES

34. In a deliberate attempt to eradicate Aboriginal culture, identity, customs and traditional ways, and with full knowledge of the abuse set out above, Canada established and propagated and/or acquiesced in child and family programs and services which caused

and proliferated unspeakable harm to Class members and as such Canada's actions were malicious, high handed, oppressive and persistent: and warrant punitive, exemplary and aggravated damages.

THE REPRESENTATIVE PLAINTIFFS

Victor Bird

35. Bird was placed in foster care at the age of one or two years. He suffered a loss of Aboriginal culture.

36. Bird was treated in a discriminatory fashion because of his Aboriginal identity.

37. Bird was also physically assaulted including, being thrown down the stairs, beaten until he was unconscious, being locked up to sleep in a dirt cellar throughout his stay in foster care and physically being restrained by being tied up with coat hangers and then subjected to sexual abuse on a regular basis.

38. At the age of 10, Bird returned to the Paul Band.

39. Bird has suffered from and continues to suffer from the after effects of the abuse. He has abused drugs, alcohol and has been incarcerated. He cannot maintain employment and he is constantly tormented with the horrors of his past in foster care and he requires counselling. Bird also suffered a spinal injury.

Leona Paul

40. Paul was placed in several foster homes starting at approximately 1 ½ years old. In total, she spent approximately 15 years in foster homes before she was released from foster care.

41. During the course of her foster care, Paul experienced such horrors, torture, indignities and abuse as, but not limited to:

a) being in bed with her foster parents, while they were naked and having sex;

b) showering with her foster father, while his soiled water would drain past her;

c) being fed dish soap;

d) being fondled and raped;

e) being fondled and fingered by a foster care sister;

f) being treated as a slave labourer, by being forced to herd cattle in the winter in rubber boots and no socks:

g) consistent physical abuse with an electric cattle prod on her bare bottom;

h) being forced to eat in inhumane ways, such as being feed scraps of food out of a toilet bowl, forced to chew on dog bones while being called a "filthy dog", and forced to eat vomit after regurgitating unfamiliar foods such as cow milk and cheese;

i) being kicked in the stomach, while she was lying on the road; and,

j) being called a "nigger" and "wagon burner" by her foster parents.

42. As a result of said abuse and torture, Paul has attempted suicide several times. She has undergone extensive counselling, which has not erased her suicidal ideations. She cannot hold a job; has anger management problems; cannot socialize; and, feels she does not fit in at the Paul Band.

COMMON ISSUES

43. The common issues include the following:

a) Did Canada have a fiduciary duty to the Class?

b) Did Canada breach that duty?

c) Did Canada owe a duty of care to the Class?

d) Did Canada breach that duty of care?

e) Have the Class members suffered damages; and, if so, what is the quantum of that damage?

f) Can the damages be assessed and distributed on an aggregate basis?

g) Did Canada breach its obligation of fairness to the Class by virtue of the principle of Honour of the Crown in failing to compensate the Class; and, if so, what are the damages?

h) Is the Class entitled to punitive damages; and, if so, in what amount?

REPRESENTATIVE PLAINTIFFS

44. The Representative Plaintiffs are members of the proposed Class, are persons competent to communicate with and on behalf of the Class and possess no conflict of interest with

the Class. The Representative Plaintiffs will diligently and adequately represent and protect the interest of the Class.

PREFERABLE PROCEDURE

45. The class action is more efficient and would serve the ends of justice better than a great number of individual claims.

46. The prosecution of a similar class action claim has been concluded with a judgment against Canada in Ontario in *Marcia Brown v. The Attorney-General of Canada*, 2017 ONSC 251 for damages caused to the plaintiff and class members in that action for breach of duty.

47. The members of the Class, condemned to a life of poverty and marginalization as a result of Canada's conduct as herein set out, are in no financial position to advance claims on an individual basis.

48. The Plaintiffs propose that this action be tried at Calgary, Alberta.

REMEDY SOUGHT

49. The Representative Plaintiffs claim on behalf of the Class:

a) An order for interim costs;

b) An order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act* and appointing the Plaintiffs as Representative Plaintiffs;

c) A declaration that Canada breached its fiduciary, treaty, statutory and common law duties toward the Class:

d) Damages in the amount of $500 million or any such amount as this Court deems fair and just with a portion of such funds being allocated to a 'common experience' pool of funds to be distributed to all apprehended Class members regardless of the severity of abuse suffered by any individual Class member;

e) An order compelling Canada to structure a settlement process whereby victims of physical, sexual and/or other forms of reprehensible abuse may be provided access to a forum to share their stories and claim additional forms of compensation over and above the common experience payment;

f) An order compelling Canada to issue a formal and ongoing apology to the Displaced Class members, their families and all other Aboriginal peoples affected by the Displacement, with such an apology extending beyond a mere statement;

g) Punitive Damages in an amount to be determined by this Court;

h) Pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c. J-1;

i) Solicitor-client costs on a full indemnity basis;

j) Such further relief as this Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.

THIS IS EXHIBIT "57" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

KOSKIE MINSKY

July 7, 2017

Kirk M. Baert *
*Practicing through a professional corporation
Direct Dial: 416-595-2092
Direct Fax: 416-204-2889
kmbaert@kmlaw.ca

Via E-mail

Messrs. William S. Klym & Brian J. Meronek, Q.C.
DD West LLP
310, 525 - 11th Avenue SW
Calgary, Alberta T2R 0C9

Dear Sirs:

Re: *Victor Bird and Leona Paul v. Attorney General of Canada*
Court File No. 1701-08523
Our File No.: 170499

We are in receipt of your Statement of Claim styled *Victor Bird and Leona Paul v. Attorney General of Canada* (Court File No. 1701-08523) commenced on June 23, 2017 in the Court of Queen's Bench of Alberta (the "*Bird* Action").

We are counsel in the class action styled *Sarah Glenn v. Attorney General of Canada* (Court File No. 1601-13286) commenced on October 6, 2016 in the Court of Queen's Bench of Alberta (the "*Glenn* Action"). Mr. Merchant is counsel in the class action *Peter Van Name v. Alberta et al.* (Court File No. 1101-11452) commenced on August 18, 2011 in the Court of Queen's Bench of Alberta (the "*Van Name* Action").

The *Bird* Action completely overlaps with the *Glenn* Action, the *Van Name* Action, and other class actions commenced in British Columbia, Saskatchewan and the Federal Court.

Furthermore, a motion for carriage between the plaintiffs in the *Glenn* Action and the *Van Name* Action has been fully briefed, the carriage hearing has concluded, and the decision is currently under reserve (pending the release of reasons from the Manitoba Court of Appeal on carriage between plaintiffs represented by, among others, Koskie Minsky LLP and the Merchant Law Group).

Simply put, your action is too late. It constitutes an abuse of process in the face of overlapping and parallel proceedings. In the circumstances, failing your immediate filing of a notice of discontinuance, we intend to move to stay your claim (in conjunction with a motion to stay another recently filed claim styled *Thomas Vogtmann & Terry Anne English v. Attorney General of Canada* (Court file No. 1701-04509) commenced on March 31, 2017 in the Court of Queen's Bench of Alberta).

KOSKIE MINSKY

Please advise no later than July 14, 2017 whether you will agree to a discontinuance of the *Bird* Action. Failing a discontinuance, we will seek all of our costs for the stay motion on a substantial scale.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:st

c Anthony E.F. Merchant, Steve Roxborough, Merchant Law Group
David Klein, Doug Lennox, Angela Bespflug, Klein Lawyers LLP
Steven Cooper - Ahlstrom Wright Oliver & Cooper LLP
Catharine Moore, Travis Henderson, Barney Brucker – Attorney General
Stephen Bronstein - Bronstein & Company

THIS IS EXHIBIT "58" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

DD WEST LLP
WINNIPEG - CALGARY - AIRDRIE

2200 - ONE LOMBARD PLACE
WINNIPEG, MANITOBA
CANADA R3B 0X7

TELEPHONE (204) 421-8655
FACSIMILE (204) 421-8566
WEBSITE: www.ddwestllp.com

July 14, 2017

VIA EMAIL: kmbaert@kmlaw.ca

REFERENCE NO:

130118-0001

PLEASE REPLY TO:

Brian J. Meronek Q.C.

DIRECT LINE:

204-925-5355

EMAIL:

bmeronek@ddwestllp.com

Koskie Minsky
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Attention: Kirk M. Baert

Dear Sir:

Re: Bird et al v. Attorney General of Canada
Alberta Court File No. 1701-08523
Your File No. 170499

We have your letter of July 7, 2017. We were disappointed in the tone of the correspondence. We do not share your characterization of our claim. It is not our intention to be involved in an imbroglio with you. We are of the view that the government is the adversary, not the lawyers advocating on behalf of the victims.

It would have been our preference to engage in a productive dialogue to explore opportunities of mutual benefit. We remain open to such dialogue.

In the meantime, we represent several hundred clients who expect us to advance their cause and we intend to do so to the utmost of our ability. I look forward to hearing from you.

Yours truly,

DD WEST LLP
Per:

BRIAN J. MERONEK Q.C.
BJM / mp

cc. William Klym
Lee McMillan
Orvel Currie

LEGAL ASSISTANT:

Marion Parsons

DIRECT LINE:

204-975-2534

EMAIL:

mparsons@ddwestllp.com

Services provided by:
Brian Meronek Law Corporation

o also of the Alberta Bar

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