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 5 OF 6

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THIS IS EXHIBIT "59" 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

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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: *Glenn v. Attorney General of Canada*, Court File No. 1601-13286
File No. 16/2003

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 LLP
Roch Dupont/Tony Merchant/Anthony Tibbs/Evatt Merchant – Merchant Law Group
Wayne Schafer/Alethea LeBlanc/Catherine Moore/Travis Henderson – Justice Canada
Peter Barber – Alberta Justice
Steven Cooper – Ahlstrom Wright Oliver & Cooper
David Klein

KM-2916474v1

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***
- and -	*for the Appellants*
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***
(Defendants) Respondents	*Judgment delivered:* ***July 21, 2017***

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

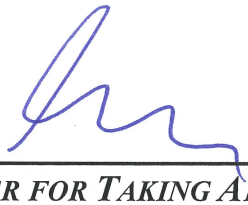
(e) any of the proceedings be,

(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 "60" 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
CALGARY · AIRDRIE · WINNIPEG

310, 525 - 11th AVENUE S.W.
CALGARY, ALBERTA
CANADA T2R 0C9

TELEPHONE (403) 246-0111
FACSIMILE (403) 246-0118
TOLL FREE (855) 856-1498
WEBSITE: www.ddwestllp.com

August 4, 2017

REFERENCE NO:
130289-0001

The Honourable Justice A. D. Macleod
The Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7

PLEASE REPLY TO:
William S. Klym
DIRECT LINE
403-531-3320
EMAIL:
wklym@ddwestllp.com

Your Lordship:

Re: *Victor Bird et al v. Attorney General of Canada*
Court File No: 1701-08523

Sarah Glenn v. Attorney General of Canada
Court File No: 1601-13286

We are counsel for the Plaintiffs in the above action 1701-08523. We enclose a copy of our Statement of Claim.

We represent over 600 indigenous persons who have suffered cultural deprivation, and sexual and physical abuse as a result of being placed in adoptive homes and foster care in Alberta, Saskatchewan and British Columbia.

We have been informed that Koskie Minsky LLP has brought an application before you seeking carriage of the action and has served merchant Law Group which had filed an action some time ago. We are also advised that the matter has been argued and is under reserve.

Our clients have expressed concern that carriage of this matter is being sought without any input from them as to their interests and needs and have directed us to so advise the Court.

We are mindful of our obligation to work cooperatively with other counsel in the best interests of the Class. We wish to indicate to the Court that we intend to operate in an inclusive manner with other counsel for the benefit of the indigenous Class members.

ASSISTANT
Whitney Wright
DIRECT LINE:
403-541-5283
EMAIL:
wwright@ddwestllp.com

BRANCH OFFICES:
WINNIPEG
AIRDRIE

DD WEST LLP
CALGARY · AIRDRIE · WINNIPEG

It is our intention to bring an application for the opportunity to be heard in the carriage issue and are prepared to file that application by August 18, 2017.

Yours truly,

DD WEST LLP
Per:

William S. Klym
WSK / wlw
Encl.

cc: Koskie Minsky LLP
Attention: K. M. Baert
Via Facsimile: 416-204-4928

Merchant Law Group LLP
Attention: E. F. A. Merchant
Via Facsimile: 306-522-3299

Adam North Peigan
Via E-mail: adamnorthpeigan@gmail.com

DD West LLP
Brian Meronek, Q.C.
Via E-mail: bmeronek@ddwest.com

Client

THIS IS EXHIBIT "61" 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

THE HONOURABLE MR. JUSTICE
ALAN D. MACLEOD

COURT OF QUEEN'S BENCH OF ALBERTA

CALGARY COURTS CENTRE
SUITE 2401 - N
601 - 5TH STREET S.W.
CALGARY, ALBERTA T2P 5P7

PH (403) 297-4500
FAX (403) 297-7536

August 9, 2017

Mr. William Klym
DD West LLP
310, 525 - 11 Avenue SW
Calgary, AB T2R 0C9

Via Fax: (403) 245-0115

RE: Victor Bird v. Attorney General of Canada
Court File No: 1701-08523

Sarah Glenn v. Attorney General of Canada
Court File: 1601-13286

Dear Counsel:

I acknowledge your letter of August 4, 2017.

As you rightly pointed out there is an application before me upon which I have reserved.

The only matters that I may consider with respect to my decision are those that are properly brought forward to the Court in the accordance with our Court rules.

Yours truly,

Mr. Justice A.D. Macleod

ADM/lc

cc: *K.M. Bert- Koskie Minsky LLP- Fax: (416) 204-4928*
E.F. A. Merchant- Merchant Law Group LLP- Fax- (306) 522-3299

THIS IS EXHIBIT "62" 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

August 14, 2017

Kirk M. Baert *
* Practicing through a professional corporation
Direct Dial: 416-595-2092
Direct Fax: 416-204-2889
kmbaert@kmlaw.ca

BY FAX (c/o 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: *Glenn v. Attorney General of Canada*, Court File No. 1601-13286
File No. 16/2003

We have the letters exchanged in this matter on August 4 and August 9. The motion has been fully briefed and fully argued for some time. The decision under reserve was held due to the pending decision of the Manitoba Court of Appeal in a related matter. That decision has now been released. It is neither fair nor appropriate that this late-blooming matter be allowed to delay this matter further. At some point, there must be an end to further Sixties Scoop actions being filed. That end has been reached here.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:ls

c William S. Klym, Brian Meronek – DD West LLP
Roch Dupont/Tony Merchant/Anthony Tibbs/Evatt Merchant – Merchant Law Group
Wayne Schafer/Alethea LeBlanc/Catherine Moore/Travis Henderson – Justice Canada
Peter Barber – Alberta Justice
Steven Cooper – Ahlstrom Wright Oliver & Cooper
David Klein – Klein Lawyers LLP
Celeste Poltak/Garth Myers – Koskie Minsky LLP

KM-2938824v1

THIS IS EXHIBIT "63" 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
CALGARY - AIRDRIE - WINNIPEG

310, 525 - 11th AVENUE S.W.
CALGARY, ALBERTA
CANADA T2R 0C9

TELEPHONE (403) 245-0111
FACSIMILE (403) 245-0115
TOLL FREE (855) 656-1495
WEBSITE: www.ddwestllp.com

August 18, 2017

The Honourable Justice A. D. MacLeod
The Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7

Your Lordship:

Re: ***Sarah Glenn v. Attorney General of Canada***
Court File No: 1601-13286

Victor Bird and Leona Paul v. Attorney General of Canada
Court File No: 1701-08523

We have filed an Application with three supporting affidavits, Dennis Paul, Victor Bird and Whitney Wright, returnable September 1, 2017, enclosed herewith.

The Paul and Bird affidavits were filed in Court File No: 1701-08523, which is the Court proceeding in which we are counsel for the Representative Plaintiff, but the affidavits have also been filed in Court File No: 1601-13286.

We filed the Application in Chambers because the Case Management officer, Ms. O'Brian is presently on vacation and we cannot get a return date until her return on August 21, 2017.

Once we obtain available dates, we will canvass the other counsel as to their availability.

Yours truly,

DD WEST LLP
Per:

William S. Klym
WSK/wlw
Encl.

Koskie Minsky LLP
Attention: K. M. Baert
Via Facsimile: 416-204-4928

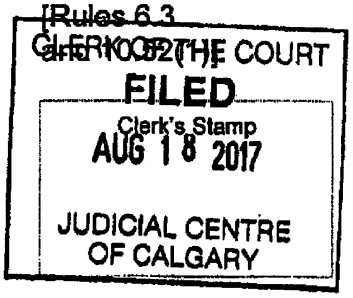
DD WEST LLP
CALGARY - AIRDRIE - WINNIPEG

Merchant Law Group LLP
Attention: E. F. A. Merchant
Via Facsimile: 306-522-3299

DD West LLP
Brian Meronek, Q.C.
Via E-mail: bmeronek@ddwest.com

Client

Form 27
[Rules 6.3 and 10.52(1)]



COURT FILE NUMBER	1601-13286
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	SARAH GLENN
DEFENDANT	ATTORNEY GENERAL OF CANADA
	and
COURT FILE NUMBER	1701-08523
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	VICTOR BIRD and LEONA PAUL
DEFENDANT	ATTORNEY GENERAL OF CANADA
DOCUMENT	**APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DD WEST LLP #310, 525 – 11th Avenue SW Calgary, AB T2R 0C9 **Attention: William S. Klym / Brian Meronek, Q.C.** Ph: (403)245-0111 Fax: (403)245-0115 File No. 130289-0001

NOTICE TO RESPONDENTS KOSKIE MINSKY LLP, counsel for the Plaintiff in Court File No: 1601-13286

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: September 1, 2017
Time: 10:00 AM
Where: Calgary Court Centre, 601 – 5th St. SW, Calgary, AB T2P 5P7
Before Whom: Master in Chambers

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An order permitting the proposed representative Plaintiffs in Action No: 1701-08523 to make representations to the Court in respect of the pending carriage application in Court File No: 1601-13286.

Grounds for making this application:

2. That the representative Plaintiffs in Action No: 1701-08523 and the members of the putative Class that are clients of DD West LLP should be heard before any carriage determination is made.

3. That the spirit of truth and reconciliation by which relations between governmental authorities and indigenous people are now governed, should apply to issues of case management in these proceedings including carriage of these actions.

4. That prosecution of the 60's scoop class actions currently filed in Alberta should be reflective of the needs and desires of the indigenous people and to proceed in an inclusive rather than exclusive fashion.

Material or evidence to be relied on:

5. Affidavits of Whitney Wright, Victor Bird and Dennis Paul, as filed.

Applicable rules:

6. N/A

Applicable Acts and regulations:

7. *The Class Proceedings Act*, SA, 2003, C-16.5

Any irregularity complained of or objection relied on:

8. N/A

How the application is proposed to be heard or considered:

9. To be placed on the morning chambers list to be then referred to the Case Management Officer for a returnable date before the Honourable Justice A.D. Macleod.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want 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 lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

COURT FILE NUMBER	1601-13286
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	SARAH GLENN
DEFENDANT	ATTORNEY GENERAL OF CANADA
	And
COURT FILE NUMBER	1701-08523
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	VICTOR BIRD and LEONA PAUL
DEFENDANT	ATTORNEY GENERAL OF CANADA
DOCUMENT	AFFIDAVIT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DD WEST LLP
#310, 525 – 11th Avenue SW
Calgary, AB T2R 0C9
Attention: William S. Klym / Brian Meronek, Q.C.
Ph: (403)245-0111
Fax: (403)245-0115
File No. 130289-0001

AFFIDAVIT OF WHITNEY WRIGHT
Sworn on August 18, 2017

I, Whitney Wright, of the City of Calgary, Province of Alberta, MAKE OATH AND SAY THAT:

1. That the Affidavit of Victor Bird and the Affidavit of Dennis Paul, attached hereto and marked as **Exhibits "A"** and **"B"** respectively, are being filed in Court File No: 1701-08523.

2. I make this affidavit for the purpose of ensuring that the Bird and Paul Affidavits are filed in Court File No: 1601-13286.

SWORN BEFORE ME at Calgary, Alberta, this 18 day of August, 2017.

A Commissioner for Oaths in and for the Province of Alberta

WILLIAM S. KLYM
Barrister & Solicitor

WHITNEY WRIGHT

COURT FILE NUMBER	1701-08523
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	VICTOR BIRD and LEONA PAUL
DEFENDANT	ATTORNEY GENERAL OF CANADA
DOCUMENT	AFFIDAVIT

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DD WEST LLP
#310, 525 – 11th Avenue SW
Calgary, AB T2R 0C9
Attention: William S. Klym / Brian Meronek, Q.C.
Ph: (403)245-0111
Fax: (403)245-0115
File No. 130289-0001

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Whitney Wright
Sworn before me this 18
day of August A.D. 17
A Commissioner for Oaths / A Notary Public in and for the Province of Alberta

WILLIAM S. KLYM
Barrister & Solicitor

AFFIDAVIT OF VICTOR BIRD
Sworn on August 17, 2017

I, Victor Bird, of the City of Edmonton, Province of Alberta, MAKE OATH AND SAY THAT:

1. I am one of the Representative Plaintiffs in the above class action (the "Class Action") and as such have a personal knowledge of the facts and matters herein deposed to except where stated to be informed and belief.

2. I was introduced to the predecessor of DD West LLP, Klym Law by Dennis Paul in February 2017, when representatives of Klym Law visited the Paul Nation, west of Edmonton.

3. Representatives of Klym Law met with both survivors of the Day Schools and survivors of the 60's Scoop and we as survivors told our experiences to them.

4. I and many others from the Paul Nation signed retainer letters and speaking for myself want DD West LLP to represent me in the Class Action.

5. I believe DD West LLP has the qualifications to properly represent my interest and the interests of other Class members who are clients DD West LLP.

6. The DD West LLP team consists of three senior counsel, Brian Meronek, Q.C., Paul Chartrand, I.P.C. and William Klym. I am advised by Mr. Meronek and do verily believe it to be true that the experience of these counsel is accurately set out on the DD West LLP's website as follows:

   a. Brian Meronek, Q.C. - Brian Meronek is a senior partner in the law firm with an extensive litigation background. He was employed with the Federal Department of Justice for 8 years from 1973 to 1981. In 1981 he began private practice with the firm and became a partner in 1983. He was appointed Queen's Counsel in 1995.

      Brian has handled a wide variety of civil litigation cases, including actions for and against the Government of Canada. From time to time, he is engaged on an agency basis by the Federal Government and the Province of Manitoba, in a variety of civil and other litigation matters. He has appeared in all Courts in Manitoba and Alberta and the Ontario Superior Court of Justice; the Federal Court of Canada Trial Division and Court of Appeal and in the Supreme Court of Canada.

      He has had extensive experience in commercial litigation, including tax litigation, investment disputes, business valuation & expropriations; personal injury litigation, including medical malpractice and general insurance litigation, including products liability cases; defamation; administrative law, including judicial inquiry matters; municipal law; oil & gas law and energy regulation; labour & employment law & class actions in pension law and aboriginal claims; and environmental law regulatory hearings.

   b. Paul Chartrand, I.P.C - B.A.(Hons)(Wpg), LL.B.(Hons) (QUT Australia), LL.M. (Sask) of the Manitoba Bar and currently counsel to the firm DD West LLP.

In 2002 Paul Chartrand was the third Indigenous lawyer appointed as *'Indigenous Peoples' Counsel'* by Canada's *Indigenous Bar Association.* His long professional career has focused upon laws and policies of states respecting Indigenous Peoples, and has included numerous publications, various university appointments in Canada, Australia, New Zealand and the United States, as well as administrative appointments in universities and colleges. He has a lengthy record of public service and providing advice to Aboriginal organisations in Canada and at the *United Nations* (UN) and the *Organisation of American States.*(OAS). He served on several high-profile advisory bodies including Canada's Royal Commission on *Aboriginal Peoples* and Manitoba's *Aboriginal Justice Implementation Commission.* He was an advisor during the *First Ministers Conferences on Aboriginal Constitutional Reform* of the 1980s and participated in the lengthy deliberations on the UN *Declaration on the Rights of Indigenous Peoples* that was adopted in 2007. He retired from university life in 2009 having achieved the rank of Full Professor of Law with Tenure.

At DD West Paul is prepared to assist with the resolution of all matters relating to the laws and policies that affect the aspirations and rights of Aboriginal peoples and the promotion of the Treaty Relationship with Canada. Paul is a member of one of the founding families of the historic Metis community of St Laurent along Lake Manitoba.

c. William S. Klym received his law degree from the University of Manitoba in 1973. He has been practicing law in Calgary for over 40 years, having been admitted to the Alberta Bar in 1974. He has appeared at all levels of Court, including the Court of Queen's Bench, Federal Court, and Supreme Court of Canada.

He was co-counsel in the seminal Charter case of The Queen v. Big-M Drug Mart. He has been plaintiff's counsel in class actions such as *Hobsbawn v. Atco, Allen v. Direct Energy,* and *Subramaniam v. Westborough Developments* and *Windsor v. Canadian Pacific Railway.*

Other notable cases include: *Ansell v. TD Bank* (breach of trust), *Nixon v. RCMP* (negligent investigation) and *Loeppky v. Calgary Police Service*.

7. Furthermore, DD West LLP has taken an approach of first visiting First Nations and listening to the experiences of 60's Scoop Class members, prior to filing the Statement of Claim.

8. The healing of 60's Scoop survivors goes beyond just monetary compensation. The Class I represent requires other matters to be dealt with. These are issues that should form part of any resolution.

9. We require healing facilities on our First Nations for survivors. Further, each of the survivors' stories should be told and archived.

10. I believe that DD West LLP has shown through its approach that it will be responsive to those needs of victims and will advocate for them.

11. An important part of our claim is the retainer agreement. Attached hereto and marked as **Exhibit "A"** is the form of retainer agreement used by DD West LLP.

12. I am informed by my counsel and do verily believe it to be true that the carriage application was brought by Koskie Minsky LLP and was heard in March 2017. Neither myself nor my counsel were aware of the Application.

13. It appears to me that Koskie Minsky LLP is seeking carriage of the matter in a fashion that will exclude our counsel who speak on behalf of members of the indigenous class.

14. It would appear that this Court is being asked to appoint carriage counsel for myself and many hundred other class members without any consultation with Class members, without regard to our choice of counsel; and without the voice of myself and other indigenous class members being heard.

15. I believe the process should be a collaborative amongst Plaintiffs' counsel, for the purpose of insuring that the voice of indigenous people is heard and respected, not excluded and forgotten.

16. I make this Affidavit in support of an Application that DD West LLP be permitted to have standing on behalf of the indigenous persons for whom I am the Class Representative in the carriage issue currently before the Court to make representations to the Court.

SWORN BEFORE ME at Calgary, Alberta, this 17 day of August, 2017.

Lee McMillan

A Commissioner for Oaths in and for the Province of Alberta

VICTOR BIRD

60s SCOOP
RETAINER AGREEMENT
Contingency Basis

THIS IS EXHIBIT "A" referred to in the Affidavit of Victor Bird Sworn before me this day of August A.D. 2017
A Commissioner for Oaths / A Notary Public in and for the Province of Alberta

THIS AGREEMENT

BETWEEN:

W.S. KLYM PROFESSIONAL CORPORATION
310, 525 – 11th Avenue S.W., Calgary, AB T2R 0C9

And

DD WEST LLP
310, 525 – 11th Avenue S.W., Calgary, AB T2R 0C9

("Lawyers")

AND:

Name: _____

Address: _____

Phone: _____

Indian/Metis Status Card #: _____
(if known)

("Client")

WHEREAS the Client has retained the Lawyers to pursue a claim against Her Majesty the Queen in Right of Canada and/or Her Majesty the Queen in Right of the Province of Alberta, Saskatchewan, and/or British Columbia in respect of losses/damages flowing from his/her experience involving what is commonly known as the '1960s Scoop'.

AND WHEREAS the Lawyers have agreed to act on behalf of the Client on the terms set forth below, and the Client wishes to instruct the Lawyers to proceed with the claim on the terms hereinafter set forth below;

AND WHEREAS the Client and the Lawyers desire to make an agreement respecting the amount and manner of payment of the Lawyers' fees;

NOW THEREFORE IT IS AGREED BETWEEN THE CLIENT AND THE LAWYERS AS FOLLOWS:

1. The Lawyers agree to pursue the claim in the best interests of the Client, and the Client authorizes the Lawyers to take any proceedings or do any acts, which in their opinion may be necessary or advisable. The Client agrees that the Lawyers are authorized to speak to the media about his/her case without revealing the Client's identity.

2. This Retainer Agreement shall in no way preclude the Client from changing or discharging its Lawyers, or from settling or opting out of the action, in which case a fee will be payable based on the usual hourly rates for services rendered by the Lawyers from time to time; but in no case will the fee be greater than the fee payable under paragraph 5 below.

3. This Retainer Agreement shall in no way preclude the Lawyers' right to withdraw for any proper reason including the refusal of the Client to accept a settlement as recommended, or a failure to follow the Lawyers' advice, in which case the fee will be based on the usual hourly rates for services rendered by the Lawyers up to that time, up to a maximum of what the Lawyers would be entitled to receive under paragraph 5 had the settlement been accepted as recommended.

4. In respect of paragraphs 2 and 3 above, the Lawyers shall retain a priority interest over any funds that become payable with respect to the claims(s) regardless of whether the Client has obtained new counsel. The Client

undertakes and covenants to inform any new counsel of the Lawyers' priority interest and to direct any new counsel to effect such payment accordingly, prior to any trust funds being disbursed, subject to the Laws of Alberta.

5. The Client agrees to pay the Lawyers a fee as follows:

a) All disbursements which may be incurred in the action by the Lawyers on behalf of the Client which may include, but are not limited to, fees and disbursements paid for travel, experts, consultants, records, photocopying costs, fax charges, long distance phone calls, legal research services, courier fees, file opening and closing fees, and all interest and charges incurred by the Lawyers in financing any or all such disbursements, which financing the Client shall reasonably cooperate in facilitating as may be requested by the Lawyers.
b) A percentage fee recovery of **15%** of any recovery from a global and/or individual settlement structure, tribunal decision, trial decision, and/or any other binding settlement mechanism respecting the claim or any portions thereof;
c) **15%** of any court, tribunal and/or arbitration costs awarded; and
d) GST, if at all applicable.

6. **The Client agrees that the Lawyers have made no promise or guarantee regarding the outcome of the claim or any amount(s) to be paid, if any, to the Client.**

7. The Client agrees that the Lawyers have the ability to retain other counsel, and the costs thereof are included in the percentage fee agreement under paragraph 5.

8. Any costs recovered from the Defendant(s), as per paragraph 5(c) above, in the action to be commenced as authorized by the Client shall be included in the recovery and the percentage fee of 15% shall apply to the amount of those costs.

9. With respect to the costs described in paragraph 5(c) above, it is hereby recognized that:

(i) the cost award is intended to be a complete or partial reimbursement of the Client's legal expenses;
(ii) the cost award is owned by the Client and that by signing the Retainer Agreement, the Client is waiving the right to any amount from the cost award that is payable to the Lawyers in accordance with sub-paragraph 9(iv) below;
(iii) the amount of the cost award retained by the Lawyers will be in addition to the Lawyers' percentage, fixed fee, or other form of legal fees; and
(iv) the percentage of the cost award that the Lawyers may receive may not exceed the percentage of the judgment or settlement that the Lawyers are entitled to

10. In the event that any court costs are awarded against the Client, those costs will be a liability of the Client and will not be borne by the Lawyers. Furthermore, in the event that security for costs are ordered by any Court in relation to this action that security shall be posted by the Client.

11. If the Client gives notice in writing to the Lawyers within 5 days after the Client's copy of this Retainer Agreement is served on the Client, the Client may, in writing, terminate this Retainer Agreement, without incurring any liability for the fees, but the Client is liable to reimburse the Lawyers for reasonable disbursements.

12. Upon any funds becoming payable, the Client assigns such funds to the firm under this Retainer Agreement, subject to the terms of any settlement agreement, Code of Conduct Rules and/or laws of Alberta.

13. **This Retainer Agreement and any accounts rendered thereunder are subject to review either by a taxing officer or a judge. Furthermore, the Parties reserve the right to have a taxing officer's decision reviewed by a judge.**

14. This Retainer Agreement and the interpretation thereof shall be governed by the Laws of the Province of Alberta.

15. This Retainer Agreement shall be effective and binding on each Party's heirs, next of kin, executors, administrators, assigns, and representatives, in the event of death or incapacity.

16. If any part of this Retainer Agreement is found to be unenforceable or invalid, it does not by that reason alone invalidate the remainder of this Retainer Agreement, which remains in full force and effect.

17. ***** The Client is encouraged and advised to seek independent legal advice with regards to this Retainer Agreement prior to signing it. *****

IN WITNESS WHEREOF THE PARTIES HAVE HEREUNTO AFFIXED THEIR SIGNATURES AS OF THE DATES WRITTEN BELOW.

_____
Witness

Date: ____, _____, 2017

_____
Client's Signature

W.S. KLYM PROFESSIONAL CORPORATION/DD WEST LLP

_____
Per:

Date: ____, _____, 2017

This Retainer Agreement is effective as of the date of the last signator.

AFFIDAVIT OF EXECUTION

CANADA	)	I, _____,
PROVINCE OF ALBERTA	)	of the City of _____
TO WIT:	)	in the Province of _____

MAKE OATH AND SAY:

1. THAT I was personally present and did see the Client, the party named in the within Instrument and who is known to me to be the person named in the within instrument, or on the basis of the identification provided to me, I believe to be the person named in the within Instrument, duly sign the Instrument;

2. THAT the same was executed at _____, in the Province of British Columbia, and that I am the subscribing witness thereto;

3. THAT it is my belief he/she is at least nineteen years of age.

SWORN BEFORE ME at the City/Town/Hamlet/Reservation/Nation/Location of _____, in the Province of British Columbia, this _____ day of _____, A.D. 2017.	)	
_____ A Notary Public in and for the Province of Alberta	)	_____ Signature of witness

COURT FILE NUMBER	1701-08523
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFFS	VICTOR BIRD and LEONA PAUL
DEFENDANT	ATTORNEY GENERAL OF CANADA
DOCUMENT	AFFIDAVIT

Clerk's Stamp

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

DD WEST LLP
#310, 525 – 11th Avenue SW
Calgary, AB T2R 0C9
Attention: William S. Klym / Brian Meronek, Q.C.
Ph: (403)245-0111
Fax: (403)245-0115
File No. 130289-0001

THIS IS EXHIBIT "B"
referred to in the Affidavit of
Whitney Wright
Sworn before me this 18
day of August A.D. 17
{A Commissioner for Oaths / A Notary Public} In and for the Province of Alberta
WILLIAM S. KLYM
Barrister & Solicitor

AFFIDAVIT OF DENNIS PAUL
Sworn on August 17, 2017

I, Dennis Paul, of the City of Edmonton, Province of Alberta, MAKE OATH AND SAY THAT:

1. I am a member of the Paul Band First Nation and have a personal knowledge of the facts and matters herein deposed to except where stated to be informed and belief.

2. I have worked closely as an advisor to DD West LLP and its predecessor firm Klym Law (collectively the **"Law Firm"**).

3. I have been actively involved in indigenous affairs for my entire adult life.

4. I have been an active on behalf of the Paul First Nation for many years. My duties have included those as set out in my resume attached hereto and marked as **Exhibit "A"**.

5. I have been working with the Law Firm since 2016 conducting meetings with First Nations people in Alberta so that their experiences with regards to day schools and 60's scoops are recorded and those people might receive legal representation.

6. I have helped arrange for the Law Firm to visit various Alberta First Nations including Morley, Eden Valley, O'Chiese, Sunchild, Paul Band and Alexis Band and to meet with Class members in both 60's scoop and day school class actions. I am in weekly contact with other First Nations Chiefs and Council as a liaison in the 60's scoop and day school matters.

7. As well, through my efforts, members of the Law Firm spoke at a two-day conference of the Assembly of Treaty 6 Chiefs held at Cold Lake First Nation, where many contacts were made and support was indicated.

8. I am informed by Lee McMillan of DD West LLP and do verily believe it to be true that that the Law Firm has visited numerous other First Nations across Saskatchewan, including Canoe Lake, Big Island, Thunderchild, Loon Lake, and Ile-a-la-crosse.

9. I am informed by Lee McMillan of DD West LLP and do verily believe it to be true that the Law Firm has visited numerous other First Nations across British Columbia, including in Mt. Currie, Little Schuswap, Skeetchestn, Splatsin, Adams Lake, Neskonlith.

10. I am informed by Lee McMillan of DD West LLP and do verily believe it to be true that the Law Firm has been retained by over 600 sixties scoop survivors and over 2,000 day school survivors, the majority of which who have been interviewed in person by a DD West LLP lawyer.

11. I am informed by Lee McMillan of DD West LLP and do verily believe it to be true that the Law Firm has committed roughly 900 to 1000 hours of billable time to the day school and 60's scoop matters, the majority of which has been spent traveling to reserves and meeting with individual survivors and that approximately $150,000 has been expended by the Law Firm to arrange for and attend these meetings.

12. Part of the reconciliation with respect to the abuses of the day schools and 60's scoop is in a respectful recognition of the harm suffered by Class members. That respectful recognition includes meetings approved by Chief and Council, moderated by the Chief of the First Nation, where prayers are said, traditional cultural ways observed and Class members are permitted to share their experiences.

13. The Law Firm is respectful of and observes that protocol.

14. I make this Affidavit in support of an Application that DD West LLP be included in making the representations to this Court in respect of the carriage application currently before this Court.

SWORN BEFORE ME at Calgary, Alberta, this 17 day of August, 2017.

A Commissioner for Oaths in and for the Province of Alberta

DENNIS PAUL

Dennis R. Paul

RPO Box 131
Duffield, Alberta, Canada T0E 0N0
M. 780.293.5695
drpaul2002@hotmail.com

Work Experience

Company Name, Dates of Employment

- Special Advisor, 2000-2015 Paul First Nation Program Restructure December 22, 2015

Duties and responsibilities

- Monitor government policy and legislation and keep the leadership apprised of any developments that may affect their interests.
- Represented the Paul First Nation in quasi-judicial proceedings and objections on applications for industrial projects proposed within the vicinity of this First Nation, under the regulatory guidelines and processes of the National Energy Board and the Alberta Environmental Protection Enhancement Act.
- Assisted in the compilation and documentation of testimony from the former students of the Indian Residential Schools, throughout the course of the litigation process against the defendants, the Federal Government, and the four church groups operating the aforementioned Indian Residential Schools up to the reconciliation, and continued throughout the healing and awareness processes
- Appointed chairmanship duties in community meetings and traditional gatherings, keeping the proceedings orderly and timely, while respecting the opinions and views of the participants and presenters.
- Prepared Land Tenure instruments, MOU/IBA agreements, partnerships, and negotiated long term benefit constructive arrangements for the Paul First Nation, so that the community will take advantage of the vast economic opportunities existing within the 80 kilometer radius of this First Nation.

Company Name, Dates of Employment

- First Nation Consultation and Capacity Investment Coordinator (Paul First Nation)December 22, 2015
- Moonlight Bay Remedial Management (Paul First Nation) August 2005-June 2007. Containment and cleanup of a massive oil spill at Wabamun Lake-880,000 litres of Bunker C oil, and 70,000 litres of a highly carcinogenic woodpole treating oil. Duties included-the overall management and coordination of the technical, environmental and logistics processes relevant to the containment and cleanup, media relations, legal review and compilation of evidence, videography, community reports staff recruitment(134), and open house duties.

Education

- University of Alberta, Edmonton Environmental Sciences and logistics.
- Martech College, Edmonton. Business Administration Management and Marketing
- TSAG Treaty 6 Region- GIS Level II intermediate mapping and data gathering
- ENFORM- Safety in the Workplace, SECOR training
- Northern Alberta Institute of Technology- electrical apprenticeship program
- Stony Plain Memorial High School
- Stony Plain Junior High School

THIS IS EXHIBIT "A"
referred to in the Affidavit of
Dennis Paul
Sworn before me this
day of August A.D. 2017
A Commissioner for Oaths / A Notary Public in and for the Province of Alberta

Achievements/Awards

- Aboriginal Achievement Award October 2009-Recipient of the **"Preservation of the Environment"** award, an honour from my peers. An annual event hosted by the River Cree Marriott, recognizing and Honouring Alberta First Nations individuals that exemplify excellence and their valuable contributions towards the communities, and grassroots people.
- Alberta **Centennial Medallion Award 2005** Ralph Klein, Alberta Premier's office –presenter: **MLA Fred Lindsay** Solicitor General Dept.– Building relations and finding common ground for First Nations, Industry, and Government through diplomatic relations, capacity building, and engagement.

Skills

- Literary and Application skills Microsoft word, excel, powerpoint, and content management systems for data entry and demographics of potential candidates for hiring or training processes.
- GIS mapping and data entry intermediate level
- Traditional Land Use and Aboriginal Traditional Knowledge technician and interviewer
- Cross cultural awareness workshops for Industry corporations with respect to First Nations' philosophies, principles, and practices in their relationship to the Creator, to Creation and to themselves.
- Corporate awareness and occupational health and safety practices workshops and seminars to aboriginal youth interested in seeking gainful employment in the various sectors of industry, transportation, and as service providers.

References:

Ron Lameman, Confederacy of Treaty Six, Edmonton, Alberta- (780)222-8976

Tanya Harnett, University of Alberta, Associate Professor- (403)393-5755

Randy Danais, Danais Inc. 780-868-5220

William Burgess, Aurora 780-701-3717

**Please view my "Linkedin Network", for a complete listing of over 500 contact and resource entities

THIS IS EXHIBIT "64" 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
CALGARY - AIRDRIE - WINNIPEG

310, 525 - 11th AVENUE S.W.
CALGARY, ALBERTA
CANADA T2R 0C9

TELEPHONE (403) 245-0111
FACSIMILE (403) 245-0115
TOLL FREE (855) 656-1495
WEBSITE: www.ddwestllp.com

August 21, 2017

VIA FACSIMILE: 403-297-2752

The Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7

Attention: Sheila O'Brien

Dear Madam:

Re: ***Victor Bird et al v. Attorney General of Canada***
Court File No: 1701-08523 (Class Action)

Sarah Glenn v. Attorney General of Canada
Court File No: 1601-13286 (Class Action)

We are Plaintiff's counsel in Action No: 1701-08523.

A carriage motion was heard in March 2017 before the Honourable Justice A.D. Macleod in Action No: 1601-136286 and the matter is currently reserved. Last week we filed affidavits and an Application which we set for the general chambers list since we were unable to confirm available dates of Justice Macleod. We propose to advise the chambers judge that the matter will be adjourned to be heard before Justice Macleod.

We are seeking leave to be heard in the carriage motion.

We would like to obtain from your offices, the option of different dates at which our application may be heard.

I believe that a half day would be sufficient.

REFERENCE No:
130280-0001

PRIMARY LAWYER
William S. Flynn
DIRECT LINE:
403-531-3320
EMAIL
wflynn@ddwestllp.com

ASSOCIATE
Whitney Wright
DIRECT LINE:
403-531-3295
EMAIL
wwright@ddwestllp.com

BRANCH OFFICES:
WINNIPEG
AIRDRIE

DD WEST LLP
CALGARY - AIRDRIE - WINNIPEG

Would you advise as to potential dates in which we might be heard by Justice Macleod.

Yours truly,

DD WEST LLP
Per:

William S. Klym
WSK/ wlw
Encl.

cc: Koskie Minsky LLP
Attention: K. M. Baert
Via Facsimile: 416-204-4928

Merchant Law Group LLP
Attention: E. F. A. Merchant
Via Facsimile: 306-522-3299

Adam North Peigan
Via E-mail: adamnorthpeigan@gmail.com

DD West LLP
Brian Meronek, Q.C.
Via E-mail: bmeronek@ddwest.com

Client

THIS IS EXHIBIT "65" 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

August 22, 2017

Kirk M. Baert *
** Practicing through a professional corporation*
Direct Dial: 416-595-2092
Direct Fax: 416-204-2889
kmbaert@kmlaw.ca

BY FAX 1-403-297-2752

Sheila O'Brien
Court of Queen's Bench of Alberta
Calgary Courts Centre
601 5th Street SW
Calgary, AB T2P 5P7

Dear Ms. O'Brien:

Re: *Glenn v. Attorney General of Canada*, Court File No. 1601-13286
File No. 16/2003

We have just been provided with a copy of the attached letter, along with certain application materials filed by DD West LLP.

We were one of the moving parties on the carriage motion heard by MacLeod J. in April 2017.

We submit that before any hearing date is set for this late-blooming application, a telephone case conference should be conducted to determine whether the application should even be entertained at this late. As all counsel know, a carriage motion was argued and reserved to await the decision of the Manitoba Court of Appeal. That decision was released more than a month ago. Involving DD West LLP will delay this matter further, necessitate further court filings and court hearings and prejudice the parties who dealt with this matter in good faith last March.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:ls
Enclosure

c Whitney Wright/William Klym – DD West LLP
Roch Dupont/Tony Merchant/Anthony Tibbs/Evatt Merchant – Merchant Law Group
Steven Cooper – Cooper Regel
Celeste Poltak/Garth Myers – Koskie Minsky LLP

KM-2950280v1

THIS IS EXHIBIT "66" 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

[illegible] 11TH AVENUE S.W.
CALGARY, ALBERTA
CANADA T2R 0C5

TELEPHONE (403) 245-0111
FACSIMILE (403) 245-0115
TOLL FREE (855) 956-1152
WEBSITE: www.ddwest.com

August 31, 2017

Merchant Law Group LLP
2401 Saskatchewan Drive
Regina, SK S4P 4H8

Attention: Tony Merchant, Q.C.
Via Fax: 1-306-522-3299

Koskie Minsky LLP
900 - 20 Queen Street West
Toronto, ON M5H 3R3

Attention: Kirk M. Baert
Via Fax: 1-416-204-2889

Dear Sirs:

Re: ***Victor Bird et al v. Attorney General of Canada***
Court File No: 1701-08553 (Class Action)

Sarah Glenn v. Attorney General of Canada
Court File No: 1601-13286

We have received no response from the Case Management office with regards to obtaining a date before Justice Macleod.

The matter comes up on the list tomorrow. Previously I had indicated our intention to have the matter adjourned at that point to be heard before Justice Macleod at a date provided to us by the Case Management office.

Unfortunately, since we have not heard from the Case Management office, I intend to adjourn the matter tomorrow *sine die* while we await available dates.

I am aware of Mr. Baert's position that he wishes a telephone conference first and while we do not agree, the *sine die* adjournment is not intended to prejudice the position he is taking.

DD WEST LLP
WINNIPEG - CALGARY - AIRDRIE

I intend to have our office attend tomorrow to effect the adjournment.

Yours truly,

DD WEST LLP
Per:

William S. Klym
WSK / wlw
c Case Management Office
Attention: Sheila O'Brien
Via Fax: 403-297-2752

DD West LLP
Attention: Brian Meronek, Q.C.
Via e-mail

DD West LLP
Attention: Lee McMillan
Via E-mail

THIS IS EXHIBIT "67" 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

September 5, 2017

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

BY FAX (c/o 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: *Glenn v. Attorney General of Canada*, Court File No. 1601-13286
Van Name v Alberta et al., Court File No. 1101-11452
File No. 16/2003

We write on consent of the Plaintiffs, Glenn and Van Name in the abovementioned court file numbers, with respect to the carriage motion that was heard by your Lordship on April 11, 2017. By agreement of the law firms, Koskie Minsky LLP and the Merchant Law Group, we jointly advise that the carriage decision currently under reserve, no longer needs to be released by the Court.

Should the Court have questions arising, we would be pleased to answer those at a time which is convenient.

Yours truly,

KOSKIE MINSKY LLP

Celeste Poltak
CP:jr

cc Tony Merchant– Merchant Law Group
Wayne Schafer/Alethea LeBlanc/Catherine Moore/Travis Henderson – Justice Canada
Peter Barber – Alberta Justice
Kirk M Baert/Garth Myers – Koskie Minsky LLP

KM-2960889v1

THIS IS EXHIBIT "68" 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

DDWEST LLP
WINNIPEG - CALGARY - AIRDRIE

310, 525 - 11th AVENUE S.W.
CALGARY, ALBERTA
CANADA T2R 0C9

TELEPHONE (403) 245-0111
FACSIMILE (403) 245-0115
TOLL FREE (855) 656-1495
WEBSITE: www.ddwestllp.com

September 20, 2017

VIA FACSIMILE: 1-416-204-2889

Koskie Minsky LLP
900 - 20 Queen Street West
Toronto, ON M5H 3R3

Attention: Kirk M. Baert

William S. Klym
DIRECT LINE:
403-531-9320
EMAIL:
wklym@ddwestllp.com

PLEASE REPLY TO:
Whitney Wright
DIRECT LINE:
403-531-5285
EMAIL:
wwright@ddwestllp.com

BRANCH OFFICES:
WINNIPEG
AIRDRIE

Dear Sirs:

Re: ***Victor Bird et al v. Attorney General of Canada***
Court File No: 1701-08553 (Class Action)

Sarah Glenn v. Attorney General of Canada
Court File No: 1601-13286

We have spoken with Sheila O'Brien who indicated to us that Justice MacLeod is not the case manager and no case manager has been appointed.

Naturally we had assumed that your application had been brought in accordance with the *Rules* and consequently concluded that you had complied with *Rule 4.12* and had sought appointment of a case management judge and Justice Macleod had been appointed.

It was not until Sheila O'Brien advised us that your case is not presently under case management, if indeed that is the case, that it appears to us that you may not have complied with the *Rules*.

Assuming that to be so, the following procedural errors appear to have occurred:

Firstly, your style of cause failed to set out that the claim was a class proceeding under the *Class Proceedings Act*, c 16.5 S.A. 2003 at *Rule* 13.11(2).

Secondly, the first step in any class proceeding is the appointment of a case manager (*Rule* 4.12 (1)(2) and (3).

That apparently has not been done.

DD WEST LLP
WINNIPEG - CALGARY - AIRDRIE

In light of your comments in your initial correspondence to us that our action was an abuse of process, we know how mindful you are of the requirement to comply with the *Rules*.

We suggest that this matter be restored to a proper footing before going any further.

I propose the that we write to Justice Macleod, advising him of the facts, requesting that he become case manager, then advise the Acting Chief Justice of the situation and, then pursuant to *Rule 4.12* request his appointment of Justice Macleod as case manager and at that point we can have the carriage issue determined in accordance with the Alberta *Rules*.

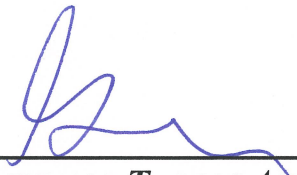
Yours truly,

DD WEST LLP
Per:

William S. Klym
WSK / wlw

c Service List

THIS IS EXHIBIT "69" 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

September 20, 2017

Kirk M. Baert *
* Practicing through a professional corporation
Direct Dial: 416-595-2092
Direct Fax: 416-204-2889
kmbaert@kmlaw.ca

BY EMAIL

William Klym
DD West LLP
310, 525-11th Avenue SW
Calgary, AB T2R 0C9

Dear Mr. Klym:

Re: *Glenn v. Attorney General of Canada*, Court File No. 1601-13286
File No. 16/2003

We write in response to your correspondence of today's date. As we have repeatedly advised, a carriage motion was heard between the competing actions, *Glenn v. Attorney General of Canada* and *Van Name v. Alberta*, on April 11, 2017. Therefore, there is nothing to write to the court about with respect to these two actions. If you wish to seek case management in your own action, please feel free to do so.

We have nothing to "restore to a proper footing", using your language. The motion was briefed, filed and argued five (5) months ago. On behalf of the *Glenn* action, we reject your attempts to re-open that motion and we are confident that Mr. Merchant is of the same view. Further to our letter to our letter to you of July 7, 2017, our position is that your action is an overlapping and unnecessary claim, constituting an abuse of process which we will not hesitate to move and stay.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:ls

c Whitney Wright – DD West LLP
Roch Dupont/Tony Merchant/Anthony Tibbs/Evatt Merchant – Merchant Law Group
Steven Cooper – Cooper Regel
Celeste Poltak/Garth Myers – Koskie Minsky LLP

KM-2980732v1

THIS IS EXHIBIT "70" 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

AMENDED this 5 day of March 2018 Pursuant to Rule 3.62
Dated the 5 day of Mar. 2018

CLERK OF THE COURT

Form 10
[Rule 3.25]

CLERK OF THE COURT
FILED
MAR 05 2018
JUDICIAL CENTRE OF CALGARY

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
PLAINTIFF	ASHLYNE HUNT ~~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	**AMENDED 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. 77000018

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, Ashlyne HuntPeter Christopher Van Name ("HuntVan Name" or the "Plaintiff") resides in EdmontonFort 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 *India. : 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. Some of the Class Members are also "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

7. Beginning in 1962, the Federal Government of Canada ("**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 herhis own behalf, and on behalf of a proposed class including "all Indians or Aboriginals who were, as children apprehended within the Province of Alberta and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians"~~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, Ashlyne Hunt, was born in Saskatoon, Saskatchewan in 1981, the progeny of her Métis father and caucasian mother (who were unmarried at the time and did not live together at the material times). Her mother was abusive, neglectful, and as with many of her extended family members, suffered from alcoholism.

13. In one instance, when Hunt was five years old, while living in a low income housing unit, her mother overslept and sent her to walk to school by herself outside of regular school hours. While on the way to school, she was abducted by a man who jumped out of an alley and kidnapped her. He was ultimately charged, convicted, and spent some five years in jail as a consequence – but experiences such as this left Hunt feeling very insecure and vulnerable.

14. When Hunt was approximately eighteen months old, her mother left her unattended on her father's doorstep. She lived with him for approximately a year and a half; however, her father was unsuccessful in his bid through a long, drawn out custody battle to win full custody of her. While he had a job, a house, did not use alcohol, did not smoke, and did not use drugs, his apparently blemishless record caused the Court to conclude that he was in fact "too perfect" (for an Aboriginal male), and that Hunt should remain with her mother.

15. Hunt was therefore returned to her mother and her alcoholic and abusive – but white – family. At family gatherings, uncles and other relatives would chase after her, the little Indian girl in the corner, when they were drunk. They would refer to her as the "smily" or "dirty" Indian, among other names. They had no understanding of her cultural background and did nothing to permit her to retain her Métis culture.

16. It was not long before Hunt's father had to call in Social Services (in Saskatchewan) because Hunt's mothers' own boyfriends (and eventually Hunt's stepfather) would abuse her in her own home. In response, Hunt's mother moved her to Alberta, taking her far away from her father in Saskatchewan and taking away the only form of protection or security that she had to rely on.

17. Hunt, while living in Alberta, would regularly attempt to leave home, running away to hitch-hike with truck drivers and anyone else who might take her back toward Saskatchewan.

18. Child protection services eventually became involved in Alberta and took Hunt from her mother, placing Hunt into (non-Aboriginal) foster care home after (non-Aboriginal) foster care home, and eventually the Yellowhead Youth Centre (where she was detained against her will, without anyone knowing where she was, for a period of time).

~~12. The Plaintiff, Peter Christopher Van Name, was born in Edmonton, Alberta on August 20th, 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*

19~~15~~. Hunt~~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'.

20~~16~~. This program was known as the Adopt Indian Métis program, "AIM".

2117. 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".

2218. 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 HuntVan Name and the class.

(c) *abused*

23. Hunt was placed into a series of non-Aboriginal foster care homes throughout the 1990s, none of which made any effort whatsoever to connect her to her Aboriginal heritage or even to treat her with the respect and dignity afforded to other non-Aboriginal children in their care.

24. In one such home, for example, the expectation was that the Aboriginal children would remain out of sight and out of mind, living primarily in the basement.

25. Hunt and her similarly situated Aboriginal "foster siblings" were expected to spend all day cleaning the house, and were given breaks only for lunch and dinner.

26. Immediately after dinner, they were expected to be in their room (in the basement), which consisted of only a barebones bed and mattress, with no telephones, lights out, and doors locked. Rather than an alarm clock, Hunt would be awoken in the morning by having water thrown in her face.

27. Hunt and her similarly situated Aboriginal "foster siblings" were not considered to be a part of the family. They were not included in family outings. They would not attend family events. They received only the bare necessities, at best.

28. Non-Aboriginal (i.e. "white") children in the same foster home would live upstairs; be a part of all family events; receive new clothes; have privileges; and generally be treated entirely different from the "Aboriginal" children.

29. Over the years, many of her Aboriginal "foster siblings" would attempt to run away from this mistreatment, sometimes through suicide attempts. Hunt witnessed

~~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

3036. Hunt~~Van Name~~ suffered ~~severe~~ physical abuse and mental trauma. Other Members of the Class suffered severe physical abuse, ~~and~~ mental trauma and sexual abuse.

31. Hunt~~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.

32. Hunt never felt that she~~Van Name could never feel that he~~ belonged with herhis adoptive parents, particularly since she felt that they only viewed herhim as a "problem" rather than their child.

33. Hunt~~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.

3437. HuntVan Name and Members of the Class did not develop proper parenting skills due to their upbringing in abusive families.

35. 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 theyhe suffered in his adoptive family.

36. 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.

37. Hunt, in particular, was deprived of a culturally-sensitive upbringing and was instead exposed to abuse, racism, and maltreatment as a consequence of the Defendant's actions.

38. HuntVan Name suffered through several years of drug and alcohol addiction due to the profound sense of alienation and loss she experienced as a youth. It was only after her father drove into town approximately 12 years ago, collected her, forced her into a detox program, connected her with people to get her into a Business Administration/Management program, and co-signed on a house, and re-introduced her to her Aboriginal roots, that she was finally able to begin to move forward.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. Hunt received her Métis card and reconnected with her Aboriginal culture only after her father's intervention tactics, and did not have the opportunity while growing up to learn or develop this sense of identity. Instead, she was left feeling the outsider for the entirety of her childhood. ~~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. Hunt~~Van Name~~ was a bright child and, as is evidenced by her later accomplishments, would have excelled in school if it had not been for the severe physical and emotional abuse she endured at the hands of her~~his~~ adoptive parents and the confusion she had about her~~his~~ identity and background throughout her~~his~~ childhood.

B. Defandant's~~Def ndants'~~ Acts, Omissions, Knowledge, and Intent

41. At all material times the Defendants was~~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 its~~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 rights 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, and 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 but having apparently done so in collaboration and with the agreement of the Defendant, the responsibility for Class Members then became that of the Defendant.

49. Canada and the Defendant, through theirits 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 and the Defendant.

50. The behaviour of the Defendants and Canada 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 or given any opportunity to learn or 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 Defendant's ~~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 Defendant's~~Defendants'~~ servants, employees, and agents were paid to operate foster homes and the Defendant's~~Defendants'~~ servants, employees, and agents were paid to coordinate the adoption of the class.

58. The Defendants waswere 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. The Defendant~~Canada~~ is directly liable~~libel~~ for its own ~~the~~ conduct and negligence as carried out by~~of~~ its servants, employees, and agents.

60. The Defendant~~Canada~~ is vicariously liable~~libel~~ for the conduct of its~~the~~ servants, employees, and agents ~~of Alberta~~.

61. The Defendant is~~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, counselling, 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 waswere 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 itstheir 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 Defendant'sDefendants' 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 hashave 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 itselfthemselves in a willful, wanton, and reckless manner as set forth above.

76. The Defendant'sDefendants' 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 Defendant'sDefendants' 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 HERHIS OWN BEHALF, AND ON BEHALF OF 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 a representative Plaintiff on behalf of a class of persons, including "all Indians or Aboriginals who were, as children apprehended within the Province of Alberta and who were subsequently placed in the care of

non-Aboriginal foster or adoptive parents or guardians" ~~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 **AMENDED** this 5th day of March, 2018 **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.

THIS IS EXHIBIT "71" 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

Amended pursuant to Rule 6-1(1) of the *Supreme Court Civil Rules* in substitution for the Notice of Civil Claim filed May 30, 2011

No. S-113566
Vancouver Registry

In the Supreme Court of British Columbia

Between

Skogamhallait also known as Sharon Russell

Plaintiff

and

The Attorney General of Canada;

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

Skogamhallait also known as Sharon Russell
27 Seymour Avenue
South Hazelton, British Columbia

The Attorney General of Canada
Deputy Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must
(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
(a) serve a copy of the filed response to civil claim on the plaintiff.
If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
(a) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
(a) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
(b) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
(c) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Parties and Overview

1. This action concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-Aboriginal foster or adoptive homes. The Plaintiff alleges that the Defendant, Her Majesty in right of Canada ("Canada"), delegated Indian child welfare services to Her Majesty the Queen in right of British Columbia ("B.C. Child Welfare") and, in so doing, caused ongoing harm to Indian children in care by not taking steps to prevent them from losing their Aboriginal identity and the opportunity to exercise their Aboriginal and treaty rights.

2. The Plaintiff Skogamhallait, also known as Sharon Russell, resides in South Hazelton, British Columbia. Ms. Russell is an Indian as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

3. Ms. Russell was born to her parents, Sta Hloxs, also known as Cora Rodgers, and Pat Rodgers on May 18, 1957 in Vancouver, British Columbia. She is a member of the Gitksan Nation and of the Sta Hloxs Wilp (House) of the Skogamlaxha (Fireweed) Clan.

4. Ms. Russell is a descendant of the Gitksan people. She is a member of the Gitsegukla Indian Band and the Gitksan First Nation.

5. The Plaintiff and class members are Aboriginals within the meaning of the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (U.K.), 1982. c. 11.

6. The Gitksan people from whom Ms. Russell has descended have exercised laws, customs and traditions integral to the distinctive society of the Gitksan people prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Gitksan people have sustained their people, communities and distinctive culture by exercising Gitksan laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

7. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class of similarly situated residents of British Columbia, and elsewhere in Canada, to be further defined in the Plaintiff's application for class certification. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

8. Canada is represented by the Attorney General of Canada.

Delegation of Aboriginal Child Welfare

9. ~~Beginning in or about 1962~~ At least as early as September 1958, Canada entered into ~~an~~ arrangements with B.C. Child Welfare whereby Canada delegated ~~a variety of~~ Indian child welfare services to B.C. Child Welfare (the "Delegation Agreements"). Canada's actions, both in entering into the Delegation Agreements and thereafter, authorized a child welfare program in British Columbia that systemically eradicated the culture, society, language, customs, traditions, and spirituality of Indian children in the province.

9.1 Pursuant to the Delegation Agreements, Canada and B.C. Child Welfare agreed ~~The arrangement was~~ that B.C. Child Welfare would provide ~~a variety of~~ child welfare services to Indian children and communities and that Canada would reimburse B.C. Child Welfare on the basis of a daily charge for family services and the maintenance and supervision of each Indian child in care. The effect of the Delegation Agreements ~~meant~~ was that authorities other than

Canada became directly responsible for the delivery of child welfare services to Indian children and communities ~~by B.C. Child Welfare~~ in British Columbia.

9.2 As a consequence of Canada's actions, both in entering into the Delegation Agreements and thereafter, Indian children were apprehended by B.C. Child Welfare and removed from their Aboriginal family and community and were placed in the care of non-Indian and non-Aboriginal foster or adoptive homes where they were systematically denied the opportunity to preserve their Aboriginal identity and exercise their Aboriginal rights and their treaty rights.

9.3 Canada had a duty to protect and preserve Indian children's culture and identity both when entering into the Delegation Agreements and after the children were placed in non-aboriginal homes. Canada should have insisted on a term or condition in the Delegation Agreements that required B.C. Child Welfare to continue to protect and preserve apprehended and adopted children's Indian and native culture, identity and rights by ensuring whenever possible that Indian children in need of protection were placed in aboriginal homes. The importance of preserving an Indian child's cultural identity should have been considered in determining the child's best interests.

9.4 In extending provincial child welfare services to Indian Bands in British Columbia, Canada failed to consult with Indian Bands in the province. No Indian Bands provided their consent to having provincial child welfare services extended to Indian Bands.

10. One purpose of the residential school system for Aboriginal children was the complete integration and assimilation of Aboriginal Children into mainstream Canadian society and the obliteration of their traditional language, culture and religion. As Canada began the transition away from residential schools, the delegation of Indian child welfare services to B.C. Child Welfare, including through the Delegation Agreements, continued the pursuit of Canada's goal of complete integration and assimilation of Aboriginal Children into mainstream Canadian society and the obliteration of their traditional language, culture and religion.

11. At all relevant times Canada was responsible for:

a. the administration of the *Indian Act* and its predecessor statutes as well as any other statutes relating to Indians and all Regulations promulgated under these Acts and their predecessors;

b. the promotion of the health, safety and well being of Indians in British Columbia;

c. the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;

d. decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;

e. the financing of Indian child welfare services in British Columbia including the incentivised payment to B.C. Child Welfare for family services and the maintenance and supervision of each Indian child in care;

f. preserving and not interfering with the Aboriginal rights of Indian children in care, including the right to:

    i. benefit from Aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;

    ii. retain and practice their culture, religion, language and traditions; and,

    iii. fully learn their culture, religion, language and traditions from their families and communities;

g. complying with the treaties outlined at paragraphs ~~34 and 35~~ 37 and 38 and for preserving and not interfering with treaty rights of Indian children in care; and,

h. preserving the estates of reserve resident Indians, including carrying out the terms of wills of deceased reserve resident Indians and administering the property of reserve resident Indians who die intestate.

12. Canada knew, or ought to have known, that by delegating Indian child welfare services to B.C. Child Welfare, including through the Delegation Agreements, B.C. Child Welfare would and did apprehend and remove Indian children from their Aboriginal family and community and place them in the care of non-Indian and non-Aboriginal foster or adoptive homes where they were systematically denied the opportunity to preserve their Aboriginal identity and exercise their Aboriginal rights and their treaty rights.

13. Canada has constitutional obligations and owes fiduciary and common law duties to act in the best interests of Indian children who were particularly vulnerable. Indian children and their families were and are entitled to a special duty of care, good faith, honesty and loyalty from Canada. Canada breached these duties by, among other things:

a. failing to take reasonable steps to prevent the Plaintiff and class members from being apprehended and removed from their Aboriginal family and community and placed in the care of non-Aboriginal foster and adoptive parents;

b. supporting or acquiescing in the apprehension and removal of the Plaintiff and class members from their Aboriginal family and community and their placement in the care of non-Aboriginal foster and adoptive parents;

c. supporting or acquiescing in the theft from the Plaintiff and class members of their communities, religion, culture, support and Aboriginal identity;

d. failing to advise the Plaintiff and class members of their status as Indians;

e. supporting or acquiescing in denying the Plaintiff and class members a reasonable opportunity to exercise their rights as Indians, including Aboriginal rights and treaty rights;

f. failing to take reasonable steps to prevent the Plaintiff and class members from losing their Aboriginal identity as a result of the Delegation Agreements and the delegation of Indian child welfare services to B.C. Child Welfare;

g. failing to:

i. adequately, properly and effectively direct, supervise or coordinate with B.C. Child Welfare;

ii. have in place and/or implement adequate, proper and effective guidelines for B.C. Child Welfare;

iii. have in place and/or implement adequate, proper and effective reporting mechanisms for B.C. Child Welfare;

to ensure that no harm would befall the Plaintiff and class members while in the care of B.C. Child Welfare and non-Aboriginal foster and adoptive parents;

h. failing to ameliorate the harmful effects of the Delegation Agreements and the delegation of Indian child welfare services to B.C. Child Welfare; and,

i. failing to carry out the terms of wills of deceased reserve resident Indians and to administer the property of reserve resident Indians who died intestate by, among other things:

i. failing to take reasonable steps to notify class members of their entitlement to unclaimed estates; and

ii. taking in and using the proceeds of those unclaimed estates as if they belonged to Canada.

14. The harm caused to Indian children by the Delegation Agreements and Canada's continued delegation of Indian child welfare services to B.C. Child Welfare came to an effective end on January 29, 1996 with the coming into force of Parts 1 through 9 of the *Child, Family and Community Service Act*, S.B.C. 1994, C 27.~~R.S.B.C. 1996, c. 46.~~

The Representative Plaintiff

15. When Ms. Russell was 7 years old she was taken from her Gitksan family and community by B.C. Child Welfare and was sent to live with a foster family in Richmond, British Columbia. The Richmond foster family was not Aboriginal.

16. While in foster care in Richmond, Ms. Russell was denied any reasonable opportunity to maintain contact with her Gitksan family and community. Ms. Russell was also denied any reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage and culture of her Gitksan family and community.

17. Ms. Russell was returned to the care of her parents, Ksi Maawx, also known as Cora Rodgers, and Pat Rodgers, after approximately 6 months.

18. When Ms. Russell was 9 years old she was again taken from her Gitksan family and community by B.C. Child Welfare and sent to live with a foster family in New Westminster, British Columbia. The New Westminster foster family was not Aboriginal.

19. Initially while in foster care in ~~Richmond~~ New Westminster, Ms. Russell was denied any reasonable opportunity to maintain contact with her Gitksan family and community. When Ms. Russell was 13 years old, her foster mother suggested that Ms. Russell re-connect with her Gitksan family. Ms. Russell then began to periodically travel to Gitsegukla to visit with her family. Up until that point, Ms. Russell was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage, and culture of her Gitksan family and community.

20. While in foster care, Ms. Russell was denied any reasonable opportunity to exercise her Aboriginal rights as a Gitksan.

21. When Ms. Russell was 15 years old, she visited her Gitksan family and community in Gitsegukla. She then refused to return to her non-Aboriginal foster family in New Westminster and, instead, remained with her Gitksan family and community.

22. During the time she was in the care of B.C. Child Welfare, Ms. Russell was unable to use the Gitksan language or to practice her Gitksan religion and culture and consequently lost facility and familiarity with her Gitksan language, religion and culture. In addition, she was denied the ability to fulfill Gitksan cultural duties including, but not limited to, learning and practicing:

a. Gitksan cultural values that were taught in the Liliget (feast hall);

b. the Gitksan language;

c. traditional Gitksan parenting skills;

d. Gitksan skills for preparing traditional foods; and,

e. Gitksan spiritual beliefs.

23. Ms. Russell entered adulthood with a significantly impaired knowledge and experience of what it meant to be Gitksan. After her return home to Gitsegukla, Ms. Russell was not immediately or readily accepted in her Gitksan community.

24. After her return home to Gitsegukla, Ms. Russell suffered from an impaired ability to trust other people or to form or sustain intimate relationships. She suffered an impaired ability to participate in normal family life and was alienated from, and denied the love and guidance of, her family and community.

25. In her teens, Ms. Russell struggled with alcohol and drug addictions and made a number of suicide attempts.

26. The Plaintiff and class members are Aboriginal persons who, as children, enjoyed:

a. Aboriginal rights, including the right to:

i. benefit from Aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;

ii. retain and practice their culture, religion, language and traditions; and,

iii. fully learn their culture, religion, language and traditions from their families and communities; and,

b. treaty rights as outlined in paragraphs 37 and 38 below.

27. The Plaintiff was unable to bring an action in respect of her injury, damage or loss as a consequence of her profound concern for the harmful impact that litigation would have on the wellbeing of her family and former foster parents. The Plaintiff's interests and circumstances were so pressing that she could not reasonably bring an action until March 2010.

28. Further, and in the alternative, Canada has constitutional obligations and owes fiduciary and common law duties to act in the best interests of Indian children who were particularly vulnerable as described above in paragraph 13. In breach of those duties, Canada wilfully concealed the material facts relating to the nexus between the Plaintiff's injury, damage or loss and the wrongful conduct of Canada. By failing to inform the Plaintiff of these material facts the Plaintiff was prevented from bringing an action in respect of her injury, damage or loss. Only after March 2010 did the Plaintiff learn of the existence of the duties owed to her by Canada and that the breach of those duties caused her to suffer injury, damage or loss.

The Plaintiffs' Ongoing Loss and Damage

29. Through the fault and negligence of Canada, as set out above, the Plaintiff and class members were and are subjected to ongoing loss or damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiff and class members include:

a. loss of opportunity to exercise Aboriginal rights;
b. loss of opportunity to exercise treaty rights;
c. psychological injury, including depression, anxiety, emotional dysfunction and suicidal ideation;
d. addiction, including addiction to alcohol, prescription and non-prescription drugs; and
e. loss of opportunity to benefit from unclaimed estates to which they were entitled.

Part 2: RELIEF SOUGHT

30. The Plaintiff claims, on her own behalf, and on behalf of a class of similarly situated persons resident in British Columbia, and elsewhere in Canada, as follows:

a. an order certifying this action as a class proceeding and appointing her as representative plaintiff under the *Class Proceedings Act*;
b. general damages and special damages;
c. exemplary and punitive damages;
d. pre-judgment interest;
e. costs; and
f. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

31. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, the *Indian Act*, R.S.C. 1952, c. 149, as amended, ~~and~~ the *Indian Estates Regulations*, S.O.R./55-285, as amended, and the *Child, Family and Community Service Act*, R.S.B.C. 1996, c 46 and its predecessor legislation.

32. The Plaintiff and class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

33. The Plaintiff and class members' Aboriginal and treaty rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982. c. 11.

34. At all material times, Canada owed the Plaintiff and class members a special duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Indian children who were particularly vulnerable.

35. ~~The Delegation Agreement and the~~ Canada's delegation of Indian child welfare services to B.C. Child Welfare, as evidenced by the Delegation Agreements, and Canada's conduct in failing to ensure that the child welfare services provided by B.C. Child Welfare to Indian children in British Columbia were appropriate and were carried out in a manner that reasonably protected the Aboriginal identity and essential connection of these children to their Aboriginal heritage, was negligent and constituted a breach of Canada's fiduciary duty. Canada's conduct was also an improper and unlawful delegation of Canada's constitutional obligations arising under the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 91(24) and the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982. c. 11.

36. The Plaintiff and class members descend from Aboriginal peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal peoples from whom the Plaintiff and class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and

traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

37. Pursuant to the treaty made between Canada and the ancestors of the Doig River, Halfway River, Prophet River, Saulteau, West Moberly, Fort Nelson, Blueberry River and McLeod Lake First Nations on and after June 21, 1899 (also known as "Treaty 8") Canada, among other things:

a. acknowledged the rights of Indian members of bands made party to the treaty to pursue their usual vocations of hunting, trapping and fishing throughout the tracts surrendered by the treaty; and,

b. established treaty annuity payments paid annually to registered Indians who are entitled to treaty annuities through membership to bands made party to the treaty.

38. Pursuant to treaties made between the Hudson's Bay Company and the ancestors of the Esquimalt, Songhees, Beecher Bay, Sooke, Tsawout, Tsartlip, Pauqhachin, Tseycum, Nanaimo, Kwakiutl (Kwawkelth), Malahat, Nanoose, Nimkish (Nungis), Comox and Gwa'sala-Nakwaxda'xw Bands between 1850 and 1854 (also known as the "Vancouver Island Treaties" or the "Douglas Treaties") Canada acknowledged, among other things, band members' rights to hunt over the bands' unoccupied lands, and to carry on fisheries as formerly.

39. Some class members are members of the bands described in paragraphs 37 and 38 and, as such, were and are entitled to exercise the treaty rights described.

Punitive Damages

40. Canada had specific and complete knowledge of the breach of Aboriginal and treaty rights and the widespread psychological, emotional and cultural abuses of the Plaintiff and class members which were occurring as a result of Canada's delegation of Indian child welfare services to B.C. Child Welfare and Canada's conduct in failing to ensure that the child welfare services provided by B.C. Child Welfare to Indian children in British Columbia were appropriate and were carried out in a manner that reasonably protected the Aboriginal identity and essential connection of these children to their Aboriginal heritage. ~~the Delegation Agreements and the delegation of Indian child welfare services to B.C. Child Welfare.~~ Despite this knowledge,

Canada continued to delegate Indian child welfare services to B.C. Child Welfare and permit the perpetration of grievous harm to the Plaintiff and class members.

41. In addition, Canada deliberately planned the eradication of the language, religion and culture of the Plaintiff and class members. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

Plaintiff's address for service:
Klein Lawyers LLP ~~Lyons~~
Suite 400, 1385 West 8th Avenue ~~Suite 1100, 1333 West Broadway~~
Vancouver, BC V6H 3V9 ~~4C1~~
CANADA

Fax number address for service (if any): 604-874-7180

E-mail address for service (if any):

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: July 7, 2016 ~~May 30, 2011~~

Signature of
[ ] plaintiff [X] lawyer for plaintiffs

David A. Klein

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This claim concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-Aboriginal foster or adoptive homes. The Plaintiff alleges that the Defendant, Her Majesty in right of Canada, delegated Indian child welfare services to Her Majesty in right of British Columbia and, in so doing, caused ongoing harm to Indian children in care by not taking steps to prevent them from losing their Aboriginal identity and the opportunity to exercise their Aboriginal and treaty rights.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident
[ ] medical malpractice
[X] another cause

A dispute concerning:

[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[ ] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[X] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[X] a class action
[ ] maritime law
[X] aboriginal law
[X] constitutional law
[ ] conflict of laws

[ ] none of the above
[ ] do not know

Part 4:

Child, Family and Community Service Act, RSBC 1996, c 46

Child, Family and Community Service Act, SBC 1994, C 27

Class Proceedings Act, R.S.B.C. 1996, c. 50.

Constitution Act, 1982, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982. c. 11.

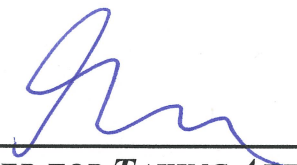
Indian Act, R.S.C. 1952, c. 149.

Indian Act, R.S.C. 1985, c. I-5.

Indian Estates Regulations, S.O.R./55-285.

Limitation Act, R.S.B.C. 1996, c. 266.

THIS IS EXHIBIT "72" 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

No. 186178
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

SARAH TANCHAK

PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, and

ATTORNEY GENERAL OF CANADA

DEFENDANTS

Proceeding under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

(a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and

(b) serve a copy of the filed Response to Civil Claim and counterclaim on the Plaintiffs and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A Response to Civil Claim must be filed and served on the Plaintiffs,

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed Notice of Civil Claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed Notice of Civil Claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed Notice of Civil Claim was served on you, or

(d) if the time for Response to Civil Claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

The Representative Plaintiff

1. The Plaintiff, Sarah Tanchak, is a Status Indian and at all material times resided in the province of British Columbia, and now resides in Milwaukee, British Columbia.

The Defendants

2. The Defendant, Her Majesty the Queen in right of the Province of British Columbia (hereinafter **"British Columbia"**), represents the provincial government of British Columbia including but not limited to the British Columbia Ministry of Children and Family Development (hereinafter **"BC Child Services"**), pursuant to section 2 of the *Crown Proceeding Act*, RSBC 1996, c 89.

3. The Defendant, the Attorney General of Canada, on behalf of the Government of Canada and the Crown (**"Canada"**), is liable and vicariously liable for all acts and omissions that occurred as a result of the Adopt Indian Metis program, including, but not limited to, cultural malfeasance, physical abuse, sexual assault, battery, neglect, and misfeasance of public officials, acting on behalf of the Crown, with Canada being liable pursuant to inter alia, section 36 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

The Classes and Class Period

4. The Plaintiff and Class Members are either "Indians" as defined by the *Indian Act*, RSC 1985, c I-5 (**"Indian Act"**) or "Aboriginal" persons as defined by the *Constitution Act, 1982*, s.35, being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c 11.

5. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class including any Indian or Aboriginal person who was, as a child, placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by either the Defendants, excluding those individuals who fall within the proposed class defined in the Notice of Civil Claim issued on May 30, 2011 in *Sharon Russell v. The Attorney General of Canada* (Court File No. VLC-S-S-113566). Without limiting the generality of the foregoing, the proposed class for this Claim includes:

a) all Indian persons who were apprehended by one or both of the Defendants, regardless of where these children were resident at the time of their apprehension;

b) all Aboriginal persons, including but not limited to Metis and other Aboriginal persons not otherwise entitled to "status" pursuant to the *Indian Act* at the time of their apprehension, who were apprehended by British Columbia or any of its delegated agents, wherever resident.

c) all Aboriginal persons, including but not limited to Indian, Metis, and other Aboriginal persons not otherwise entitled to "status" pursuant to the *Indian Act* at the time of their apprehension, who were apprehended by British Columbia or any of its delegated agents, wherever resident.

and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians (the "**Class**" or "**Class Members**").

The Drug and Defendants' Wrongdoings

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

7. In the language of the 1960s, Indians were distinguished from Métis, and each of these groups, Indians and Métis, were distinguished once again from non-status Indians. But all are Aboriginal persons. 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 Government of British Columbia 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 traditional beliefs of all Members of the Class. The removal and assimilation of aboriginal children, and the AIM Program led to the obliteration of the culture, language, and religion of Members of the class. The forced adoption of Aboriginal children into non-Aboriginal families resulted

in the physical, sexual, emotional, and psychological abuse and trauma to members of the class. All Members of the Class have in common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and programs of BC Child Services which, in the case of Indian Members of the Class, occurred with the province of British Columbia acting as the agent and delegate of Canada.

The Plaintiff's Harms

(a) Abduction

9. The Plaintiff is an Aboriginal woman who was born in 1975, at the Vancouver General Hospital, in British Columbia.

10. The Plaintiff was taken from the same hospital by BC Child Services shortly after being born, and adopted out to a Caucasian family in Burnaby, British Columbia.

(b) AIM

11. The Plaintiff, like other members of the class, was adopted out to a non-Aboriginal family as part of a program in British Columbia and Canada to "remove the Indian from the Indian" or make Aboriginal children behave like Caucasian adults. The color of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be "white adults".

12. This program was known as the Adopt Indian Metis Program, or "AIM" ("AIM").

13. The British Columbia Government advertised on both Canadian and American television channels and through other media for people to adopt Indian or Metis children. The AIM program ended in the 1990s and has become known within the Aboriginal community as "the 60s scoop" or "Lost Boys / Lost Girls".

14. The AIM Program was a badly misconceived and wrongful initiative that visited profound and permanent psychological harm, and often sexual or physical harm, and other wrongdoing visited among the Plaintiff and all members of the class.

(c) Injury and Neglect

15. During the time the Plaintiff lived with her adoptive family she suffered psychological abuse and neglect and was treated as an inferior person, given her Aboriginal heritage.

16. At the age of 5 the Plaintiffs adoptive parents divorced and the Plaintiff lived with her adoptive mother following the separation.

17. At the age of 13 the Plaintiff was kicked out of her home by her adoptive mother and as a result was forced to live on the streets until she reached the age of 15.

18. During her time on the streets, the Plaintiff began to abuse drugs and alcohol, especially marijuana due to the profound sense of alienation and loss she experienced as a youth.

19. At the age of 15, the Plaintiff was apprehended and placed into foster care after her adoptive mother refused to take her back. From the time she was apprehended and placed into foster care until she was 18, the Plaintiff was placed in about 30 different foster homes.

20. At the age of 19, the Plaintiff attended treatment for her drug and alcohol abuse. After leaving treatment, the Plaintiff attained her Indian Status Card.

21. As a result of her childhood, the Plaintiff suffered severe psychological harm, cultural and identity loss, mental trauma, and a sense of abandonment. The Plaintiff and other Members of the Class experienced a loss of culture and self-worth as a result of the physical and psychological abuse. The Plaintiff never felt she belonged to her adoptive family and felt viewed as their "problem" rather than as their child. The Plaintiffs adoptive parents, and all adoptive parents were part of the wrongful plan of Canada and British Columbia within.

PART 2: RELIEF SOUGHT

22. 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.

23. The Plaintiff claims, on her own behalf and on behalf of all of the members of the Class (as defined above), on a joint and several basis against each of the Defendants:

a) general damages in an amount to be determined by the Honourable Court;

b) special damages in an amount to be determined by the Honourable Court;

c) aggravated, punitive, and/or exemplary Damages;

d) pre-judgment interest, pursuant to *The Pre-Judgment Interest Act* and post-judgment interest on the foregoing sums;

e) solicitor-client costs, plus applicable tax;

f) the costs of notice and of administering any plan of distribution of the recovery in this action, plus applicable tax; and

g) such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

24. 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.

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

26. The Defendants breached their duty to the Plaintiff and the members of 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*.

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

28. The Defendants are liable *inter alia* to the Plaintiff and all class members for:

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 off class members from their families;
e. Destroying class members' sense of self worth;
f. Reducing class members' capacities to parent and maintain normal marital and family ties;
g. Permitting the circumstances which resulted in the physical or sexual abuse to which class members were subject;
h. Failing to provide adequate care for class members as children and provide for their needs;

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

j. Depersonalizing and demeaning class members including loss of their culture and Aboriginal name;

k. Cutting class members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and

l. Discriminating against him or her on the basis of Aboriginal background.

29. The behavior 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 children from Aboriginal families or communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

30. The Plaintiff and members of the class were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis. Further, the Plaintiff and other members of the class were not permitted to speak their traditional languages.

31. 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.

32. The Defendants' actions were in contravention of the treaties between the Defendants and the First Nations peoples 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 heritages were to be systematically 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 through these sadistic punishment and practices.

33. Through the organized genocide imposed upon them by the Defendants, their programs, and their agents and servants, the Plaintiff and other members of the class had their Indigenous cultures denigrated and taken away from them. Through the combination of

sexual, physical, and psychological abuse members of the class were made to feel meaningless and to believe that their culture and all things "Indian" were worthless.

34. As a result of the acts by the Defendants, The Plaintiff and members of 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 families.

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

36. Other class member suffered similar assaults and harms as those experienced by the Plaintiff, due to the AIM program and similar programs.

37. The Defendants' agents were paid to operate foster homes and the AIM program and similar programs, and the Defendants' agents were paid to coordinate the adoption of aboriginal children.

38. The Defendants were under a positive fiduciary duty to protect the Plaintiff and class members from physical or mental or moral health, and the Defendants knew or ought to have known that the Plaintiff and class members would suffer damages if the Defendants failed to carry out this duty.

39. The Plaintiff and class claim that 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.

40. In the alternative, the Plaintiff and 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.

41. As a result of the physical and sexual assaults and emotional and mental abuse, the Plaintiff and class 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.

42. The Plaintiff and class sustained and will continue to sustain pain and suffering, loss of enjoyment of life, and loss of amenities. The Plaintiff and class unable to participate in many different types of recreational, social, athletic, educational and employment

activities to the extent to which the Plaintiff and class would have participated in such activities had the physical and sexual assaults not occurred.

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

44. The Plaintiff and 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.

45. The Plaintiff and 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.

46. The Plaintiff and class claim that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for and the rights of the class. The Plaintiff and class further claim that the Defendants knew or ought to have known and were or should have been conscious of the probable consequences of their actions and the damages such actions would cause to other persons including the Plaintiff.

47. The Plaintiff and class further claim that they are entitled to aggravated, punitive, and exemplary damages from the Defendants.

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

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

Causation

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

Damages

51. The Plaintiff and 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.

Aggravated, Punitive and Exemplary Damages

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

53. The Defendants have demonstrated that a cavalier and arbitrary approach towards the rights and welfare of the class and with respect to the obligations of the Defendants towards the class.

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

55. 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.

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

PLAINTIFFS' ADDRESS FOR SERVICE:

MERCHANT LAW GROUP LLP
303 – 304 15127 100th Avenue
Vancouver-Surrey, British Columbia
V3R 0N9

Direct Fax number for service: 604-951-7721

Place of trial: North Westminster
The address of the registry is: Law Courts, Begbie Square
651 Carnarvon Street
New Westminster, B.C. V3M 1C9

DATED: Dec 16/16

Steve Roxborough
Solicitors for the Plaintiff

Rule 7-1 (1) of the *Supreme Court Civil Rules* states:
1. Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists
    (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    (ii) all other documents to which the party intends to refer at trial, and
(b) serve the list on all parties of record.

ENDORSEMENT FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiffs and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c 28 (the "*CJPTA*") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss 10 (e) - (i) of the *CJPTA* because this proceeding:

a) concerns a resident of British Columbia;
b) concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia and resulted from a solicitation of business in British Columbia;
c) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
d) concerns a tort committed in British Columbia;
e) concerns a business carried on in British Columbia; and
f) is a claim for damages sustained in British Columbia.

THIS IS EXHIBIT "73" 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 No. S - 172776
Vancouver Registry

In the Supreme Court of British Columbia

Between

Cindy Anne Jones

Plaintiff

And

The Attorney General of Canada

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

Cindy Anne Jones
6411, Village Road
Chase, British Columbia
V0E 1M0

The Attorney General of Canada
Minister of Indigenous & Northern Affairs Canada,
Terrasses de la Chaudière
10 Wellington, North Tower
Gatineau, Québec
K1A 0H4

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

1. Cindy Anne Jones (the "**Plaintiff**") currently resides at Chase, British Columbia. The Plaintiff was born in Enderby, B.C. on April 7th, 1956. Her parents, John Jones and Dorothy Jones were from the Splatsin Reserve, B.C.

2. The Plaintiff is filling this class action on her own behalf, and as representative plaintiff 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, (the "**Proposed Class**"). These Aboriginal children were taken away from their reserves in British Columbia, or outside thereof, and placed either in foster homes of non-aboriginal families or given up for adoption to non-aboriginal families. In many cases they were sent to live with non-aboriginal families residing in other provinces. Most importantly they were placed in these non-aboriginal families without the consent and in some cases even without the knowledge of their biological parents. The Plaintiff pleads and relies on the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

3. 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**).

4. This class action relates to the time period from around 1960 till the early 1990's (the "**Class Period**") when the Plaintiff and members of the Proposed Class were placed in foster care with

non-aboriginal families or adopted out to non-aboriginal families. This Class Period is more commonly known as the "sixties scoop," because the practise involved the scooping up of Aboriginal children from their families without the consent and knowledge of their families.

5. The right to provide child care services to Aboriginal people in general falls within the jurisdiction of Canada and is derived *inter alia* from the treaties entered into between Canada and the First Nation communities, subsection 91(24) of *The Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3, applicable and 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.

6. However the extension of general provincial laws to the Aboriginal people was 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.

7. 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 arrangements.

8. Beginning in or around 1964 Canada began negotiations for transferring social welfare services to the Province of British Columbia (the "**Province**") with federal funding support and for this purpose developed a Federal-Provincial Welfare Committee. These negotiations culminated in an arrangement between Canada and the Province whereby Canada delegated Aboriginal child welfare services to the Province sometime in or around 1965 (the "**Arrangement**"). As a result of the Arrangement the Plaintiff 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.

9. Much like its predecessor the Residential School System, the Arrangement was predicated on the assimilation of "Indian" children into mainstream Caucasian society. In doing so, the Plaintiff 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 including the Plaintiff were also sexually abused.

10. Most importantly Canada, having placed the Plaintiff and members of the Proposed Class in non-aboriginal foster or adoptive homes, did not at any time inform the Plaintiff and members of the Proposed Class about their Aboriginal status and also their right and entitlement to Aboriginal-related monetary benefits. Hence the Plaintiff 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.

The Plaintiff

11. The Plaintiff was raised as a child on the Splatsin reserve (the "**Reserve**"). She spoke her native language, Shuswap. She was raised primarily by her maternal grandmother. Her biological father passed away when she was around 11 years old.

12. After the passing away of her biological father the *White Welfare* workers tried to take her and her siblings away. Although her biological mother and maternal grandmother resisted, the Plaintiff was ultimately taken away and placed in a non-aboriginal Mormon family in Lethbridge. Her oldest brother was placed in a non-aboriginal family in Taber, Alberta. Her other brother and sister were also placed in foster homes of non-aboriginal families.

13. The Plaintiff spent a year and half with this Mormon foster family. The Plaintiff was denied any opportunity to maintain contact with her 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.

14. The Plaintiff's biological mother was able to locate her and some of her siblings and the Plaintiff returned to the Reserve briefly. The Claimant was during this time period sexually abused on the Reserve and after the abuse she was once again placed in a non-Aboriginal Mormon foster home located on a farm in the Southern part of Alberta.

15. During her stay with this foster family the Plaintiff was again isolated from her biological family and her Aboriginal culture and customs. She was not allowed to speak her language. She was in correspondence for her education and when she was not studying she was made to perform household chores.

16. The Plaintiff after giving birth to her son at the age of 16 was briefly sent back to the Reserve. Her child was taken away from her and given up for adoption to another non-aboriginal foster Mormon family. The Plaintiff was never told about the whereabouts of her Aboriginal child.

17. Again the Plaintiff was taken away from her home on the Reserve and placed in a non-Aboriginal Mormon foster family in Cardston, Alberta where she was abused repeatedly. The abuse included sexual abuse.

18. The Plaintiff complained to the social welfare workers about the abuse yet nothing was ever done.

19. The Plaintiff was made to perform household chores while the other children played. She was forbidden any contact with Aboriginal people. The Plaintiff lost all connection with her Aboriginal culture, language and heritage.

20. The Plaintiff was also kept away from her family including her brother and sisters and today they are strangers to each other.

21. The Plaintiff has been confused in regards to her identity. Through the different non-aboriginal foster homes that she was placed in during her youth the Plaintiff 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 any federal benefits and financial entitlements as a status Indian.

22. The Plaintiff at the time of giving birth to her first child was not informed that being a status "Indian" she was entitled to federal benefits that would have enabled her to keep and raise her child. She has never seen her child since.

23. The Plaintiff returned to her Aboriginal community when she was 19 years old. When the Claimant was around 24 years old she started learning about her rights as an Aboriginal person. The Plaintiff later learned that she was entitled to federal benefits and financial entitlements.

Canada's acts and omission resulting in damages

24. Canada at all material times had constitutional obligations and fiduciary and common law duties to act in the best interest of the Plaintiff and the Proposed Class members.

25. Prior to entering into the Arrangement 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 Plaintiff and

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 Plaintiff 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 Plaintiff 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 families 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 Plaintiff 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

29. As a result of Canada's acts and omissions and above-mentioned breaches of legal duties and obligations the Plaintiff 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 most importantly loss of language, culture and identity.

Aggravated, Punitive and Exemplary Damages

30. The Plaintiff pleads 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 Arrangement.

31. The length of the Class Period and the manner in which the Plaintiff 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.

PART 2: RELIEF SOUGHT

32. The Plaintiff claims, on her own behalf and on behalf of members of the Proposed Class, the following relief against Canada:

1) an order certifying this action as a class action and appointing the Plaintiff as the representative plaintiff pursuant to the *Class proceedings Act*, R.S.B.C. 1996, c. 50;

2) general and special damages;

3) aggravated damages;

4) exemplary and punitive damages;

5) pre-judgment interest;

6) costs; and

7) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Canada's Common Law Duty of Care

33. At all material times Canada was responsible for the care and protection of the Plaintiff 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.

34. 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 Aboriginal and treaty rights recognized and affirmed by s. 35(1) of the *Constitution Act*, 1982, [including "Treaty 8" and the "Vancouver Island Treaties" and the "Douglas Treaties"];

2) 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;

3) 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;

4) the "honour of the Crown"; and

5) 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

35. Canada owes a fiduciary duty to the Plaintiff 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. More importantly 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 Plaintiff 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.

36. 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 Arrangement on the Plaintiff and members of the Proposed Class. Canada also had a duty to monitor, safeguard and secure the culture and language of the Plaintiff 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 Plaintiff and members of the Proposed Class regarding their Aboriginal status and the resulting financial benefits and entitlements.

37. 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.

PLAINTIFF'S ADDRESS FOR SERVICE

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
Place of Trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street, Vancouver BC V6Z 2E1

Date: March 24th, 2017

Lawyer for the Plaintiff (s)

STEPHEN J. BRONSTEIN

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This class action relates to the time period of around 1960 till the early 1990's, commonly known as the "sixties scoop," when provincial child care workers, acting as delegates of Canada, scooped Aboriginal children from their reserves in British Columbia, or outside thereof, and placed them in foster care with non-aboriginal families or adopted them out to non-aboriginal families. Most importantly they were placed in these non-aboriginal families without the consent and in some cases even without the knowledge of their biological parents. The Plaintiff alleges that Canada failed to take any steps to prevent the Plaintiff and members of the Proposed Class from losing their language and culture. Further, the Plaintiff alleges that Canada failed to take any steps to ensure that the Plaintiff and members of the Proposed Class were informed of their status as Aboriginal persons which would have enabled them to exercise their Aboriginal rights and obtain federal benefits and financial entitlements.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[X] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[X] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[X] a class action

[ ] maritime law

[X] aboriginal law

[X] constitutional law

[ ] conflict of laws

[ ] none of the above

[X] do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3
3. *The Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
4. *Indian Act*, R.S.C. 1985 c.I-5; and
5. Common Law

THIS IS EXHIBIT "74" 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 No. CV 16 565598 00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

CATHERINE MORRISSEAU

Plaintiff

- and –

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and ATTORNEY GENERAL OF CANADA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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 an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure,* serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario. If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: December 7th, 2016 Issued by: _____

Local Registrar
393 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

TO: HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Ministry of the Attorney General - Crown Law Office (Civil Law)
McMurtry-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

TO: ATTORNEY GENERAL OF CANADA
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, ON K1A 0H8

CLAIM

1. The Plaintiff claims, on her own behalf and on behalf of all of the members of the Class (as defined below), on a joint and several basis against each of the Defendants:

(a) general damages in excess of $500,000,000, or such other amount as may be proved in this Honourable Court;

(b) special damages in excess of $500,000,000, or such other amount as may be proved in this Honourable Court;

(c) punitive damages in the amount of $100,000,000;

(d) pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended;

(e) costs of this action on a substantial indemnity basis and GST/HST thereon;

(f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable tax, pursuant to s. 26(9) of the *CPA*; and,

(g) such further and other relief as this Honourable Court deems just.

THE PARTIES

Plaintiff

2. The Plaintiff, Catherine Morrisseau, is a Status Indian and at all material times resided in the province of Ontario, and now resides in Atikokan, Ontario.

Defendants

3. The Defendant, Her Majesty the Queen in right of Ontario, represents the Ontario Ministry of Community and Social Services (named the Ministry of Public Welfare from 1930-1967, and named the Ministry of Social and Family Services from 1967-1972; hereinafter **"Ontario Social Services"**), pursuant to section 5 (1) of *The Proceedings Against the Crown act*, RSO 1990, c P-27.

4. The Defendant, the Attorney General of Canada, on behalf of the Government of Canada and the Crown (**"Canada"**), is liable and vicariously liable for all acts and omissions that occurred as a result of the AIM program, including, but not limited to, cultural malfeasance, physical abuse, sexual assault, battery, neglect, and misfeasance of public officials, acting on behalf of the Crown, with Canada being liable pursuant to inter alia, section 36 of *The*

Crown Liability and Proceedings Act, RSC 1985, c C-50.

Proposed Class

5. The Plaintiff, and Class Members, are either "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5 [***Indian Act***], or "Aboriginal" persons as defined by the *Constitution Act*, 1982, s. 35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

6. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class including any Indian or Aboriginal person who was, as a child, placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by either of the Defendants, excluding those individuals who fall within the class as certified in *Brown v Canada (Attorney General)*, 2013 ONSC 5637. Without limiting the generality of the foregoing, the proposed class includes:

a. all Indian persons who were apprehended by one or both of the Defendants while living outside of an Indian reserve;

b. all Aboriginal persons, including but not limited to Metis and other Aboriginal persons not otherwise entitled to "status" pursuant to the *Indian Act* at the time of their apprehension, who were apprehended by Canada, wherever resident;

c. all Aboriginal persons, including but not limited to Indian, Metis, and other Aboriginal persons not otherwise entitled to "status" pursuant to the *Indian Act* at the time of their apprehension, who were apprehended by Ontario or any of its delegated agencies, wherever resident.

and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians (the "**Class**" or "**Class Members**").

PARTICULARS OF THE CLAIM

A. Plaintiff's Harms

(a) Abduction

7. The Plaintiff is a woman of Ojibway heritage who was born at in 1960 at La Verendrye Hospital in Fort-Frances, Ontario, where she lived from the time she was born until she was approximately 6 months old.

8. In 1960, at the age of 6 months, the Plaintiff was taken from the hospital by a social worker for Ontario Social Services based out of Fort-Frances, Ontario, and adopted to the Christian family of Ron and Dora Kloosterman of Stratton, Ontario.

9. The Plaintiff lived with the Kloosterman family on their farm for approximately 15 years, when she eventually left the home at age 15. Prior to leaving, the Plaintiff was physically and sexually abused by her adoptive family and workers at the farm with the knowledge of her adoptive parents.

(b) AIM

10. The Plaintiff and members of the class were adopted out to non-Aboriginal families as a part of a program in Canada and Ontario to 'remove the Indian from the Indian' or make Aboriginal children behave like Caucasian adults. The color of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be 'white adults'.

11. This program was known as the Adopt Indian Métis program, or "AIM" (**"AIM"**).

12. The Ontario government advertised on both Canadian and American television channels and through other media for people to adopt an Indian or Métis child. The AIM program ended in the 1990s and has become known within the Aboriginal community as "the 60s Scoop" or "Lost Boys/Lost Girls".

13. The AIM program was a badly misconceived and wrongful initiative that visited profound and permanent psychological harm, and often sexual or physical harm, and other wrongdoing visited upon the Plaintiff and all members of the class.

(c) Abuse

14. During the time that she resided with the Kloosterman family in Stratton, Ontario, the Plaintiff suffered severe physical and sexual abuse and was treated as an inferior person, given her Aboriginal heritage.

15. The Plaintiff was beaten repeatedly with rubber hoses by her adoptive family.

16. The Plaintiff was sexually assaulted by workers on the farm.

17. If the Plaintiff tried to report this abuse to her adoptive parents or to Ontario Social Services, her adoptive family would beat, punish, and threaten her.

18. At the age of 15, the Plaintiff began to struggle with her identity, and ran away and began living on the street, as her complaints to Ontario Social Services went unanswered.

(d) Injuries

19. The Plaintiff suffered severe sexual abuse and mental trauma. Other Members of the Class suffered severe psychological harm, physical abuse, sexual abuse, cultural and identity loss, and/or mental trauma. The Plaintiff and other and Members of the Class experienced a loss of culture and lack of self-worth as a result of the physical, sexual and psychological abuse. The Plaintiff 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. The Plaintiff's adoptive parents, and all adoptive parents were a part of the wrongful plan of Canada and Ontario within.

20. The Plaintiff and other and members of the class did not develop proper parenting skills due to their upbringing in abusive families and as a result share in common difficulties parenting children. The Plaintiff has had difficulties parenting her two children due to the severe emotional and psychological trauma she suffered in her while living with her adoptive family. Class Members being similarly taken from their Aboriginal roots, did not have any connection with their Aboriginal communities or families, to support them and teach them how to be loving parents.

21. The Plaintiff suffered through drug and alcohol addiction during her thirties due to the profound sense of alienation and loss he experienced as a youth. It was only after she was able to reconnect with her culture that she was able to rebuild her relationship with her children and stop abusing drugs. The Plaintiff attended treatment for her drug and alcohol problem in Thunder Bay and Blind River. Similarly, other members of the class have suffered drug and alcohol problems resulting from their sense of alienation and loss resulting from being part of the AIM program.

22. The Plaintiff requires a substantial amount of counseling and psychological support as a result of the severe abuses that she suffered as a child at the hands of her adoptive parents and due to their neglect, and due to the abuse by her adoptive father.

23. The Plaintiff has also suffered cultural injuries. Amongst other things, the Plaintiff lost her ability to speak her native language of Ojibway and her aboriginal identity due to the fact that she was taken from her parents and placed with a white family by Ontario Social Services.

24. The Plaintiff still has a lot of anger towards her adoptive family in the province of Ontario. She is distressed by the fact that her adoptive family, members of which caused so much havoc in her life, have never had to face criminal charges for what they did.

25. The Plaintiff 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 family called her names because of her aboriginal heritage.

26. Morrisseau did not become a registered Indian within the meaning of *Indian Act* until the 1980's, shortly after she was advised of her history by the children's aid services.

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

27. Beginning in 1962, Canada entered into an arrangement with the Province of Ontario, whereby Canada delegated Indian child welfare services to Ontario Social Services. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Ontario Social Services provided a variety of child welfare services to Indian and Aboriginal persons and Canada agreed to reimburse Ontario Social Services for each Indian child in care. The transfer payments made by Canada to Ontario Social Services were calculated based on the number of Indian or Aboriginal children for which it had the responsibility of maintenance and supervision.

28. 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.

29. The Government of Ontario 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 traditional beliefs of all Members of the Class. The removal and assimilation of aboriginal children, and the AIM Program led to the obliteration of the culture, language, and religion of Members of the class. The forced adoption of Aboriginal children into non-Aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to members of the class. All Members of the Class have in common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and programs of Ontario Social Services which, in the case of Indian Members of the Class, occurred with the province of Ontario acting as the agent and delegate of Canada.

30. 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.

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

32. The Defendants breached their duty to the Plaintiff and the members of 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*.

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

34. The Defendants are liable *inter alia* to the Plaintiff and all class members for:

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 off class members from their families;

E. Destroying class members' sense of self worth;

F. Reducing class members' capacities to parent and maintain normal marital and family ties;

G. Permitting the circumstances which resulted in the physical or sexual abuse to which class members were subject;

H. Failing to provide adequate care for class members as children and provide for their needs;

I. Holding class members in foster homes and placing them in adoptive families without the prior consent of their parents;

J. Depersonalizing and demeaning class members including loss of their culture and Aboriginal name;

K. Cutting class members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and

L. Discriminating against him or her on the basis of Aboriginal background.

35. The behavior 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 children from Aboriginal families or communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

36. The Plaintiff and members of the class were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis. Further, the Plaintiff and other members of the class were not permitted to speak their traditional languages.

37. 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.

38. The Defendants' actions were in contravention of the treaties between the Defendants and the First Nations

peoples 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 heritages were to be systematically 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 through these sadistic punishment and practices.

39. Through the organized genocide imposed upon them by the Defendants, their programs, and their agents and servants, the Plaintiff and other members of the class had their Indigenous cultures denigrated and taken away from them. Through the combination of sexual, physical, and psychological abuse members of the class were made to feel meaningless and to believe that their culture and all things "Indian" were worthless.

40. As a result of the acts by the Defendants, The Plaintiff and members of 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 families.

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

42. Other class member suffered similar assaults and harms as those experienced by the Plaintiff, due to the AIM program and similar programs.

43. The Defendants' agents were paid to operate foster homes and the AIM program and similar programs, and the Defendants' agents were paid to coordinate the adoption of aboriginal children.

44. The Defendants were under a positive fiduciary duty to protect the Plaintiff and class members from physical or mental or moral health, and the Defendants knew or ought to have known that the Plaintiff and class members would suffer damages if the Defendants failed to carry out this duty.

45. The Plaintiff and class claim that 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.

46. In the alternative, the Plaintiff and 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.

47. As a result of the physical and sexual assaults and emotional and mental abuse, the Plaintiff and class 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.

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

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

50. The Plaintiff and 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.

51. The Plaintiff and 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.

52. The Plaintiff and class claim that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for and the rights of the class. The Plaintiff and class further claim that the Defendants knew or ought to have known and were or should have been conscious of the probable consequences of their actions and the damages such actions would cause to other persons including the Plaintiff.

53. The Plaintiff and class further claim that they are entitled to aggravated, punitive, and exemplary damages from the Defendants.

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

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

Causation

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

D. Damages

57. The Plaintiff and 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

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

59. The Defendants have demonstrated that a cavalier and arbitrary approach towards the rights and welfare of the class and with respect to the obligations of the Defendants towards the class.

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

61. 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.

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

THE RELIEF SOUGHT

63. 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 DEFENDANT:

(1) an Order certifying this action as a class action and appointing representative Plaintiff on behalf of a class of persons, including all persons who were, as a child, placed in the "Adopt Indian Metis"

program, excluding those who fall within the class definition certified in *Brown v Canada (Attorney General)*, 2013 ONSC 5637.

(2) an Order for an aggregate monetary award respecting all or any part of a Defendants' liability to class members including an Order that Class Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class Members pursuant to Sections 34 (1) of the *Class Proceedings Act, 1992*

(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) cultural 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) prejudgment and postjudgment interest on the foregoing sums, pursuant to the *Courts of Justice Act*, RSO 1990, c C.43;

(9) costs; and

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

REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

64. There is a real and substantial connection between the subject matter of this action and the Province of Ontario for the following reasons:

(a) the Defendants carry on activities in Ontario;

(b) the Plaintiff and other members of the Class are resident in Ontario and have sustained their damages and injuries in Ontario.

PLACE OF TRIAL

65. The Plaintiff proposes that this action be tried in Toronto.

Date of Issue: December 1st 2016

MERCHANT LAW GROUP LLP
Barristers and Solicitors
Suite 1201 - 120 Adelaide Street West
Toronto, Ontario M5H 1T1

Evatt Merchant (LSUC #51811C)
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Lawyers for the Plaintiff

CATHERINE MORRISEAU v. **HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, and ATTORNEY GENERAL OF CANADA**

Court File No. CV 16 565598 00CP

Plaintiff *Defendants*

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

NOTICE OF ACTION ISSUED

MERCHANT LAW GROUP LLP
Barristers and Solicitors
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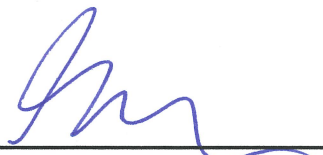
Lawyers for the Plaintiff

1658

THIS IS EXHIBIT "75" 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 3-9
(Rule 3-9)

COURT FILE NUMBER QB 1794 of 2017

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE Saskatoon

PLAINTIFF DARCY LONGMAN (HALL)

DEFENDANTS THE ATTORNEY GENERAL OF CANADA

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF SASKATCHEWAN

NOTICE TO DEFENDANTS

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 24th day of November, 2017.

Court Seal

SIGNED BY
P. VOGT
Local Registrar

STATEMENT OF CLAIM

1. The Plaintiff, Darcy Longman, also known as Darcy Hall, (hereinafter the "Plaintiff') resides in the City of Saskatoon, in the Province of Saskatchewan.

2. The 1st Defendant, the Attorney General of Canada, (hereinafter referred to as the "Government of Canada") is designated pursuant to Section 23(1) of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, and was at all material time responsible for the development of a program/policy through which First Nations and Métis children were taken from their families and placed with non-aboriginal families ("Sixties Scoop").

3. The 2nd Defendant, Her Majesty the Queen in right of the Province of Saskatchewan, (hereinafter referred to as the "Government of Saskatchewan") is designated pursuant to Section 2(b) of the *Proceedings Against the Crown Act* R.S.S. 1978 c.P-27, and was at all material time responsible for the operation of the Saskatchewan Department of Social Services ("Social Services") in the care of whom the Plaintiff was entrusted.

4. In furtherance of and/or in concert with Sixties Scoop policy of the Government of Canada, the Government of Saskatchewan through the Social Services designed the Adopt Indian Metis ("AIM") pilot project to place Indigenous children of ages six and under into non-Indigenous homes.

5. The Plaintiff's biological mother is a member of Cree tribe from George Gordon First Nation, Saskatchewan.

6. The Plaintiff was taken from his mother at birth and was placed in a foster home of Shirley Hall by Social Services on October 31, 1971 in furtherance of the said AIM project. He resided with Shirley Hall in a foster home at 83 Magee Crescent, Regina, in the Province of Saskatchewan.

7. Along with other foster children, the Plaintiff resided with Shirley Hall at the foster home until about 1986 when he escaped from the home following Shirley's attempt to perform exorcism on him.

8. Throughout the time that the Plaintiff resided with Shirley Hall, he was harshly disciplined and subject to physical and emotional abuse by Shirley Hall. The physical abuse included but was not limited to being hit on the back and bare bottom with a leather belt, struck on the ear with fist, hit on knuckles with mental or wooden spoon, and kick on the penis.

9. While the Plaintiff resided with Shirley Hall, he was sexually abused on many occasions by her son Michael Hall (also known as "Kathleen Hamilton"). The sexual abuse included fondling, masturbation, oral and anal sexual intercourse.

10. As a result of the physical and sexual abuse visited upon the Plaintiff while he was residing with Shirley Hall, he continues to suffer a loss of personal and cultural identity, and shame. He also continues to have suicidal tendencies.

11. As a result of being scooped from his mother at birth, the Plaintiff lost contact with his families, Aboriginal language, culture and identity. The loss of the Plaintiff's Aboriginal identity has left him fundamentally disoriented, with a reduced ability to lead healthy and fulfilling life.

12. At all material times, the Defendants were responsible for the AIM program and are jointly and/or severally liable to the Plaintiff for the physical and sexual abuse visited upon him while he was under the care of the Social Services.

13. The physical, sexual and emotional abuse of the Plaintiff, and the resulting injuries and life style changes were caused by the negligence, breach of trust, and/or fiduciary duty of the Defendants, their agents, servants, and employees, the particulars of which include – but are not limited – to the following:

    (a) Failure of the Defendants to properly screen and select appropriate foster parents;

    (b) Failure to have policy or guidelines that caters for the Plaintiff's cultural identity and emotional well being in place with respect to the selection of foster parents;

    (c) Failure to supervise and inspect the foster placements;

    (d) The failure to protect the Plaintiff from physical and sexual abuse by the foster parent and other persons in the foster home;

    (e) 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 in the care of the Government.

    (f) The cause and the existence of the physical and 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.

14. As a result of the sexual and physical assaults, the Plaintiff sustained serious, lasting and permanent personal injuries including nervous shock, anxiety, depression, emotional trauma, personality change, traumatic neurosis, loss of confidence, decreased social ability, suicidal tendencies, and fatigue.

15. The Plaintiff 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 those recreational, social, athletic, education, spiritual, and employment activities to the extent to which he would have participated in such activities had the sexual and physical assault not occurred and he has been injured severely.

16. As a further result of the sexual and physical assaults, the Plaintiff will need to undergo therapy, counselling, hospitalization, rehabilitation, and other forms of treatment.

17. The Plaintiff will also incur further expenses, including expenses for medication, therapy, counselling, hospitalization, rehabilitation, medication, and other forms of medical treatment and care particulars of which expenses will be proved at trial.

18. The Plaintiff s life has been damaged and changed profoundly as a result of the physical and mental abuse visited upon his while in foster care.

19. The Plaintiff has sustained a loss of income and will continue to sustain a loss of income, a loss of competitive advantage in the employment field, loss of income and diminution of an income earning capacity and a loss of sense of sense worth. The Plaintiff is entitled to aggravated, punitive, and exemplary damages from the Defendants.

20. The Defendants were under a positive fiduciary duty to protect the Plaintiff from injury to his person, mental, physical 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 their duty.

WHEREOF THE PLAINTIFF, DARCY LONGMAN (HALL), CLAIMS AGAINST THE DEFENDANTS:

(a) General damages in the sum of $5 million;

(b) Special damages in an amount to be proven at trial;

(c) Exemplary and punitive damages;

(d) Damages for breach of fiduciary duty;

(e) Interest pursuant to the Pre-Judgement Interest Act;

(f) Costs of this action;

(g) Such further and other relief and counsel may advise and this honourable court may allow.

DATED at Saskatoon, Saskatchewan, this 24TH day of Nov. 2017.

PER: ABORIGINAL LAW GROUP

Benjamin Omoruyi
(Plaintiff's Counsel)

CONTACT INFORMATION AND ADDRESS FOR SERVICE

Name of firm:	Aboriginal Law Group
Name of lawyers in charge of file:	Douglas Racine & Benjamin Omoruyi
Address of legal firms:	210-335 Packham Ave, Saskatoon, SK S7N 4S1
Telephone number:	306-373-8511
Fax number:	306-373-8510
E-mail address:	asr@sasktel.net

THIS IS EXHIBIT "76" 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

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nº: 500-06-000829-164

Copie conforme / True Copy
(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

SUPERIOR COURT
(Class Action)

MARY-ANN WARD, residing and domiciled at 407 Avenue O North, in the city of Saskatoon, Province of Saskatchewan, S7L 2V2;

Applicant

-vs-

THE ATTORNEY GENERAL OF CANADA, Quebec Regional Office Department of justice Canada Guy Favreau Complexe east Tower, 9th Floor 200 René Lévesque Boulevard West Montréal Québec H2Z 1X4;

-and-

THE ATTORNEY GENERAL OF QUEBEC, (representing the Ministry of Social Services) having a business address at 1 Notre-Dame Street East 8TH Floor in the city and judicial district of Montreal, province of Quebec, H2Y 1B6

Defendants

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE APPLICANT
(Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES THE FOLLOWING:

GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following group, of which she is a member, namely:

- All Indians and Aboriginal persons who were, as children, placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by either of the Defendants, and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians

(referred to herein as "Group Member(s)", "Group Member(s)", the "Group", the "Group", the "Member(s)");

The Defendants

2. The Defendant, The Attorney General of Canada, represents the Government of Canada, and the Department of Indian and Northern Affairs Canada, pursuant to Section 23 of *The Crown Liability and Proceedings act*, R.S.C. 1985, c.C-50.;

3. The Defendant, The Attorney General of Quebec represents' the Quebec Ministry of Social Services; pursuant to the *Act respecting the Ministry of Justice*.

4. The Attorney General of Canada and The Attorney General of Quebec ("**Defendants**") shared the common purpose of implementing child welfare services on aboriginal people in the province of Quebec;

5. The child welfare agreement and interests of the Defendants are inextricably interwoven, therefore, both Defendants are solidarily liable for the acts and omissions of the other;

General Facts:

6. The Applicant, and Group Members, are either "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5 [***Indian Act***], or "Aboriginal" persons 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 the Province of Quebec, whereby Canada delegated Indian child welfare services to the Province of Quebec. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Quebec provided a variety of child welfare services to Indian and Aboriginal persons and Canada agreed to reimburse Quebec for each Indian child in care. The transfer payments made by Canada to Quebec were calculated based on the number of Indian or Aboriginal children 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 Province of Quebec 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 traditional beliefs of all Members of the Group. The removal and assimilation of aboriginal children, and the *AIM Program led to the obliteration of the culture, language, and religion of Members* of the group. The forced adoption of Aboriginal children into non-Aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to members of the group. All Members of the Group have in common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and programs of Quebec which, in the case of Indian Members of the Group, occurred with the province of Quebec acting as the agent and delegate of Canada.

10. 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;

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

12. The Defendants breached their duty to the Applicant 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 Freedom;*

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

14. The Defendants are liable *inter alia* to the Applicant for:

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 off group members from their families;

E. Destroying group members' sense of self worth;

F. Reducing group members' capacities to parent and maintain normal marital and family ties;

G. Permitting the circumstances which resulted in the physical or sexual abuse to which group members were subject;

H. Failing to provide adequate care for group members as children and provide for their needs;

I. Holding group members in foster homes and placing them in adoptive families without the prior consent of their parents;

J. Depersonalizing and demeaning group members including loss of their culture and Aboriginal name;

K. Cutting group members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and

L. Discriminating against him or her on the basis of Aboriginal background.

15. The behavior 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;

16. The Applicant and members of the group were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis. Further, the Applicant and other members of the group were not permitted to speak their traditional languages;

17. The Applicant 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 Applicant

18. *The Defendant' 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 Applicants 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;

19. Through the organized genocide imposed upon them by the Defendants, their programs, and their agents and servants, the Applicant and other members of the group had their Indigenous cultures denigrated and taken away from them. Through the combination of sexual, physical, and psychological abuse members of the group were made to feel meaningless and to believe that their culture and all things "Indian" were worthless;

20. As a result of the acts by the Defendants, The Applicant and members of the group 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 families;

21. The Applicant lost her sense of family. She was cut off from her biological family *through forced adoptions and through placement in various foster homes;*

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

23. The Defendants' agents were paid to operate foster homes and the Defendants' agents were paid to coordinate the adoption of aboriginal children;

24. The Applicant and group claim that 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.

25. In the alternative, the Applicant 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;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

26. The Applicant, Mary-Ann Ward is now a resident Saskatoon Saskatchewan;

27. The Applicant Mary-Ann Ward Was born in Amos Quebec.

28. The Applicant remembers that at about the age of 4 years old she was taken from her home in Amos Quebec and she was moved by the Quebec social services to a group home in Aylmer Quebec;

29. The Applicant has experienced psychological and emotional distress knowing that she was taken from her home and placed in foster care in Aylmer Quebec.;

30. The Applicant was adopted out to a white family when she was 10 years old by an employee of Indian Affairs and therefore has suffered and continues to suffer damages due to the fact she was adopted out to a white family;

31. The Applicant eventually reconnected with family members in Calgary Alberta in 1995 and it was there that she discovered the she was a Cree status Indian from the town of Chibougameau Quebec;

32. The Applicant Ward, and members of the group 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'

33. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;

34. As a consequence of the foregoing, the Applicant is justified in claiming damages;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

35. Every member of the group 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.

36. Each Member of the Group is justified in claiming at least one or more of the following:

a) Damages for loss of identity;

b) Damages attributable to sexual abuse;

c) Damages attributable to physical abuse;

d) Sentimental damages;

e) Damages for mental distress;

f) Recovery of health care costs;

g) And such further and other damages as this Court may be advised.

37. All of these damages to the Group Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:

38. The number of persons included in the Group is estimated to be in the thousands. According to the Statistics Canada, between 1960 and 1990 there are 11,132 known status Indians adoptions. However that is only status Indians adoptions the number of children will be much higher if we include non-status Indians and Metis children where some of these adoptions were never recorded ;

39. The names and addresses of all persons included in the Group are not known to the Applicant but are known to the Defendants;

40. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Defendants would increase delay and expense to all parties and to the Court system;

41. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Group to obtain mandates and to join them in one action;

42. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Group Members:

43. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:

a) Did the Defendants permit unqualified individuals to hire servants, agents and employees to administer and operate foster homes?

b) Did the Defendants permit unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuses?

c) Did the Defendants Fail to protect the Applicant and group members from harm?

d) Did the Defendants fail in general to take proper and reasonable steps to prevent injury to the Applicant and Group Members physical health and mental well-being and moral safety while the Applicant and Group members were residents at foster homes, and when they were adopted by non-aboriginal families?

e) *Did the Defendants Having occupied a position analogous to that of a* parents, fail to establish and maintain systems to protect the Applicant and Group members as a good parents should have ?

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?

g) Are the Defendants liable to pay compensatory damages to Group Members stemming from their actions?

h) What are the categories of damages for which the Defendants are responsible to pay to Group Members, and in what amount?

i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

44. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

45. The action that the Applicant wishes to institute for the benefit of the members of the Group is an action in damages for liability;

46. The conclusions that the Applicant wishes to introduce by way of a motion to institute proceedings are:

GRANT Applicant's action against Defendants;

ORDER for an aggregate monetary award respecting all or any part of a Defendant's liability to group members including an Order that Group Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Group Members ;

ORDER and CONDEMN general and special damages for the Group in amounts to be determined at trial, including:

(a) on the elections of the Applicant and Group 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.

CONDEMN Defendants to reimburse to the Group Members any costs or fees paid in relation to the counselling;

CONDEMN Defendants to pay compensatory damages to the Group Members for the loss of their cultural identity, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

47. Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

a) Many Group Members are domiciled in the District of Montreal;

b) The Defendants have a business establishment in the District of Montreal;

c) Many of the abuses were suffered by Group Members in District of the Montreal;

d) The Applicant's counsel is domiciled in the District of Montreal;

48. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Applicant:

a) Was taken and adopted out to a white family and had a loss of culture, and is thus a Member of the Group;

b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;

c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Group attorneys in this regard;

d) is ready and available to manage and direct the present action in the interest of the Group Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group;

e) does not have interests that are antagonistic to those of other members of the Group;

f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;

g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

49. The present motion is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Group herein described as:

All Indians and Aboriginal persons who were, as children, placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by either of the Defendants, and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians (referred to herein as "Group Member(s)", "Group Member(s)", the "Group", the "Group", the "Member(s)")

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

a) Did the Defendants permit unqualified individuals to hire servants, agents and employees to administer and operate foster homes?

b) Did the Defendants permit unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuses?

c) Did the Defendants Fail to protect the Applicant and group members from harm?

d) Did the Defendants fail in general to take proper and reasonable steps to prevent injury to the Applicant and Group Members physical health and mental well-being and moral safety while the Applicant and Group members were residents at foster homes, and when they were adopted by non-aboriginal families?

e) Did the Defendants Having occupied a position analogous to that of a parents, fail to establish and maintain systems to protect the Applicant and Group members as a good parents should have ?

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?

g) Are the Defendants liable to pay compensatory damages to Group Members stemming from their actions?

h) What are the categories of damages for which the Defendants are responsible to pay to Group Members, and in what amount?

i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Applicant's action against Defendants;

ORDER for an aggregate monetary award respecting all or any part of a Defendant's liability to group members including an Order that Group Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Group Members ;

ORDER and CONDEMN general and special damages for the Group in amounts to be determined at trial, including:

(a) on the elections of the Applicant and Group 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.

;

CONDEMN Defendants to reimburse to the Group Members any costs or fees paid in relation to the counselling;

CONDEMN Defendants to pay compensatory damages to the Group Members for the loss of their cultural identity, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, December 7, 2016

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for the Applicant

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

SUMMONS
(Articles 145 and following C.C.P.)

Filing of a Judicial Application
Take notice that the Applicant has filed this Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montreal.

Defendants' Answer
You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to Answer
If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district
You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division
If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference
Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application
In support of the Application to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative, the Applicant intends to use the following exhibits:

(None identified)

These Exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, December 7, 2016

Merchant Law Group LLP

Merchant Law Group LLP
10 rue Notre Dame Est, suite 200
Montréal (Québec) H2Y 1B7
Phone : 514-842-7776
Fax : 514-842-6687
Notifications : rdupont@merchantlaw.com
Attorneys for the Applicant

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

NOTICE OF PRESENTATION

(Articles 146 and 574 al.2 C.P.C.)

TO: **THE ATTORNEY GENERAL OF CANADA**
Quebec Regional Office - Department of justice Canada
Guy Favreau Complexe
East Tower, 9th Floor
200 René Lévesque Boulevard West
Montréal, Québec H2Z 1X4

and

TO: **THE ATTORNEY GENERAL OF QUEBEC,** (representing the Ministry of Social Services)
1 Notre-Dame Street East, 8TH Floor
Montreal, Quebec H2Y 1B6

TAKE NOTICE that the present FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montreal, December 7, 2016.

Copie conforme / True Copy
(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for the Applicant

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Recours collectif

Auto 1700 $
COL 190704
Et
dct: Me Roch Dupont

07 DEC. 2016

16h25.

№, 500-06-000829-164

SUPERIOR COURT
DISTRICT OF MONTREAL

MARY-ANN WARD

Applicant

vs

THE ATTORNEY GENERAL OF CANADA ET AL.

Respondents

APPLICATION FOR AUTHORIZATION TO INSTITUE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE APPLICANT
(Art. 574 C.C.P. and following)

COPY

Me Roch Dupont
MERCHANT LAW GROUP LLP
10, rue Notre-Dame Est, Suite 200
Montreal, Quebec H2Y 1B7
Telephone: (514) 842-7776
Telecopier: (514) 842-6687
BC 3841

THIS IS EXHIBIT "77" 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

2016

Hfx No. 458720

Supreme Court of Nova Scotia

Between:

LINDA LOU FLEWIN

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL OF NOVA SCOTIA REPRESENTING HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA

Defendants

Proceeding under the *Class Proceedings Act*

NOTICE OF ACTION

TO: **THE ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
Suite 1400, Duke Tower
5251 Duke Street
Halifax Nova-Scotia
B3J 1P3

AND TO: **THE ATTORNEY GENERAL OF NOVA SCOTIA REPRESENTING HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NOVA SCOTIA**
1690 Hollis Street
Halifax, Nova-Scotia
B3J 2L6

Action has been started against you
The plaintiff takes action against you.

The plaintiff started the action by filing this notice with the court on the date certified by the prothonotary.

The plaintiff claims the relief described in the attached statement of claim. The claim is based on the grounds stated in the statement of claim.

Deadline for defending the action
To defend the action, you or your counsel must file a notice of defence with the court no more than following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada
- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend
The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action
If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under $100,000
Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents
Any documents you file with the court must be filed at the office of the prothonotary, The Law Courts Building, 1815 Upper Water St. Street, Halifax, Nova Scotia (telephone 902-424-4900).

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information
The plaintiff designates the following address:

Anthony Tibbs
MERCHANT LAW GROUP LLP
Barristers and Solicitors
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: (306) 359-77777
Fax: (306) 522-3299

Documents delivered to this address are considered received by the plaintiff on delivery. Further contact information is available from the prothonotary.

Proposed place of trial
The plaintiff proposes that, if you defend this action, the trial will be held in Halifax Nova Scotia.

Signed: December 19th, 2016

Signature of Counsel

MERCHANT LAW GROUP LLP
Barristers and Solicitors
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Phone: (306) 359-7777
Fax: (306) 522-3299

Prothonotary's certificate
I certify that this notice of action, including the attached statement of claim, was filed with the court on December 20 2016.

~~Prothonotary~~

SARAH DRYSDALE
Deputy Prothonotary

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff, Linda Lou Flewin, is an individual who resides in Watford, Nova Scotia.

2. The Defendant, The Attorney General of Nova Scotia, representing Her Majesty the Queen in right of the Province of Nova Scotia, represents and is liable for the actions and omissions of the government of Nova Scotia ("**Nova Scotia**") and any of its agents or delegated authorities, pursuant to the *Proceedings Against the Crown Act*, RSNS 1989, c 360.

3. The Defendant, the Attorney General of Canada, represents and is liable for the actions and omissions of the government of Canada ("**Canada**") and any of its agents or delegated authorities, pursuant to inter alia, section 36 of *The Crown Liability and Proceedings Act*, RSC 1985, c C-50.

4. The Defendants are liable and vicariously liable for all acts and omissions that occurred as a result of the AIM program, including, but not limited to, cultural malfeasance, physical abuse, sexual assault, battery, neglect, and misfeasance of public officials, acting on behalf of the Crown.

Proposed Class

5. The Plaintiff, and Class Members, are either "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5 [*Indian Act*], or "Aboriginal" persons as defined by the *Constitution Act*, 1982, s. 35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

6. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class including any Indian or Aboriginal person, including but not limited to First Nations, Inuit, Métis, and non-status Indians, who was as a child resident in Nova Scotia or elsewhere in Canada, and placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by either of the Defendants (the "**Class**" or "**Class Members**").

PARTICULARS OF THE CLAIM

A. Plaintiff's Harms

(a) Abduction

7. The Plaintiff was born in 1958, in Wolfville, Nova Scotia, and part of the Benoit First Nation in Newfoundland, which is part of the Mi'k Mak Nation.

8. When the Plaintiff was approximately 13 months old, she was abducted or taken by the Defendants as part of the Adopt Indian Metis program, being taken from her parents in Nova Scotia without their consent.

9. The Plaintiff was adopted out to a white Christian parents, Frank and Vee Hooper, originally of St-Croix, Nova Scotia, and raised as a resident of Lower Sackville, Nova Scotia, until she reached the age of approximately 10 years old.

10. With the assistance of Nova Scotia, she and her adoptive parents subsequently moved to the Caribbean until she was 14 years old, and then to Cornwall, England.

11. By the age of 16, the Plaintiff ran away from her Cornwall, England home to escape the severe beatings by her adoptive parents.

(b) AIM

12. The Plaintiff and members of the class were adopted out to non-Aboriginal families as a part of a program in Canada and Nova Scotia to 'remove the Indian from the Indian' or make Aboriginal children behave like white people. They were to be reprogrammed to be 'white adults'.

13. This program was known as the Adopt Indian Métis program, or "AIM" ("AIM").

14. The Defendants advertised on both Canadian and American television channels and through other media for people to adopt an Indian or Métis child. The AIM program ended in the 1990s and has become known within the Aboriginal community as "the 60s Scoop" or "Lost Boys/Lost Girls".

15. The AIM program was a badly misconceived and wrongful initiative that visited profound and permanent psychological harm, and often sexual or physical harm, and other wrongdoing visited upon the Plaintiff and all members of the class.

(c) Abuse

16. During the time that she resided with the Hooper family in Nova Scotia, the Carribean, and England, the Plaintiff suffered severe physical and sexual abuse, and was treated as an inferior person, given her Aboriginal heritage.

17. These physical assaults included beatings that broke bones, including in her hands where surgical intervention was required, and which caused the Plaintiff to be partially deaf in her left ear.

18. The beatings were perpetrated both be the Plaintiff's adoptive mother and the Plaintiff's adoptive father.

19. Additionally, the Plaintiff was sexually assaulted by her adoptive father who would, *inter alia*, use a belt to beat her in the buttocks area (while being stripped naked), and repeatedly tell her that it was "God's will to have sex with her" and that this was what Indian girls were for.

20. Between the ages of 14 and 16, the Plaintiff began to struggle with her identity, acting out, running away from home, and generally struggling with coping with life.

21. After running away from home at age 16, the Plaintiff was married twice, and gave birth to two children in England. The Plaintiff did not know what to do with or how to raise children, *and attempted to give up her first child. As a consequence of the abuse, the Plaintiff's children* were not raised properly and were deprived the benefit of a loving, caring mother.

22. At the age of 52, the Plaintiff decided to come back to Canada and reconnect with her Aboriginal heritage and birth parents.

(d) Injuries

23. The Plaintiff suffered severe sexual abuse and mental trauma. Other Members of the Class suffered severe psychological harm, physical abuse, sexual abuse, cultural and identity loss, and/or mental trauma. The Plaintiff and other and Members of the Class experienced a loss of culture and lack of self-worth as a result of the physical, sexual and psychological abuse.

24. The Plaintiff 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. The Plaintiff's adoptive parents, and all adoptive parents were a part of the wrongful plan of Canada and Nova Scotia within.

25. The Plaintiff and other and members of the class did not develop proper parenting skills due to their upbringing in abusive families and as a result share in common difficulties parenting children. The Plaintiff has had difficulties parenting her two children due to the severe emotional and psychological trauma she suffered in her while living with her adoptive family.

26. Class Members being similarly taken from their Aboriginal roots, did not have any connection with their Aboriginal communities or families, to support them and teach them how to be loving parents.

27. The Plaintiff requires a substantial amount of counseling and psychological support as a result of the severe abuses that she suffered as a child at the hands of her adoptive parents and due to their neglect, and due to the abuse by her adoptive father.

28. The Plaintiff has also suffered cultural injuries. Amongst other things, the Plaintiff lost her ability to speak her native languages and her aboriginal identity due to the fact that she was taken from her parents and placed with a white family by Nova Scotia.

29. The Plaintiff still has a lot of anger towards her adoptive family, and is distressed by the fact that her adoptive family, members of which caused so much havoc in her life, have never had to face criminal charges for what they did.

30. The Plaintiff 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 family called her names because of her aboriginal heritage.

31. The Plaintiff did not become an affiliated Indian within the meaning of *Indian Act* until 2006, shortly after returning to Nova Scotia. She is now an affiliated member of the Benoit Indian Band from Newfoundland, where she has obtained her band card. She has not registered as a "status Indian" and does not feel the need to do so.

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

32. Beginning in the 1960s, Canada entered into an arrangement with the Province of Nova Scotia, whereby Canada delegated Indian child welfare services to Nova Scotia. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Nova Scotia provided a variety of child welfare services to Indian and Aboriginal persons and Canada agreed to reimburse Nova Scotia for each Indian child in care. The transfer payments made by Canada to Nova Scotia were calculated based on the number of Indian or Aboriginal children for which it had the responsibility of maintenance and supervision.

33. *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.

34. The Government of Nova Scotia 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 traditional beliefs of all Members of the Class. The removal and assimilation of aboriginal children, and the AIM Program led to the obliteration of the culture, language, and religion of Members of the class. The forced adoption of Aboriginal children into non-Aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to members of the class. All Members of the Class have in

common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and programs of Nova Scotia which, in the case of Indian Members of the Class, occurred with the province of Nova Scotia acting as the agent and delegate of Canada.

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 and the members of 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*.

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

39. The Defendants are liable *inter alia* to the Plaintiff and all class members for:

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 off class members from their families;

E. Destroying class members' sense of self worth;

F. Reducing class members' capacities to parent and maintain normal marital and family ties;

G. Permitting the circumstances which resulted in the physical or sexual abuse to which class members were subject;

H. Failing to provide adequate care for class members as children and provide for their needs;

I. Holding class members in foster homes and placing them in adoptive families without the prior consent of their parents;

J. Depersonalizing and demeaning class members including loss of their culture and Aboriginal name;

K. Cutting class members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and

L. Discriminating against him or her on the basis of Aboriginal background.

40. The behavior 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 children from Aboriginal families or communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5.

41. The Plaintiff and members of the class were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis. Further, the Plaintiff and other members of the class were not permitted to speak their traditional 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 Nations peoples and in contravention of the United Nations Genocide Convention, particularly Article (2)(3) thereof to which Canada was a signatory. The Plaintiff and other children of First Nation heritages were to be systematically 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 through these sadistic punishment and practices.

44. Through the organized genocide imposed upon them by the Defendants, their programs, and their agents and servants, the Plaintiff and other members of the class had their Indigenous cultures denigrated and taken away from them. Through the combination of sexual, physical, and psychological abuse members of the class were made to feel meaningless and to believe that their culture and all things "Indian" were worthless.

45. As a result of the acts by the Defendants, The Plaintiff and members of 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 families.

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

47. Other class member suffered similar assaults and harms as those experienced by the Plaintiff, due to the AIM program and similar programs.

48. The Defendants' agents were paid to operate foster homes and the AIM program and similar programs, and the Defendants' agents were paid to coordinate the adoption of aboriginal children.

49. The Defendants were under a positive fiduciary duty to protect the Plaintiff and class members from physical or mental or moral health, and the Defendants knew or ought to have known that the Plaintiff and class members would suffer damages if the Defendants failed to carry out this duty.

50. The Plaintiff and class claim that 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.

51. In the alternative, the Plaintiff and 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.

52. As a result of the physical and sexual assaults and emotional and mental abuse, the Plaintiff and class 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.

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

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

55. The Plaintiff and 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.

56. The Plaintiff and 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.

57. The Plaintiff and class claim that the Defendants conducted themselves with brutal and callous disregard and complete lack of care for and the rights of the class. The Plaintiff and class further claim that the Defendants knew or ought to have known and were or should have been conscious of the probable consequences of their actions and the damages such actions would cause to other persons including the Plaintiff.

58. The Plaintiff and class further claim that they are entitled to aggravated, punitive, and exemplary damages from the Defendants.

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

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

Causation

61. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendant(s) have caused or materially contributed to the Plaintiff and class suffering injury, economic loss and damages.

D. Damages

62. The Plaintiff and 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 Defendant(s).

E. Aggravated, Punitive and Exemplary Damages

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

64. The Defendants have demonstrated that a cavalier and arbitrary approach towards the rights and welfare of the class and with respect to the obligations of the Defendants towards the class.

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

66. 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.

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

THE RELIEF SOUGHT

68. 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 DEFENDANT:

(1) an Order certifying this action as a class action and appointing representative Plaintiff on behalf of a class of persons, including all persons who were, as a child, apprehended by the Defendants or either of them and placed in the "Adopt Indian Metis" program.

(2) an Order for an aggregate monetary award respecting all or any part of a Defendants' liability to class members including an Order that Class Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Class Members pursuant to Sections 32 (1) of the *Class Proceedings Act*.

(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) cultural 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 and post-judgment interest on the foregoing sums;

(9) costs; and

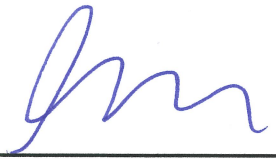
(10) such further and other relief as counsel may advise and this Honourable Court may allow.

DATED at Regina, Saskatchewan, this 19th day of December, 2016.

ANTHONY TIBBS

MERCHANT LAW GROUP LLP
2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8
Telephone: (306) 359-7777
Fax: (306) 522-3299

THIS IS EXHIBIT "78" 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 1 (Rule 8 (2))

S.C. No 17 - A0103

SUPREME COURT OF YUKON

BETWEEN:

CHARLES ESHLEMAN and CHRISTINE MULLIN

pursuant to Rule 5(11) of the Rules of Court representing and suing on behalf of themselves and all other First Nation, Inuit or Metis persons who were removed from their families or communities in the Yukon Territory by or on behalf of the Government of Canada or the Commissioner of Yukon as part of the Yukon 60s Scoop during the period 1950 to 1993 and as a result lost their language and cultural identities and suffered Rights Abuses and in some cases Individual Abuses

PLAINTIFFS

-and-

THE ATTORNEY GENERAL OF CANADA and THE COMMISSIONER OF YUKON

DEFENDANTS

STATEMENT OF CLAIM

Name and Address of each Plaintiff:

Charles Eshleman and Christine Mullin
c/o Shier & Jerome
#200 – 6131 Sixth Avenue
Whitehorse, Yukon
Y1A 1N2

Name and Address of each Defendant:

Attorney General of Canada c/o Department of Justice 200 - 300 Main Street Whitehorse, Yukon Y1A 2B5	**The Commissioner of Yukon** 412 Main Street Whitehorse, Yukon Y1A 2B7

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this Statement of Claim.

IF YOU INTEND TO DEFEND this action, or if you have a counterclaim, YOU MUST

(a) GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in the registry of this court, at the address shown below, within the time for appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this Statement of Claim, and

(b) FILE A STATEMENT OF DEFENCE in Form 10 in the registry of this court within the time for defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

(a) YOU FAIL to file the Appearance within the time for appearance provided for below, or

(b) YOU FAIL to file the Statement of Defence within the time for defence provided for below.

TIME FOR APPEARANCE

If this Statement of Claim is served on a person in Yukon, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Statement of Claim is served on a person outside Yukon, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days from the end of the time for appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1)	The address of the registry is: The Law Courts 2134 Second Avenue Whitehorse, Yukon. Y1A 5H6 Telephone: (867) 667-5937 Fax: (867) 393-6212
(2)	The plaintiff's ADDRESS FOR DELIVERY (**Required**: Residential address or business address **AND** postal address in Yukon) is: **Shier & Jerome** **#200 – 6131 Sixth Avenue** **Whitehorse, Yukon** **Y1A 1N2** Optional: Fax number for delivery: **867 668 2604** Email address: **info@shierjerome.ca** Telephone: **867 668 2600**
(3)	The names and office address of the plaintiff's lawyers are: **Daniel S. Shier and Brenda F. Jerome** **Shier & Jerome** **#200 – 6131 Sixth Avenue** **Whitehorse, Yukon** **Y1A 1N2**

STATEMENT OF CLAIM
(Rules 8 and 20)

The Parties

1. The Plaintiff Charles Eshleman is a citizen of the Tr'ondek Hwech'in First Nation, one of the Yukon First Nations. He lives in Whitehorse, Yukon.

2. The Plaintiff Christine Mullin is also a citizen of the Tr'ondek Hwech'in First Nation. She lives in Whitehorse, Yukon.

3. The Plaintiffs bring this action pursuant to Rule 5(11) of the Rules of Court on behalf of themselves and a group hereinafter referred to as the "Class Members" and consisting of all other First Nation, Inuit or Metis persons who were removed from their families or communities in the Yukon Territory by or on behalf of the Government of Canada or the Commissioner of Yukon during the period 1950 to 1993 and as a result lost their language and cultural identity and suffered the Rights Abuses and Individual Abuses described herein.

4. The Attorney General of Canada is named as the representative of the Government of Canada ("Canada") pursuant to the provisions of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 as amended.

5. At all material times, Canada took upon itself the governance of the Yukon Territory, including the provision of health, welfare and education of the Plaintiffs and the Class, in part pursuant to the *Indian Act*, R.S.C. 1985 c. I-5 as amended and predecessor legislation.

6. The Commissioner of the Yukon Territory (the "Commissioner") is the official representative of the Government of Canada in the Yukon Territory and responsible for the administration of the Yukon Territory.

7. At all material times, Canada and the Commissioner provided welfare and social services in the Yukon Territory.

8. At all material times, these welfare and social services included - but were not limited to - the following (the "Child Welfare Services"):

    a) apprehending children deemed neglected;

    b) placing children in foster homes;

    c) supervising foster homes;

    d) placing children in group homes;

    e) operating group homes;

    f) supervising group homes not operated by the Government of Canada or the Commissioner;

g) providing casework services to parents of children in care;

h) taking children into temporary and permanent wardship;

i) placing children into adoptive homes; and

j) seeking out and finding homes deemed suitable for child wards labeled and considered as "native" and "part-native".

The Yukon 60s Scoop

8. During a period beginning in or about 1950 and ending in or about 1993, hundreds of children comprising the Class Members were apprehended by agents, employees, or representatives of Canada or the Commissioner and:

a) placed in foster homes;

b) placed in group homes and other facilities operated by Canada or the Commissioner ;

c) placed in group homes operated by other entities;

d) taken into temporary or permanent wardship; or

e) adopted out into adoptive families and homes.

(the "Yukon 60s Scoop")

9. In the case of the Plaintiff Charles Eshleman, he is a First Nation person and was apprehended by agents, employees or representatives of Canada, the Commissioner, or both, and

a) placed in foster homes;

b) taken into temporary or permanent wardship; and

c) adopted out into an adoptive family and home.

10. In the case of the Plaintiff Christine Mullin, she is a First Nation person and was apprehended by agents, employees or representatives of Canada, the Commissioner, or both, and

a) placed in foster homes;

b) taken into temporary or permanent wardship;

c) placed in group homes and other facilities operated by the Commissioner; and

d) placed in group homes operated by other entities.

The Rights Abuses

11. It was an underlying purpose of Canada and the Commissioner through the Yukon 60s Scoop to extend and further the assimilation of First Nation, Metis and Inuit children into white, Euro-Canadian, mainstream Canadian society that had been undertaken through the Indian Residential School program, with the assumption that the languages and culture of First Nations, Metis and Inuit people were inferior to those of white, Euro-Canadian, mainstream Canadian society.

12. As such, the policies, programs and actions of Canada and the Commissioner through the Yukon 60s Scoop constitute intentional actions or attempts to destroy the Class Members' national, ethnic and racial groups by forcibly transferring the Class Members to another group (white, Euro-Canadian, mainstream Canadian society) and amount to breaches of

    a) Canada's obligations and the Class Members' rights under the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide*, in particular Article 2 subparagraph (e) and Article 3 thereof;

    b) The Class Members' aboriginal rights, including rights protected under section 35 of the *Constitution Act, 1982,* and including the right of belonging to and participating meaningfully in traditional practices, customs, languages, communities, laws and cultures.

(collectively, the "Rights Abuses")

13. As a result of the Yukon 60s Scoop, and the Rights Abuses, all Class Members, including the Plaintiff, were separated from their families and communities, deprived of their language and culture, and suffered the Rights Abuses.

Individual Abuses

14. As a further result of the Yukon 60s Scoop, some but not all, Class Members were exposed to and suffered additional injuries at foster homes, group homes, other facilities, and adoptive homes, including:

    a) Psychological abuse;
    b) Physical abuse;
    c) Neglect;
    d) Forced labour; and
    e) Sexual abuse.

(collectively, the "Individual Abuses")

Additional Grounds of Liability

15. By conducting the Yukon 60s Scoop, Canada and the Commissioner took on or assumed duties of care to the Class members and breached those duties of care to the Class Members with respect to the Individual Abuses by:

    a) failing to adequately investigate the foster homes and families, group homes and adoptive homes and families;

    b) failing to adequately supervise the foster homes and families, group homes and adoptive homes and families;

    c) failing to take any or any adequate steps to investigate allegations or information about any of the Individual Abuses or the likelihood that they would occur;

    d) failing to warn the Class Members, their families, or any responsible authority of any allegations or information about any of the Individual Abuses or the likelihood that they would occur; and

    e) failing to take any or any reasonable steps to ensure that the Class Members were not placed in any danger of the Individual Abuses.

Injuries, Losses and Damages

16. As a result of the Yukon 60s Scoop, the Rights Abuses, and the Individual Abuses, the Class Members have suffered significant injuries, losses and damages, including:

    a) Psychological, emotional and spiritual injuries;
    b) Loss of cultural identity;
    c) Loss of linguistic ability to connect with and participate in their language and culture;
    d) Loss of the ability to participate meaningfully in economic and employment opportunities, leading to loss or impairment of capacity to earn income.

17. As a further result of the Yukon 60s Scoop, the Rights Abuses, the Individual Abuses, and their injuries, losses and damages, the Class Members have required and in future will require:

    a) Traditional healing;
    b) Counselling;
    c) Reconnection with their families, communities, traditional practices, customs, laws, cultures and identities;
    d) Language training; and
    e) Psychological and medical treatment.

18. As a further result of the Yukon 60s Scoop, the Rights Abuses, the Individual Abuses, and their injuries, losses and damages, the Class Members have required and still require extraordinary assistance from family and community members and claim in trust for these services.

Relief Sought

The Plaintiffs claim on behalf of themselves and the Class Members as follows:

(a) A declaration certifying this action as a representative action pursuant to Rule 5(11) of the Rules of Court;

(b) General damages,

(c) Special damages;

(d) Prejudgment interest;

(e) Costs; and

(f) Such further relief as may be ordered by the Court.

Dated October 20, 2017

Lawyers for the Plaintiffs

Daniel S. Shier

Brenda F. Jerome

NOTICE OF EXEMPTION FROM MANDATORY

CASE MANAGEMENT CONFERENCE

TAKE NOTICE that this Action is exempt from mandatory Case Management Conference pursuant to Practice Direction Civil 10.

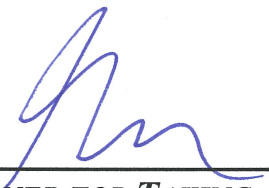
Dated October 20, 2017

Lawyers for the Plaintiffs

Daniel S. Shier

Brenda F. Jerome

THIS IS EXHIBIT "79" 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

CASE INFORMATION	JURISDICTION	PLAINTIFF COUNSEL
Marcia Brown *v The Attorney General of Canada* (Main Action) (formerly Brown, Commanda v. AGC) CV-09-00372025-00CP	**Ontario**	**Jeffrey Wilson** Wilson Christen LLP Tel.: 416.360.5952 jeffrey@wilsonchristen.com **Morris Cooper, Barrister** Tel.: 416.961.2626 cooper@cooperlaw.ca
Marcia Brown *v The Attorney General of Canada* CV-17-571694-00CP	**Ontario**	**Jeffery Wilson and Jessica Braude** Wilson Christen LLP Tel.: 416.360.5952 jeffery@wilsonchristen.com jessica@wilsonchristen.com **Morris Cooper, Barrister** Tel.: 416.961.2626 cooper@cooperlaw.ca
Catherine Morrisseau *v Her Majesty the Queen in Right of Ontario et al* CV-16-565598-00CP	**Ontario**	**Evatt Merchant** Merchant Law Group LLP Tel.: 3.06.653.7777 emerchant@merchantlaw.com **Roch Dupont** Merchant Law Group LLP Tel.: 306.359.7777 rdupont@merchantlaw.com
Wendy Lee White *v The Attorney General of Canada* T-294-17	**Federal Court (Toronto)**	**Kirk M. Baert** Koskie Minsky LLP Tel.: 416.595.2117 kbaert@kmlaw.ca **Celeste Poltak** Koskie Minsky LLP Tel: 416.595.2701 cpoltak@kmlaw.ca

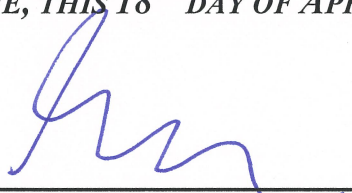
Skoganhallait aka Sharon Russell *v The Attorney General of Canada* VLC-S-S-113566	British Columbia	**David Klein** Klein Lawyers LLP Tel.: 604.874.7171 dklein@callkleinlawyers.com
Sarah Tanchak *v Her Majesty the Queen in Right of the Province of British Columbia et al* No. 186178 Victoria Registry	British Columbia	**Steve Roxborough** Merchant Law Group LLP Tel.: 604.609.7777 sroxborough@merchantlaw.com
Cindy Anne Jones *v Attorney General of Canada* No. S-172776 Vancouver Registry	British Columbia	**Stephen J. Bronstein** Bronstein & Company Tel.: 604.739.7920 sbron@telus.net **Thomas G. Keast, QC** Watson Goepel LLP Tel.: 604.609.3053 tkeast@watsongoepel.com
Catriona Charlie *v Her Majesty the Queen* T-421-17	Federal Court (Vancouver)	**David Klein** Klein Lawyers LLP Tel.: 604.874.7171 dklein@callkleinlawyers.com
Gloria Topilikon and Theresa Doreen Stevens *v Attorney General of Canada* T-1412-17	Federal Court (Vancouver)	**Stephen J. Bronstein** Bronstein & Company Tel.: 604.739.7920 sbron@telus.net
Peter Christopher Van Name *v Her Majesty the Queen in Right of Canada et al* 1101-11452	Alberta	**Tony Merchant** Merchant Law Group LLP Tel.: 306.359.7777 info@merchantlaw.com

Sarah Glenn v *Attorney General of Canada* 1601-13286	Alberta	**Kirk M. Baert** Koskie Minsky LLP Tel.: 416.204.2889 kmbaert@kmlaw.ca **Steven Cooper** Ahlstrom Wright Oliver & Cooper Tel.: 780.464.7477 s.cooper@awoc.ca
Thomas Vogtmann & Terry Anne English *v Attorney General of Canada* 1701-04509	Alberta	**Stephen J. Bronstein** Bronstein & Company Tel.: 604.739.7920 sbron@telus.net
Victor Bird and Leona Paul *v Attorney General of Canada* 1701-08523	Alberta	**William S. Klym** DD West LLP Tel.: 403.245.0111 wklym@ddwestllp.cpm **Brian J. Meronek, QC** DD West LLP Tel.: 204.925.5355 bmeronek@ddwestllp.com
Victor Bird and Leona Paul *v Attorney General of Canada* T-1811-17	Federal Court (Calgary)	**William S. Klym** DD West LLP Tel.: 403.245.0111 wklym@ddwestllp.cpm **Brian J. Meronek, QC** DD West LLP Tel.: 204.925.5355 bmeronek@ddwestllp.com
Maggie Blue Waters also known as Maggie Nelson *v Her Majesty the Queen in Right of Canada et al* QBG 2635 of 2014	Saskatchewan	**Roch Dupont** Merchant Law Group LLP Tel.: 306.359.7777 rdupont@merchantlaw.com

Simon Ash *v Attorney General of Canada* QBC 2487/16	Saskatchewan	**Kirk M. Baert** Koskie Minsky LLP Tel.: 416.595.2117 kbaert@kmlaw.ca **Eleanore Sunchild** Sunchild Law Tel.: 306.937.6154 eleanore@sunchildlaw.com
Gary Pelletier et al *v Attorney General of Canada* QGB 631/17	Saskatchewan	**Stephen J. Bronstein** Bronstein & Company Tel.: 604.739.7920 sbron@telus.net
Darcy Longman (Hall) *v Attorney General of Canada* QGB 1794 of 2017	Saskatchewan	**Douglas Racine** Aboriginal Law Group Tel.: 306.373.8511 asr@sasktel.net **Benjamin Omoruyi** Aboriginal Law Group Tel.: 306.373.8511 asr@sasktel.net mailto:sbron@telus.net
Lynn Thompson et al *v Her Majesty the Queen in Right of Canada et al* CI 15-01-94427	Manitoba	**Roch Dupont** Merchant Law Group LLP Tel.: 306.359.7777 rdupont@merchantlaw.com
Priscilla Meeches et al *v The Attorney General of Canada* CI 16-01-01540	Manitoba	**Kirk M. Baert** Koskie Minsky LLP Tel.: 416.595.2117 kbaert@kmlaw.ca **Dennis M. Troniak and Jonathan A. Troniak** Troniak Law Office Tel: 204.947.1743 troniaklawoffice@gmail.com

Mary-Ann Ward *v The Attorney General of Canada et al* 500-06-000829-164	Quebec	**Roch Dupont** Merchant Law Group LLP Tel.: 514.842.7776 rdupont@merchantlaw.com
Linda Lou Flewin *v Attorney General of Canada et al* HFX No. 458720	Nova Scotia	**Anthony Tibbs** Merchant Law Group LLP Tel.: 306.359.7777 atibbs@merchantlaw.com
Jessica Riddle *v Her Majesty the Queen* T-2212-16	Federal Court (NWT)	**Steve Roxborough** Merchant Law Group LLP Tel.: 604.609.7777 sroxborough@merchantlaw.com

THIS IS EXHIBIT "80" 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

THIS IS EXHIBIT "A"
REFERRED TO IN THE AFFIDAVIT OF Jessica Riddle
SWORN THE 9 DAY OF March 2017
A Commissioner for taking Affidavits within ~~British Columbia~~ Northwest Territories

Judith Anne Murdock
Notary Public in & for
the Northwest Territories
My commission expires [illegible]

Court File No. T-2212-16

FEDERAL COURT

PROPOSED CLASS PROCEEDING

Between:

[redacted]

JESSICA RIDDLE

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

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 solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: 20 DEC 2016

Issued By: MUN Y. CHAN
REGISTRY OFFICER
AGENT DU GREFFE
(Registry Officer)

Address of Local Office:
Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

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Centre Pacific, 3ième étage
701, rue Georgia ouest
C.P. 10065
Vancouver (Colombie-Britannique)
V7Y 1B6

TO: **HER MAJESTY THE QUEEN**
Served by virtue of filing in accordance with Rule 133(1)

CLAIM

1. The Plaintiff claims, on behalf of herself and as a representative of the class defined *infra*:

(1) an Order certifying this action as a class action and appointing the Plaintiff as representative plaintiff;

(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 Rule 334.28(1).

(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) cultural 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) prejudgment and postjudgment interest on the foregoing sums;

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

THE PARTIES

2. The Plaintiff, Jessica Riddle, is an individual who now resides in Lutselk'e, Northwest Territories.

3. The Defendant, Her Majesty the Queen, on behalf of the Government of Canada and the Crown ("**Canada**"), is liable and vicariously liable for all acts and omissions that occurred as a result of the Adopt Indian Métis ("**AIM**") program as described herein, including all acts and omissions that occurred or were caused by the Government of Yukon and the Government of Northwest Territories ("**Territorial Governments**"), including, but not limited to, cultural malfeasance, physical abuse, sexual assault, battery, neglect, and misfeasance of public officials, acting on behalf of the Crown, with Canada being liable pursuant to *inter alia*, section 36 of *The Crown Liability and Proceedings Act*, RSC 1985, c C-50.

4. More specifically, while the Territorial Governments and agents and servants thereof were in part responsible for the operation, administration, and delivery of the AIM program, the Territorial Governments were at all relevant times constitutionally a part of the federal Crown and no separate and distinct legal entity exists against which this claim may be asserted.

Proposed Class

5. The Plaintiff, and Class Members, are either "Indians" as defined by the *Indian Act*, R.S.C. 1985, c. I-5 [*Indian Act*], or "Aboriginal" persons as defined by the *Constitution Act*, 1982, s. 35 being Schedule B to the *Canada Act* 1982 (U.K.), 1982 c. 11.

6. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class including any Indian or Aboriginal person, including but not limited to First Nations, Inuit, Métis, and non-status Indians, who was as a child resident in the Northwest Territories, the Yukon Territory, or the geographic area now constituting Nunavut, and placed in the "Adopt Indian Metis" program or any similar program(s) promoted or operated by the Defendant (the "**Class**" or "**Class Members**").\

A. Plaintiff's Harms

(a) Abduction

7. The Plaintiff was born on September 26th, 1983 in Yellowknife, Northwest Territories.

8. Immediately after her birth, she was taken by the Defendant as part of the Adopt Indian Metis program, being taken from her parents in Yellowknife, Northwest Territories.

9. The Plaintiff was adopted out to a family in Hay River, who shortly thereafter moved to the Bridgewater, Nova Scotia area where the Plaintiff grew up and lived until around the age of 23.

(b) AIM

10. The Plaintiff and members of the class were adopted out to non-Aboriginal families as a part of a program in Canada and the territories to 'remove the Indian from the Indian' or make Aboriginal children behave like white people. They were to be reprogrammed to be 'white adults'.

11. This program was known as the Adopt Indian Métis program, or "AIM" ("AIM").

12. The Defendant advertised on both Canadian and American television channels and through other media for people to adopt an Indian or Métis child. The AIM program ended in the 1990s and has become known within the Aboriginal community as "the 60s Scoop" or "Lost Boys/Lost Girls".

13. The AIM program was a badly misconceived and wrongful initiative that visited profound and permanent psychological harm, and often sexual or physical harm, and other wrongdoing visited upon the Plaintiff and all members of the class.

(c) Injuries

14. The Plaintiff, in common with other members of the Class, suffered mental trauma, psychological harm, cultural and identity loss, leading to a lack of personal self-worth.

15. The Plaintiff could never feel that she belonged with her adoptive parents, or of the community in which she grew up. There were no, or very few, people of Aboriginal or Indian background in her community. The Plaintiff's adoptive parents, and all adoptive parents were a part of the wrongful plan of Canada within.

16. The Plaintiff and other and members of the class did not develop proper relationship and coping skills due to their upbringing and as a result share in common difficulties interacting with other people. The Plaintiff has had difficulties with interpersonal relationships stemming from her lack of trust. Class Members being similarly taken from their Aboriginal roots, did not have any connection with their Aboriginal communities or families, to support them and teach them how to be caring members of a family and society.

17. The Plaintiff requires counseling and psychological support – which services are especially difficult to access in her remote, northern community – as a result of the depression and self-confidence issues she faces as a result of feeling like an "outsider" throughout her childhood.

18. The Plaintiff has also suffered cultural injuries. Amongst other things, the Plaintiff lost her ability to speak her native languages and her aboriginal identity due to the fact that she was taken from her parents and placed with a white family who, ultimately, took her very far from her home.

(d) Reunification

19. At the age of approximately 23 years old, the Plaintiff was reunited with her birth family, including her mother, father, and ten older, biological siblings. Her mother was ill due to cancer and managed to locate the Plaintiff in Nova Scotia where she was living.

20. The Plaintiff moved back to the Northwest Territories and has lived there for approximately the last five years. She has reconnected with her community, but faces the reality that she does not know or speak the native language; does not have the cultural knowledge that she would have

gained had she grown up in the community with her family; and continues to have difficulty building and maintaining interpersonal relationships.

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

21. Beginning in the 1960s, Canada entered into arrangements with various provincial and territorial governments, including *inter alia* the Territorial Governments, delegating Indian child welfare services to local administrative bodies. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. The Territorial Governments provided a variety of child welfare services to Indian and Aboriginal persons and Canada agreed to reimburse the Territorial Governments for each Indian child in care. The transfer payments made by Canada to the Territorial Governments were calculated based on the number of Indian or Aboriginal children for which it had the responsibility of maintenance and supervision.

22. 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.

23. Canada and the Territorial Governments 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 traditional beliefs of all Members of the Class. The removal and assimilation of aboriginal children, and the AIM Program led to the obliteration of the culture, language, and religion of Members of the class. The forced adoption of Aboriginal children into non-Aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to members of the class. All Members of the Class have in common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and programs of Canada and the Territorial Governments which, in the case of Indian Members of the Class, occurred with the boundaries of the territories, with the Territorial Governments acting as the agent and delegate of Canada.

24. At all materials times, the Defendant was 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.

25. The Defendant therefore played a supervisory and oversight role with respect to these programs.

26. The Defendant breached its duty to the Plaintiff and the members of 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*.

27. In particular, the arbitrary and wanton manner in which the Defendant treated the Plaintiff and members of the class, illustrates that the right of the Plaintiff 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*.

28. The Defendant is liable *inter alia* to the Plaintiff and all class members for:

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 off class members from their families;

E. Destroying class members' sense of self worth;

F. Reducing class members' capacities to parent and maintain normal marital and family ties;

G. Permitting the circumstances which resulted in the physical or sexual abuse to which class members were subject;

H. Failing to provide adequate care for class members as children and provide for their needs;

I. Holding class members in foster homes and placing them in adoptive families without the prior consent of their parents;

J. Depersonalizing and demeaning class members including loss of their culture and Aboriginal name;

K. Cutting class members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and

L. Discriminating against him or her on the basis of Aboriginal background.

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

30. The Plaintiff and members of the class were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis. Further, the Plaintiff and other members of the class were not permitted to speak their traditional languages.

31. 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.

32. The Defendant's actions were in contravention of the treaties between the Defendant and the First Nations peoples and in contravention of the United Nations Genocide Convention, particularly Article (2)(3) thereof to which Canada is a signatory. The Plaintiff and other children of First Nation heritages were to be systematically 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 through these sadistic punishment and practices.

33. Through the organized genocide imposed upon them by the Defendant, its programs, and its agents and servants, the Plaintiff and other members of the class had their Indigenous cultures denigrated and taken away from them. Through the combination of sexual, physical, and

psychological abuse members of the class were made to feel meaningless and to believe that their culture and all things "Indian" were worthless.

34. As a result of the acts by the Defendant, the Plaintiff and members of 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 families.

35. 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 Defendant, 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 physical and sexual assaults surrounding circumstances that were or ought to have been within the knowledge of the Defendant and would not have occurred but for the negligence of the Defendant.

36. Other class members suffered similar assaults and harms as those experienced by the Plaintiff, due to the AIM program and similar programs.

37. The Defendant's agents were paid to operate foster homes and the AIM program and similar programs, and the Defendant's agents were paid to coordinate the adoption of aboriginal children.

38. The Defendant was under a positive fiduciary duty to protect the Plaintiff and class members from physical or mental or moral health, and the Defendant knew or ought to have known that the Plaintiff and class members would suffer damages if the Defendant failed to carry out this duty.

39. The Plaintiff and class claim that the Defendant is vicariously liable for the actions and negligence of any Territorial Government, governmental agency, charitable organization or other organization that contracted with the Defendant or to whom the Defendant 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.

40. In the alternative, the Plaintiff and class claim that the cause of the physical and sexual assaults and surrounding circumstances were within the knowledge and control of the Defendant and the physical and sexual assaults would not have occurred but for the negligence of the Defendant.

41. As a result of the physical and sexual assaults and emotional and mental abuse, the Plaintiff and class 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.

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

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

44. The Plaintiff and 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.

45. The Plaintiff and 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.

46. The Plaintiff and class claim that the Defendant conducted itself with brutal and callous disregard and complete lack of care for and the rights of the class. The Plaintiff and class further

claim that the Defendant 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.

47. The Plaintiff and class further claim that they are entitled to aggravated, punitive, and exemplary damages from the Defendant.

48. The Plaintiff and class further claim that as a result of the actions and negligence of the Defendant, members of class has suffered damages and losses which are not yet known to them.

49. The Defendant was under a positive fiduciary duty to protect the Plaintiff and class from injury, physical and mental health and morals, and that the Defendant knew or ought to have known, that the Plaintiff and class would suffer damages if the Defendant failed to carry out its fiduciary duty.

C. Causation

50. The acts, omissions, wrongdoings and breaches of legal duty and obligations of the Defendant have caused or materially contributed to the Plaintiff and class suffering injury, economic loss and damages.

D. Damages

51. The Plaintiff and 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 Defendant.

E. Aggravated, Punitive and Exemplary Damages

52. As a result of the Defendant's deceitful conduct, acts, omissions, wrongdoings and breaches of legal duties and obligations of the Defendant, the Plaintiff and class have suffered injury and economic loss and damages.

53. The Defendant has demonstrated that a cavalier and arbitrary approach towards the rights and welfare of the class and with respect to the obligations of the Defendant towards the class.

54. At all material times, the conduct of the Defendant as set forth above was malicious, deliberate and oppressive towards the Plaintiff and class, and the Defendant conducted itself in a willful, wanton and reckless manner as set forth above.

55. The Defendant'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.

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

F. General

57. The Plaintiff proposes that the trial of this action take place in Vancouver, British Columbia.

December 20th, 2016

STEVE ROXBOROUGH
MERCHANT LAW GROUP LLP
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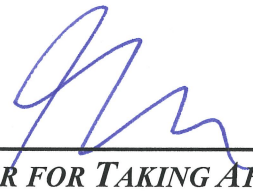
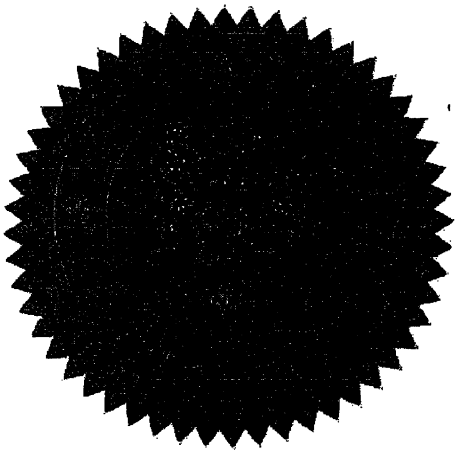
THIS IS EXHIBIT "81" REFERRED TO IN THE
AFFIDAVIT OF DAVID ROSENFELD
SWORN BEFORE ME, THIS 18TH DAY OF APRIL, 2018



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.
GARTH MYERS

Court File No.: T-294-17



FEDERAL COURT

PROPOSED CLASS PROCEEDING

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

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 solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: MAR 0 1 2017

Issued by: Spencer Salvo
(Registry Officer) Registry Officer

Address of local office: 180 Queen Street West, Suite 200, Toronto, Ontario, M5V 3L6 / 180, rue Queen Ouest, bureau 200, Toronto, Ontario, M5V 3L6

TO: The Attorney General of Canada
The Exchange Tower
130 King Street West, Suite 3400, Box 36
Toronto, Ontario
M5X 1K6

CLAIM

1. The Plaintiff claims:

(a) an order certifying this action as a class proceeding 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 $500 million or any such amount that this Honourable Court deems appropriate;

(e) punitive damages of $100 million, or such other sum as this Honourable Court may find appropriate;

(f) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

(g) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;

(h) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and

(i) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

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. This practice was largely dictated throughout Canada, although not exclusively, by certain bilateral agreements executed between Canada and the Provinces and/or Territories, under which, *inter alia*, Children's Aid Societies ("CAS"), or related agencies, scooped Aboriginal children from their homes for foster placement in, and/or adoption with, non-Aboriginal homes. In exchange, Canada reimbursed the Provinces and/or Territories for per diem costs of providing these services for Aboriginal children therein.

5. By virtue of this practice in Canada, 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 Class Period.

THE PARTIES

6. The proposed Representative Plaintiff on behalf of the Class is Wendy Lee White. She was born Pauline Nuna on July 3, 1972 to an Innu mother in North West River, Labrador. She was taken from her birth mother in or around late 1973 or early 1974, placed in foster care with non-Aboriginal parents, and then adopted out to non-Aboriginal parents on or about May 3, 1975.

7. The Plaintiff resides in St. John's, Newfoundland and Labrador 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 Aboriginal persons in Canada, save for Excluded Persons, who were taken and 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. "Excluded Persons" constitute "all Aboriginal persons in Ontario between December 1, 1965 and December 31, 1984 who 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

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

12. 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.

13. 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.

14. 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, 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.

15. 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.

16. 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 any bilateral agreements between Canada and the Provinces and/or Territories.

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

17. The Defendant owes a duty of care to all Class Members. By virtue of, *inter alia*, the various bilateral agreements between Canada and the Provinces and/or Territories, Canada created, planned, established, operated, financed, supervised, controlled and/or regulated the provision of child welfare services throughout Canada to the Aboriginal child Class Members.

18. Canada knew or ought to have known of the impropriety of policies in respect of Aboriginal children under the various bilateral agreements between Canada and the Provinces and/or Territories, 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.

19. 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 child welfare programs to them by virtue of the various bilateral agreements between Canada and the Provinces and/or Territories.

20. 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

21. 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 the Provinces and Territories 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 the Provinces and/or Territories 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 the Provinces and/or Territories 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 Indian Bands, Aboriginal communities, 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.

22. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada provided funding to the Provinces and Territories to ensure that the applicable child welfare legislation would extend to Aboriginal children. As Canada knew, the various bilateral agreements between Canada and the Provinces and/or Territories 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 Canada.

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

24. 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.

25. The provision of funding through the various bilateral agreements between Canada and the Provinces and/or Territories 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 Canada.

THE PLAINTIFF'S EXPERIENCES

26. Wendy Lee White was born on July 3, 1972 in North West River, Labrador. Her birth name was Pauline Nuna. She was born to an Innu mother of the Sheshatshiu Innu First Nation. Her biological father was not in her life.

27. Ms. White spent her first year of life living with her mother and various relatives. At approximately 16 months of age, she was removed from her biological mother's care and placed in a non-Aboriginal foster home outside St. John's, Newfoundland.

28. On or about May 3, 1975, Ms. White was adopted by a non-Aboriginal family. She was given a new name and a birth certificate from Corner Brook, Newfoundland. Only her birthdate remained the same.

29. At about five (5) years of age, Ms. White was told by her adoptive non-Aboriginal mother that she was adopted. Ms. White did not speak about it afterwards and tried to repress this information. Growing up, Ms. White was reminded by classmates in school and persons in the community about her darker skin colour and was ridiculed on many occasions for being adopted. She was made to feel different. She would be asked where she was from but she could not answer because she did not know. She experienced racism and exclusion on account of what she later learned to be her Aboriginal background.

30. Ms. White was not raised in respect of her Aboriginal identity, culture, customs and background in any way. She was not taught about her Aboriginal heritage, culture, or language.

31. Just prior to her nineteenth birthday, Ms. White's adoptive parents told her that her biological family had contacted her adoptive father's extended family looking for her whereabouts. It was only at that time that Ms. White learned about her Aboriginal roots in Labrador in relation to the Sheshatshiu Innu First Nation.

32. Ms. White subsequently met with a post-adoption social worker, where she read documents from her file and learned about her first year of life in her biological mother's care, circumstances surrounding her removal, her months spent in a non-Aboriginal foster home, and her adoption by her non-Aboriginal adoptive family. Shortly afterwards, she spoke with her biological mother on the phone and met her biological mother and siblings for the first time in the Fall of 1997.

33. In 2002, Ms. White completed her Master of Social Work degree from the University of Toronto. She was offered employment with Health Canada in Goose Bay, Newfoundland and Labrador, located very close to the Sheshatshiu Innu First Nation where she had spent her first year of life. She was excited to be working in close proximity with her people in Sheshatshiu and Natuashish.

34. However, her excitement was short-lived as she quickly became emotionally, psychologically, and spiritually overwhelmed. She felt alienated, anxious, hopeless, sad, frustrated, and resentful. She was trying to fit into, and identify with, the Innu culture she was born into but in which she was never raised. She was not able to speak with her people in their language. She was left feeling broken and traumatized. She felt confused and spiritually damaged. She felt as if she did not belong anywhere.

35. According to her post-adoptions records, Ms. White was able to speak a few Innu-aimun words at the time of her removal from her biological mother's care. She has lost these language skills since no one continued speaking to her in her first language while she was being raised.

36. To this day, Ms. White feels she has lost contacts and ties with her biological Aboriginal family, community, language, and culture. She was deprived of her Aboriginal identity, culture, customs and background, as well as her status as an Aboriginal and any related benefits derived therefrom. She was deprived of her family relationships.

37. Ms. White's past life experiences have significantly impacted her present interpersonal relationships. She has difficulty opening up to others, including friends, adoptive parents, her spouse, and even her own children. Having a fragmented sense of self has led her to develop relationships that can be best described as superficial in many instances. Feeling unlovable and having a confused identity has contributed to low self-esteem, low self-worth, and self-loathing.

38. Ms. White continues to struggle with her adoption and feels caught between two worlds. She feels difficulty engaging in the culture in which she was raised and difficulty engaging in the Innu culture into which she was born. She feels alone and stuck. She feels psychologically damaged and spiritually broken. She wants to heal and begin repairing her spirit so that she can move forward and live at peace.

DAMAGES SUFFERED BY CLASS MEMBERS

39. 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 or related 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

40. 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 various bilateral agreements between Canada and the Provinces and/or Territories and proceeded to operate thereunder in an irresponsible and indifferent fashion and permitted the perpetration of grievous harm to the Class Members.

41. 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.

42. 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.

43. 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

44. For decades, on account of the Sixties Scoop in Canada, 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.

45. The Plaintiff pleads and relies upon the:

(a) *Federal Courts Rules*, SOR/98-106;

(b) *Federal Courts Act*, R.S.C., 1985, c. F-7;

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

(d) Common law.

46. Where the actions of Canada and its employees, agents and servants took place in Québec, they constitute:

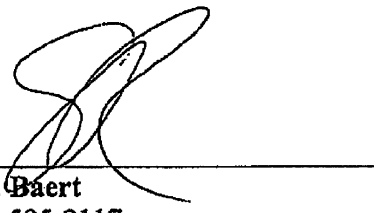
(a) fault giving rise to the extra-contractual liability of the Defendant, its employees, servants and agents to the Plaintiff and Class pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1457; and

(b) fault giving rise to the extra-contractual liability of the Defendant in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 3, and the *Interpretation Act*, R.S.C. 1985, c. 1-16, s. 8.1; thereby

(c) giving rise to the liability of the Defendant to pay damages, including punitive damages to the Plaintiff and Class members pursuant to the *Civil Code of Québec*, Arts. 1611-1621.

47. The Plaintiff proposes that this action be tried at Toronto, Ontario.

DATED at Toronto, Ontario, this 1st day of March, 2017.



Per: **Kirk M. Baert**
Tel: 416-595-2117
Fax: 416-204-2889

Celeste Poltak
Tel: 416-595-2701
Fax: 416-204-2909

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

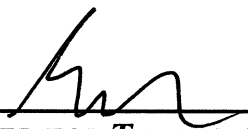
Lawyers for the Plaintiff

I HEREBY CERTIFY that the above document is a true copy of the original issued by this Court on the MAR 0 1 2017

day of _____ A.D. 20___

Dated this ____ day of MAR 0 1 2017 20___

THIS IS EXHIBIT "82" 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

Federal Court  Cour fédérale

Date: 20170317

Docket: T-294-17

Ottawa, Ontario, March 17, 2017

PRESENT: The Chief Justice

PROPOSED CLASS PROCEEDING

BETWEEN:

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER

IT IS ORDERED pursuant to Rule 383 that Justice Michael D. Manson is assigned as Case Management Judge in this matter.

"Paul S. Crampton"
Chief Justice

THIS IS EXHIBIT "83" 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

Federal Court | Cour fédérale

Ottawa, ON
K1A 0H9

March 20, 2017

BY E-MAIL ONLY

For the Plaintiff

Mr. Scott Robinson
srobinson@kmlaw.ca

Koskie Minsky LLP

For the Defendant

Ms. Catherine Moore
catherine.moore@justice.gc.ca

Department of Justice Canada

Dear Counsel:

RE: Wendy Lee White and the Attorney General of Canada
Court File No: T-294-17

This will confirm the Direction of the Honourable Mr. Justice Manson, on March 20, 2017:

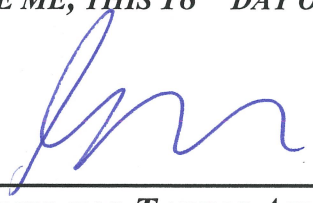
"A Case Management Conference via teleconference will take place on Tuesday April 18, 2017 at 1:00 p.m. EST. Counsel may remain in their respective offices."

Yours truly,

S. D

Sherley Désir
Registry Officer

THIS IS EXHIBIT "84" 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 No.: T-421-17

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

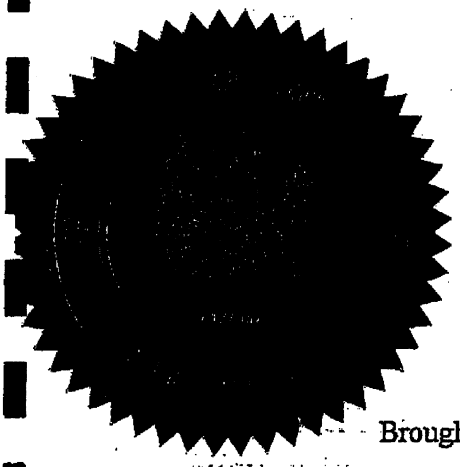
CATRIONA CHARLIE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant



Brought pursuant to the *Federal Courts Rules*, SOR/98-106

STATEMENT OF CLAIM

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 solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you

Date: MAR 2 2 2017

Issued by: _____ JULIA ORCHARD
(Registry Officer) REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: Her Majesty the Queen
Office of the Deputy Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900 - 840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Issued by: _____
(Registry Officer)

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver
British Columbia

Relief Sought

1. The Plaintiff, Catriona Charlie, claims on her own behalf and on behalf of a class of similarly situated persons resident throughout Canada:

a. an order certifying this action as a class proceeding and appointing Catriona Charlie as representative plaintiff under the *Federal Courts Rules*, SOR/98-106;

b. general damages plus damages equal to the costs of administering the plan of distribution;

c. special damages in an amount to be determined;

d. exemplary and punitive damages;

e. disgorgement by the Defendant of its profits;

f. pre-judgment and post-judgment interest;

g. costs; and

h. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. Catriona Charlie and class members are Indians as defined by the *Indian Act*, RSC 1985, c I-5 and aboriginals within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

3. This action concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-aboriginal foster or adoptive homes (the Sixties Scoop).

4. The Defendant, Her Majesty the Queen – who had a duty to protect and preserve Indian children's culture and identity – delegated Indian child welfare services to the provinces and territories. While the dates during which the Sixties Scoop occurred in each province and territory varied, the phenomenon commenced in the late 1950s and continued until the mid-1990s.

5. The Defendant's actions in delegating child welfare services to the provinces and territories, and in failing to take steps to prevent Indian children from losing their aboriginal identity and the opportunity to exercise their aboriginal and treaty rights, were in breach of its fiduciary and common law duties and caused ongoing harm to Indian children in care.

6. Indian children who were victims of the Sixties Scoop lost their cultural identity. They were deprived of their aboriginal and treaty rights and were deprived of monetary benefits to which they were entitled pursuant to the *Indian Act*, RSC 1985, c I-5 and other legislation.

Parties and Class

7. Catriona Charlie is a descendant of the Namgis people and a member of the Namgis First Nation, which is one of the Kwakwaka'wakw Nations.

8. Ms. Charlie's birth mother, Francis Provost, lived on reserve land in Alert Bay. She moved to Campbell River when she learned that she was pregnant with Ms. Charlie. Ms. Charlie was born on July 26, 1968.

9. The Namgis people from whom Ms. Charlie has descended have exercised laws, customs and traditions integral to the distinctive society of the Namgis people prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Namgis people have sustained their people, communities and distinctive culture by exercising Namgis laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

10. The Plaintiff and class members' aboriginal and treaty rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

11. The Plaintiff brings this action on her own behalf and on behalf of a proposed class of similarly situated persons in Canada, to be further defined in the Plaintiff's application for class certification, except for Excluded Persons.

12. Excluded Persons are Indian children who were taken from their homes on reserves in Ontario between December 1, 1965 and December 31, 1984 who 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.

13. Her Majesty the Queen was, at all relevant times, responsible for the promotion of the health, safety and wellbeing of Indians in Canada, and for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. The Defendant has exclusive jurisdiction in respect of aboriginal persons pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria,

c 3 (UK) and the common law.

Delegation of Indian Child Welfare Services

14. The Defendant delegated Indian child welfare services to the provinces and territories through bilateral agreements entered into between the Defendant and each province and territory (each a Delegation Agreement, collectively the Delegation Agreements).

15. It was an express or implied term of each Delegation Agreement that provincial/territorial Children's Aid Societies or related agencies (the Agencies) would provide child welfare services to Indian children and communities and that the Defendant would reimburse the Agencies on the basis of a daily charge for family services and the maintenance and supervision of each Indian child in care.

16. The effect of the Delegation Agreements was that authorities other than the Defendant became directly responsible for the delivery of child welfare services to Indian children and communities in Canada.

17. In extending provincial and territorial child welfare services to Indian children in Canada, the Defendant failed to consult with Indian Bands in each province and territory.

18. As a consequence of the Defendant's actions, both in entering into the Delegation Agreements and thereafter, Indian children were apprehended by the Agencies and removed from their aboriginal family and community and placed in the care of non-Indian and non-aboriginal foster or adoptive homes where they were systematically denied the opportunity to preserve their aboriginal identity and exercise their aboriginal rights and their treaty rights.

19. The Defendant should have insisted on a term or condition in each Delegation Agreement that required the Agencies to continue to protect and preserve apprehended and adopted children's Indian and aboriginal culture, identity and rights by ensuring whenever possible that Indian children in need of protection were placed in aboriginal homes. The importance of preserving an Indian child's cultural identity should have been considered in determining the child's best interests.

20. The Defendant's actions, both in entering into the Delegation Agreements and thereafter, authorized a child welfare program that systemically eradicated the culture, society, language, customs, traditions, practices and spirituality of Indian children in each province and territory.

The Representative Plaintiff

21. When Ms. Charlie was born, her birth mother – just a teenager – consented to putting her up for adoption. Her grandparents, however, refused to sign consents for her adoption.

22. The province of British Columbia (BC Child Welfare) apprehended Ms. Charlie.

23. BC Child Welfare was initially unable to find an adoptive home for Ms. Charlie, so she spent the first 16 months of her life in a non-aboriginal foster home.

24. In November of 1969, Ms. Charlie was provisionally adopted. The adoption was finalized in February of 1972. Ms. Charlie's adoptive parents and four sisters were non-aboriginal.

25. Ms. Charlie's adoptive mother rejected her because she was of a different race and culture.

26. In the spring of 1978, Ms. Charlie's adoptive parents separated, and her adoptive father was left to care for Ms. Charlie and her four adoptive sisters.

27. When Ms. Charlie was approximately 10 years old, she moved with her adoptive father and sisters to Edinburgh, Scotland. While in Scotland, Ms. Charlie was completely isolated from her Aboriginal-Canadian community. She was thousands of kilometers from her Namgis home and had no access to her Namgis community, culture and heritage. Nor did she even have access to her Aboriginal-Canadian community, culture and heritage generally.

28. While living in foster care and with her adoptive family throughout her childhood and teenage years, Ms. Charlie had no reasonable opportunity to maintain contact with her Namgis family and community. She had no reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage and culture of her Namgis community.

29. In addition, she had no ability to fulfill Namgis cultural duties including, but not limited to, learning and practicing:

a. the Namgis language;

b. traditional Namgis parenting skills;

c. Namgis skills for preparing traditional foods; and

d. Namgis spiritual beliefs.

30. Ms. Charlie had no reasonable opportunity to exercise her aboriginal rights as a Namgis.

31. Ms. Charlie entered adulthood with a significantly impaired knowledge and experience of what it meant to be Namgis.

32. On June 24, 1994, Ms. Charlie moved from Scotland to the reserve land of her Namgis people in Alert Bay. She had hoped to connect with her birth family and learn the Namgis language, religion and culture.

33. Unfortunately, Ms. Charlie's birthmother had died in 1978. While Ms. Charlie was able to meet her stepfather and half-brother, she generally felt awkward, alienated and alone in Alert Bay.

34. Ms. Charlie left Alert Bay after 2 years.

35. Ms. Charlie was unable to bring an action in respect of her injury, damage or loss as a consequence of her profound concern for the harmful impact that litigation would have on the wellbeing of her Namgis family and community and on her adoptive father and sisters. Ms. Charlie's interests and circumstances were so pressing that she could not reasonably consider commencing this action until 2016.

36. Further, and in the alternative, the Defendant has constitutional obligations and owes fiduciary and common law duties to act in the best interests of Indian children who were particularly vulnerable. In breach of those duties, the Defendant wilfully concealed the material facts relating to the nexus between the Plaintiff's injuries, damages or losses and the wrongful conduct of the Defendant. By failing to inform the Plaintiff of these material facts the Plaintiff was prevented from bringing an action in respect of her injuries, damages or losses. Only in 2016 did Ms. Charlie learn of the existence of the duties owed to her by the Defendant and that the breach of those duties caused her to suffer injury, damage or loss.

Ongoing Loss and Damage

37. The Plaintiff and class members are aboriginal persons who, as children, enjoyed or were entitled to enjoy:

e. Aboriginal rights and treaty rights, including the right to:

i. benefit from aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;

ii. retain and practice their culture, religion, language and traditions; and

iii. fully learn their culture, religion, language and traditions from their families and communities.

38. Through the fault and negligence of the Defendant, as set out above, the Plaintiff and class members were and are subjected to ongoing loss or damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiff and class members include:

f. loss of opportunity to exercise aboriginal rights;
g. loss of opportunity to exercise treaty rights;
h. psychological injury, including depression, anxiety, emotional dysfunction and suicidal ideation;
i. addiction, including addiction to alcohol, prescription and non-prescription drugs; and
j. loss of opportunity to benefit from unclaimed estates to which they were entitled.

Duties of the Defendant

Generally

39. The Defendant had a duty to protect and preserve Indian children's culture and identity both when entering into the Delegation Agreements and after the children were placed in non-aboriginal homes. Indian children and their families were and are entitled to a special duty of care, good faith, honesty and loyalty from the Defendant.

40. At all relevant times the Defendant was responsible for:

a. the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes as well as any other statutes relating to Indians and all Regulations promulgated under these Acts and their predecessors;
b. the promotion of the health, safety and wellbeing of Indians in Canada;
c. the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;

d. decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;

e. the financing of Indian child welfare services in the provinces and territories, including the incentivised payments to the provinces and territories for family services and the maintenance and supervision of each Indian child in care;

f. preserving and not interfering with the aboriginal rights of Indian children in care, including the right to:

   i. retain their status as Indians;

   ii. benefit from aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;

   iii. retain and practice their culture, religion, language and traditions;

   iv. fully learn their culture, religion, language and traditions from their families and communities; and

   v. obtain monetary benefits under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;

g. preserving and not interfering with the treaty rights of Indian children in care; and

h. preserving the estates of reserve resident Indians, including carrying out the terms of wills of deceased reserve resident Indians and administering the property of reserve resident Indians who die intestate.

Fiduciary Duty

41. The Defendant stands in a fiduciary relationship with Canada's aboriginal peoples.

42. The Defendant has an ongoing obligation to consult with aboriginal peoples on matters relevant to aboriginal peoples' interests.

43. At all material times, the Plaintiff and class members were particularly vulnerable and – being children taken away from their families, homes and communities – were in need of protection.

44. At all material times, the Defendant had undertaken to act in the best interests of Indian

children.

45. Aboriginal identity and culture were legal or substantial practical interests of Indian children. The Defendant was required to take steps to safeguard, monitor, preserve, secure and protect these interests.

46. At all material times, the Defendant assumed such a degree of discretionary control over the protection and preservation of the identity and culture of Indian children that it amounted to a direct administration of those interests.

47. The Defendant's fiduciary duty owed to Indian children was, at all material times, a non-delegable duty. This duty continued despite the fact that the Defendant entered into the Delegation Agreements with the provinces and territories.

Common Law Duty

48. At all material times, the Defendant owed a common law duty of care to take steps to prevent aboriginal children who were placed in the care of non-aboriginal foster or adoptive parents from losing their aboriginal identity.

49. In one or more of the Delegation Agreements, the Defendant undertook the obligation to consult with Indian Bands regarding the provision by the Agencies of child welfare services to Indian children. The Indian Bands were third-party beneficiaries under the Delegation Agreements. A special relationship – to which the law attached a duty of care – existed as between the Defendant and the Indian Bands. This special relationship, by extension, existed as between the Defendant and the Indian children who were apprehended during the Sixties Scoop, namely the Plaintiff and class members.

50. In the alternative, a common law duty of care arose by virtue of the relationship of proximity that existed between the Defendant and Indian children who were apprehended during the Sixties Scoop.

51. There is a long-standing historical and constitutional relationship between the Defendant and aboriginal peoples that has evolved into a unique and important relationship. Given such close and trust-like proximity, it was forseeable that a failure on the Defendant's part to take reasonable care might cause loss or harm to aboriginal peoples, including their children.

52. The Delegation Agreements evidence that the Defendant assumed an obligation to

provide child welfare programs to Indian children. The Defendant established, supervised, financed, regulated and controlled the provision of child welfare services to Indian children. The Defendant knew or ought to have known that failure on its part to take reasonable care to ensure that the child welfare services provided to Indian children – who were particularly vulnerable – were executed in a manner that took into account the protection and preservation of their aboriginal identity and culture, would cause harm to the Indian children.

Breach of the Defendant's Duties

53. The Defendant breached its fiduciary and common law duties by, *inter alia*:

a. failing to take reasonable steps to prevent the Plaintiff and class members from being placed in the care of non-aboriginal foster and adoptive parents;

b. supporting or acquiescing in the apprehension and removal of the Plaintiff and class members from their aboriginal family and community and their placement in the care of non-aboriginal foster and adoptive parents;

c. failing to take reasonable steps to prevent the Plaintiff and class members from losing their aboriginal identity and culture;

d. failing to ensure that adequate services were provided to the Plaintiff and class members to enable them to exercise their aboriginal culture, language, religion, customs, rights, benefits and traditions during the period of placement in non-aboriginal homes;

e. failing to advise the Plaintiff and class members of their status as Indians, including failing to provide essential information about the aboriginal identity of the Plaintiff and class members to their non-aboriginal foster and adoptive parents;

f. supporting or acquiescing in denying the Plaintiff and class members a reasonable opportunity to exercise their rights as Indians, including aboriginal rights and treaty rights;

g. failing to ameliorate the harmful effects of the Delegation Agreements and the delegation of Indian child welfare services to the provinces and territories;

h. failing to provide information, to their non-aboriginal foster and adoptive parents, about the financial benefits to which the Plaintiff and class members were entitled;

i. failing to provide the financial benefits to which the Plaintiff and class members were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;

j. failing to assure that aboriginal children were made aware of their treaty and aboriginal rights;

k. failing to consult with Indian Bands and other aboriginal stakeholders about the delegation of child welfare services to the provinces and territories, the provision of funding to the provinces and territories for that purpose, and the policies and practices that would be adopted by the Agencies with respect to the removal of aboriginal children from their homes and their subsequent placement in non-aboriginal foster and adoptive homes and the related and/or anticipated consequences of those practices; and

l. actively promoting a policy of cultural assimilation.

54. The Defendant is also liable for the negligent acts and omissions of its employees, servants and agents.

55. The Defendant's conduct was an improper and unlawful delegation of the Defendant's constitutional obligations arising under the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 91(24) and the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

Damages

56. As a consequence of the Defendant's breaches of its fiduciary and common law duties, as set out above, the Plaintiff and class members were and are subjected to ongoing loss or damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiff and class members

include:

a. loss of their aboriginal culture and identity;

b. loss of their aboriginal customs, language, religion, spirituality and traditions;

c. loss of opportunity to exercise their aboriginal rights;

d. loss of opportunity to exercise their treaty rights;

e. loss of their status as Indians;

f. isolation from their families, communities and reserve land;

g. alienation and the inability to cope in social situations;

h. psychological injury, including depression, anxiety, emotional dysfunction, suicidal ideation and loss of self-worth;

i. addiction, including addiction to alcohol, prescription and non-prescription drugs;

j. loss of opportunity to benefit from the financial and other benefits to which they were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;

k. loss of opportunity to benefit from unclaimed estates to which they were entitled; and

l. the cost of required psychological, psychiatric and medical treatment.

Punitive Damages

57. A punitive damage award in this case is necessary to express society's condemnation of the conduct of the Defendant, and to achieve the goals of both general and specific deterrence.

58. The Defendant had detailed knowledge of the breach of aboriginal and treaty rights and the widespread psychological, emotional and cultural abuses of the Plaintiff and class members which were occurring as a result of the Defendant's delegation of Indian child welfare services to the provinces and territories and the Defendant's conduct in failing to ensure that the provision of those services were appropriate and carried out in a manner that reasonably protected the aboriginal identity and essential connection of these children to their aboriginal heritage. Despite this knowledge, the Defendant continued to delegate Indian child welfare services to the provinces and territories, and thus continued to permit the perpetration of grievous harm to the Plaintiff and class members. The Defendant deliberately planned the eradication of the language, religion and culture of the Plaintiff and class members.

59. The conduct of the Defendant was deliberate, lasted for decades and represented a marked departure from ordinary standards of decent behaviour.

60. The Defendant's actions were deliberate, malicious, willful, reprehensible, reckless, arrogant, high-handed, wanton, vindictive and abusive and showed a callous disregard for the Plaintiff's and class members' rights.

61. Compensatory damages are insufficient in this case. The conduct of the Defendant merits punishment and warrants a claim for punitive damages.

Disgorgement

62. Throughout the Sixties Scoop, the Plaintiff and class members were deprived of the financial benefits to which they were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies. The Defendant wrongfully retained these monies and the value of these benefits.

63. The Plaintiff and class members received differential treatment as compared to other aboriginal persons in Canada who were not apprehended during the Sixties Scoop.

64. The Defendant should be required to disgorge the profits and other financial benefits that it inequitably acquired by virtue of its wrongful acts and omissions.

Quebec Class Members

65. Where the acts and omissions of the Defendant and its agents and servants took place in Quebec, they constitute fault giving rise to extra-contractual liability pursuant to the *Civil Code of* Quebec, CQLR c C-1991, c 64. The Defendant's acts and omissions also constitute fault giving rise to extra-contractual civil liability pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Interpretation Act*, RSC 1985, c 1-21.

66. The Defendant is liable to pay damages - including punitive damages - to the Plaintiff and Class members pursuant to the *Civil Code of Quebec*, CQLR c C-1991, c 64.

Legislation

67. The Plaintiff and class members plead and rely upon, *inter alia*:

a. *Civil Code of Quebec*, CQLR c C-1991, c 64
b. Common law

c. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK)
d. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982 c 11
e. *Crown Liability and Proceedings Act*, RSC 1985, c C-50
f. *Federal Courts Act*, RSC, 1985, c F-7
g. *Federal Courts Rules*, SOR/98-106
h. *Indian Act*, RSC 1952, c 149
i. *Indian Act*, RSC 1985, c I-5
j. *Indian Estates Regulations*, SOR/55-285
k. *Interpretation Act*, RSC 1985, c 1-21

Place of Trial

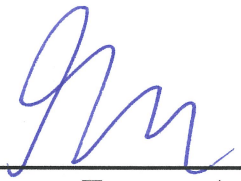
The Plaintiff proposes that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: March 22, 2017

Lawyers for the Plaintiff

David A. Klein
Angela Bespflug
Klein Lawyers LLP
400 – 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Fax: 604-874-7180

THIS IS EXHIBIT "85" 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: Dunn, Amanda <Amanda.Dunn@cas-satj.gc.ca>
Sent: March-27-17 5:25 PM
To: 'genevieve.chabot@justice.gc.ca'; 'andrew.fox@justice.gc.ca'; 'sroxborough@merchantlaw.com'; Scott Robinson; 'catharine.moore@justice.gc.ca'; 'dklein@callkleinlawyers.com'
Cc: Craigie, Kathy
Subject: Federal Court Proposed Class Actions: T-2212-16, T-297-17, T-421-17

Follow Up Flag: Follow up
Flag Status: Completed

Dear Counsel,

On this date, the Court (Manson, J) issued the following direction on the following three files:

T-2216-16 Jessica Riddle v. HMTQ
T-294-17 Wendy Lee White v. HMTQ
T-421-17 Catriona Charlie v. HMTQ

"Further to the Case Management Conference held on Friday March 24th, 2017 on file T-2212-16, counsel for both the Plaintiff and the Defendant are directed to consult with the counsel on file T-294-17 Wendy Lee White v. AGC, and file T-421-17 Catriona Charlie v. HMTQ, and to work towards an agreed schedule for moving forward on the Proposed Class Actions. If the parties cannot reach an agreement, they are each to provide a status report to the Court in writing, on or before April 13th, 2017.

A Case Management Conference will be held on Friday April 21st, 2017, at 2pm PST for all three files (T-2212-16, T-294-17, and T-421-17) to discuss the possibilities of consolidation, proposed schedules, and carriage of the files.

In light of the above, the scheduled case management conference for Tuesday April 18th 2017 on file T-294-17 is adjourned."

Please respond to confirm receipt.

Many thanks-

Amanda Dunn
Registry Officer, Vancouver Local Office
Courts Administration Service
604-666-6269

THIS IS EXHIBIT "86" 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

Sue Mineiro

From: Dunn, Amanda <Amanda.Dunn@cas-satj.gc.ca>
Sent: April-24-17 12:47 PM
To: kbaert@kmlaw.ca; Scott Robinson; Celeste Poltak; dklein@callkleinlawyers.com; Angela Bespflug; tmerchant@merchantlaw.com; sroxborough@merchantlaw.com; Henderson, Travis; Brucker, Barney; Fox, Andrew; Moore, Catharine; 'Moores, James'
Cc: Craigie, Kathy
Subject: T-2212-16/T-294-17/T-421-17 Directions of the Court 24-APR-2017

Follow Up Flag: Follow up
Flag Status: Completed

Dear counsel-

Further to the CMCs held on 21-APR-2017, please see the Court's (Manson, J) directions:

"Further to the CMC held on Friday April 21st, 2017 on files T-294-17, T-421-17, and T-2212-16, the parties are directed to report to the Court, on or before April 28th, 2017 on whether they wish to schedule a Dispute Resolution Conference.

Counsel for the Plaintiff Wendy White will draft an Order, in consultation with the other parties, fixing the serving and filing of the Notice of Motion for Carriage of the Proposed Class Action, and service of Affidavit evidence, to May 26th 2017. The responding parties will have until June 20th 2017 to serve their responding affidavits. The parties will then requisition a CMC with 10 days of the responding affidavits being served. This Consent Draft Order is to submitted by counsel for the Plaintiff Wendy White on or before April 28th, 2017.

Counsel for the Defendant will draft an Order, in consultation with the other parties, staying the filing of the Defence and subsequent steps on these Actions, pending the resolution of the carriage Motion or such further Order of this Court. This Consent Draft Order is to be submitted by counsel for the Defendants on or before April 28th, 2017. "

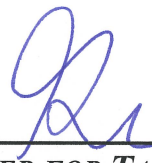
Please contact me if you have any questions or concerns.

Please acknowledge receipt of these directions by return email.

Many thanks-

Amanda Dunn
Registry Officer, Vancouver Local Office
Courts Administration Service
604-666-6269

THIS IS EXHIBIT "87" 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, Saskatchewan
S4P 4H8

E.F.A Merchant Q.C.
lcovill@merchantlaw.com
(306) 539-7777

March 22, 2017

Federal Court
Vancouver Local Office

BY EMAIL. Amanda.Dunn@cas-satj.gc.ca

Attention: Amanda Dunn, Registry Officer

Dear Ms. Dunn:

Re: T-294-17 - *White v. Attorney General of Canada*
T-421-17 - *Charlie v. Her Majesty the Queen*
T -2212-16 - *Jessica Riddle v. Her Majesty the Queen*
Our File 7700 0617 - Adopt Indian Métis

Please draw this letter to the attention of Mr. Justice Mason.

It was not my understanding that counsel were to write a lengthy letter of argument, but rather only to indicate whether they would participate in judicial mediation. Our client and Merchant Law Group LLP would participate in judicial mediation. We assume the Court does not want us to answer the carriage arguments that were submitted.

Yours truly,

MERCHANT LAW GROUP LLP

Per:

E.F. ANTHONY MERCHANT, Q.C.

EFAM*lc

cc. srobinson@mklaw.ca; dklein@callkleinlawyers.com; abespflug@callkleinlawyers.com; Travis.Henderson@justice.gc.ca; Barney.Brucker@justice.gc.ca; Andrew.Fox@justice.gc.ca; Catharine.Moore@justice.gc.ca; James.Moores@justice.gc.ca; Kathy.Craigie@cas-satj.gc.ca; kmbaert@kmlaw.ca; cpoltak@kmlaw.ca; smineiro@kmlaw.ca; lseto@kmlaw.ca; sroxborough@merchantlaw.com

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THIS IS EXHIBIT "88" 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 27, 2017

Kirk M. Baert *
Direct Dial:416-595-2117
Direct Fax:416-204-2889
kmbaert@kmlaw.ca

BY EMAIL (Amanda.Dunn@cas-satj.gc.ca)

The Honourable Justice Michael D. Manson
c/o Amanda Dunn (Registry Officer, Vancouver Local Office)
Federal Court of Canada, Ottawa, Ontario, K1A 0H9

Dear Justice Manson:

Re: Reporting letter regarding position and issues on dispute resolution

White v. Attorney General of Canada
Court File No. T-294-17
Our File No. 170499

Riddle v. HMQ
Court File No. T-2216-16

Charlie v. HMQ
Court File No. T-421-17

Counsel for the *White* plaintiff writes with respect to Your Honour's request at the case conference on April 21, 2017, and in the direction dated April 24, 2017, for a detailed reporting letter setting out our position, prospects, and issues relating to dispute resolution in these cases.

In our view, it is important to distinguish between the notion of *settling carriage* with the notion of *settling this litigation on a national scale as a whole*. Your Honour is aware of our position on the former. With respect to the latter issue, in order to provide the *White* plaintiff's position and related issues, a comprehensive discussion of the case histories of the various "Sixties Scoop" cases across the country and the conduct of proposed class counsel therein, is necessary and provides context to the *White* plaintiff's position at this time.

Carriage

In short, Koskie Minsky LLP, as counsel for the *White* plaintiff, seeks to reiterate the necessity of a carriage motion with respect to the above three (3) class proceedings in the Federal Court. In our view, there is no prospect for settling the *question of carriage*. There is no possibility for consultation, agreement, or consolidation between the plaintiffs in these actions. This position is informed by the discussion set out in the section below in this letter.

The Court is faced with three (3) proposed class proceedings with overlapping subject matters, and it is on this basis that the Court must determine the question of carriage. No party is presumed to have carriage of the Federal Court action at this time. In effect, all parties will be "moving" for carriage *per se*, and the Court will then have to apply the requisite case law test to decide the issue.

Nevertheless, we appreciate Your Honour's comments made at the case conference on April 21, 2017, and those indicated in your direction to the parties dated April 24, 2017, with respect to the scheduling of a carriage motion. We will work towards the May 26, 2017 date for our service and filing of a notice of motion and supporting affidavits for the carriage motion.

General dispute resolution

At the case conference on April 21, 2017, a great deal of discussion occurred with respect to extra-judicial settlement of the "Sixties Scoop" litigation by Canada. While this issue was not and should not have been before this Court at that time, in view of counsel for the *White* plaintiff, our position on this issue was considerably misrepresented by counsel for the plaintiffs in the *Riddle* and *Charlie* cases and deserves clarification.

Koskie Minsky LLP wishes to reiterate its utmost support for a pan-Canadian settlement of the "Sixties Scoop" litigation with Canada on a national basis. Counsel for Canada is well aware of this intention, as is counsel for the plaintiffs in the *Riddle* and *Charlie* cases. The fact is such discussions are ongoing. Indeed, the parties met for preliminary prospective settlement discussions in December 2016.

However, and significantly, counsel for the *White* plaintiff takes considerable issue with counsel for the *Riddle* plaintiff, the Merchant Law Group ("MLG"), and counsel for the *Charlie* plaintiff, Klein Lawyers, being permitted to represent class members in this litigation, due to years of wasted time and resources and inaction in their various provincially-filed "Sixties Scoop" cases throughout Canada. This has proved to be a major impediment to dispute resolution.

As courts have stated, "a party proposing to represent a class has an obligation to move the proceeding forward with reasonable dispatch".[1] It is well-settled that delay equates to prejudice when a vulnerable and rapidly aging class is at issue, such as in these cases.[2] Delay is such a critical issue that some courts have found that unreasonable delay in prosecuting the claim was itself alone sufficient to determine carriage, without consideration of the typical carriage factors at all.[3] Indeed, courts have found that when no steps are taken by plaintiff's counsel in a class action for years at a time, a transfer of carriage is possible when, *inter alia*, the delay is unreasonable by current class action litigation standards, leading to prejudice or harm to the putative class members, and the explanation for the delay is inadequate.[4]

Ultimately, "[a]ccess to justice means access to timely justice".[5] Indeed, this Court "must remain focused on whether evidence of past misconduct, or the failure to expeditiously or successfully pursue certain claims, raises questions as to the ability of the lawyer or firm to pursue the action in the best interests of the class."[6] The penultimate purpose behind the "extent of case

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[1] *Turon v. Abbot Laboratories Ltd.*, 2011 ONSC 4343 at para. 18 [emphasis added] (Strathy J., now Chief Justice of Ontario).

[2] This was expressly recognized in respect of residential school survivors in *Baxter v. Canada (Attorney General)*, [2005] O.J. No. 2165 (S.C.) at para. 13 (Winkler J., Chief Justice of Ontario at the time). See also similar comments concerning residential school survivors in *Anderson v. Canada (Attorney General)*, 2014 NLCA 24 at para. 22.

[3] See *Horstman v. Canada*, 2014 SKQB 114 at paras. 36-37.

[4] *Waheed v. Glaxosmithkline Inc.*, 2013 ONSC 5792 at para. 9.

[5] *Wilson v. Servier Canada Inc.*, [2001] O.J. No. 4717 (S.C.) at paras. 22-23 [emphasis added].

[6] *Baumung v. Bayer Inc.*, 2016 SKQB 221 at para. 30.

management and supervision exercised by the court" in a class proceeding is to "ensure that the interests of absent class members are protected".[7]

The delay and prejudice inflicted by MLG and Klein Lawyers was and remains completely contrary to the bests interests of the aging and vulnerable class members and these firms' duties as proposed class counsel. No court should ever countenance such misconduct. Koskie Minsky LLP remains committed to moving against it and exposing it.

To provide context to Koskie Minsky LLP's position in this respect, and to provide a full picture of the issue to this Court, a summary of what has occurred to date in the various provincially-filed "Sixties Scoop" cases throughout Canada concerning counsel for the parties now before Your Honour, is necessary.

Merchant Law Group

Counsel for the *White* plaintiff has already been engaged in carriage motions with counsel for the *Riddle* plaintiff, MLG, with respect to competing claims concerning similar "Sixties Scoop" subject matter in Manitoba,[8] Saskatchewan, and Alberta. Below provides an overview of MLG's conduct in its cases across the country.

Manitoba:

MLG has had multiple overlapping, un-certified "Sixties Scoop" claims in Manitoba for years without action. On April 20, 2009, MLG filed its Statement of Claim in *Thompson et al. v. Manitoba et al.*, Court File Number CI-09-01-60921. No steps were taken by MLG until a substantially identical Amended Statement of Claim was filed on February 4, 2011 in its 2009 *Thompson* action. Again, MLG took no action with respect to its case until March 13, 2015, when it issued an overlapping "replacement claim" in *Thompson et al. v. Manitoba et al.*, Court File No. CI-15-01-94427.

Clear service deficiencies went un-remedied for years in MLG's 2009 *Thompson* action. In May 2016, MLG attempted but failed to unilaterally discontinue its 2009 *Thompson* action, which remains a live action. It took MLG six (6) years to obtain a case management judge in its *Thompson* actions. To date, neither of MLG's actions in Manitoba have been certified as a class proceeding, nor have any certification records been served or filed, despite the duplicative actions having been filed in 2009 and 2015 respectively. Neither case has been appropriately discontinued nor stayed. In total, MLG's *Thompson* actions suffered from seven (7) years of unexplained delay and complete inaction.

Conversely, a consortium in which Koskie Minsky LLP is a part filed a "Sixties Scoop" Statement of Claim (*Meeches et al. v. Canada*, Court File No. CI-16-01-01540) on April 20, 2016 and immediately intervened for a carriage motion to be heard. A carriage motion was heard between the *Meeches* action and MLG's *Thompson* actions in Winnipeg on June 17, 2016. As Your Honour is aware, on August 24, 2016, Justice Edmond did not award MLG

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[7] *Smith v. Canadian Tire Acceptance Ltd.*, [1995] O.J. No. 327 (Gen. Div.) at para. 41 [emphasis added]. See also *1176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada Ltd.*, [2002] O.J. No. 4781 (S.C.) at para. 74.

[8] See *Thompson et al. v. Minister of Justice of Manitoba et al.*, 2016 MBQB 169.

carriage of that proceeding, with the court taking particular issue with MLG's unexplained delay and prejudice to the aging class.[9]

Unfortunately, despite Justice Edmond's decision being highly discretionary and interlocutory, due to the lack of a statutory need for leave to appeal an interlocutory decision in Manitoba, MLG was able to appeal that decision as of right on its merits. The Manitoba Court of Appeal heard the appeal on January 23, 2017 and its decision is still currently under reserve.

Despite the appeal under reserve, however, Justice Edmond has still ordered the *Meeches* action to proceed accordingly on an expedited basis. The plaintiffs served and filed their certification record on January 31, 2017. The return of the certification motion remains scheduled before Justice Edmond on December 5, 2017.

Saskatchewan:

In Saskatchewan, MLG has also had multiple overlapping, un-certified "Sixties Scoop" claims for years without action. On August 22, 2011, MLG issued its Statement of Claim in *Thompson v. Canada*, QBG 1642/11. Approximately three (3) years then passed without any steps by MLG to advance its *Thompson* action until an identical Statement of Claim was 're-filed' on January 29, 2014. A further one (1) year then passed without any steps by MLG in the *Thompson* action until January 9, 2015, when MLG purported to unilaterally file a "notice of discontinuance" of its *Thompson* claim.

However, on December 17, 2014, prior to its purported discontinuance of its *Thompson* action, MLG issued its substantially similar "Sixties Scoop" Statement of Claim in *Blue Waters v. Saskatchewan et al.*, QBG 2635/14. A further approximately 1.5 years then passed in which no further steps were taken by MLG to advance the *Blue Waters* action until June 28, 2016, when a substantially similar Amended Statement of Claim was filed. A case management judge was not appointed in the *Blue Waters* action until September 27, 2016.

To date, neither of MLG's *Thompson* or *Blue Waters* actions in Saskatchewan have been certified as a class proceeding, nor have any certification records been served or filed, despite the duplicative actions having been filed in 2011 and 2014 respectively. Neither case has been appropriately discontinued nor stayed.

Conversely, a consortium in which Koskie Minsky LLP is a part filed a "Sixties Scoop" Statement of Claim (*Ash v. Canada*, QBG 2487/16) on October 7, 2016 and immediately intervened for a carriage motion to be heard. It was ordered that carriage would be heard as the first order of business on March 2-3, 2017 before any further steps were taken in the actions. However, on March 1, 2017, a mere 24 hours before the carriage motion was to be heard in Regina, the case management judge imposed a *sine die* adjournment and stay of the carriage motion and the competing actions *ex proprio motu*, inflicting further delay and prejudice on the class. The court's order is currently under appeal.

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[9] See *Thompson et al. v. Minister of Justice of Manitoba et al.*, 2016 MBQB 169.

Alberta:

In Alberta, MLG has had a "Sixties Scoop" claim in the courts since 2011. On August 18, 2011, MLG issued its Statement of Claim in *Van Name v. Alberta et al.*, Court File No. 1101-11452. Approximately 4.5 years then passed without any steps by MLG to advance the *Van Name* action until a "Certification Application" form was filed on January 14, 2016, which MLG again failed to act upon. A further period of time passed without any steps by MLG in the *Van Name* action until its letter to the court dated May 31, 2016 requesting a case management judge and case management dates – almost a full five (5) years since its commencement of the case.

Almost six (6) more months then elapsed until October 17, 2016, when MLG served on Canada and Alberta, and indicated it would file with the Court, an application to stay its own *Van Name* action, returnable at the first case conference in the *Van Name* action that had only recently been scheduled for October 25, 2016. To date, MLG's *Van Name* action has not been certified as a class proceeding, nor has any timetable for certification been set, despite it now being approximately six (6) years since the action was filed. The *Van Name* action has not been discontinued nor has it been stayed.

Conversely, a consortium in which Koskie Minsky LLP is a part filed a "Sixties Scoop" Statement of Claim (*Glenn v. Canada*, Court File No. 1601-13286) on October 6, 2016 and immediately intervened for a carriage motion to be heard. A carriage motion was heard between the *Glenn* action and MLG's *Van Name* action in Calgary on April 11, 2017. The decision is currently under reserve.

Cases filed in December 2016:

In mid-to-late December 2016 – well after Canada made its intentions for a national pan-Canadian settlement known in the fall of 2016, and a date had been set in December 2016 for the parties to meet and discuss prospective settlement – MLG filed five (5) further "Sixties Scoop" claims across Canada in the following places:

- Ontario: Statement of Claim filed on December 7, 2016 in *Morriseau v. Ontario et al.*, CV-16-565598-00CP (in direct opposition to the certified *Brown v. Canada* class action in Ontario re: the "Sixties Scoop", which at that time was proceeding towards summary judgment)[10];

- British Columbia: Notice of Civil Claim filed on December 16, 2016 in *Tanchak v. British Columbia et al.*, Court File No. 186178 (in direct opposition to Klein Lawyers' claim re: the "Sixties Scoop" in B.C. in the *Russell* action);

- Nova Scotia: Notice of Action filed on December 20, 2016 in *Flewin v. Nova Scotia et al.*, Court File No. 458720;

- Quebec: Application for Authorization filed on December 7, 2016 in *Ward v. Quebec et al.*, Court File No. 500-06-000829-164; and

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[10] See *Brown v. Canada (Attorney General)*, 2014 ONSC 6967 (Div. Ct.).

- Federal Court: Statement of Claim filed on December 20, 2016 in *Riddle v. Canada*, Court File No. T-2212-16.

These filings were nothing but opportunistic on the part of MLG in view of Canada having made known its intention to seek a national settlement. MLG also failed to alert counsel for the other negotiating parties to the advent of these late filings at the December 2016 settlement negotiations. These late filings have proved particularly problematic to ongoing settlement discussions. In view of the *White* plaintiff, a Dispute Resolution Conference would not solve this problem.

Klein Lawyers

British Columbia:

Klein Lawyers commenced a claim in May 2011 in B.C. regarding the "Sixties Scoop" in that province (*Russell v. Canada*). To date, the *Russell* action remains uncertified despite the action being six (6) years old.

In its letter to Your Honour dated April 12, 2017, Klein Lawyers stated that "the Russell action in B.C. was held in abeyance pending the outcome of the Brown proceedings in Ontario".[11] Assuming the *Russell* action was in fact officially held in abeyance, which is doubtful, it does not excuse Klein Lawyers' delay in that case.

To any extent that Klein Lawyers suggests it was awaiting the outcome of *Brown* in Ontario to move the *Russell* case forward, it would be misleading. The *Brown* "Sixties Scoop" class action in Ontario is confined to Ontario only. Its resolution would not have impacted the *Russell* action in B.C. and therefore it was unreasonable for Klein Lawyers to effectively wait five (5) years to push its case in B.C. ahead on behalf of the class members in B.C. The only outcome was further delay and prejudice to the aging and vulnerable class, some of whom have passed away without ever seeing access to justice.

Moreover, *Brown* was certified in 2013 and affirmed on appeal in 2014.[12] To the admission of Klein Lawyers itself, in the *Russell* action, "[t]he plaintiff's certification materials were delivered in July 2016".[13] There is no reasonable explanation for the further two (2) years of delay in the *Russell* action on the part of Klein Lawyers after *Brown* had been certified in Ontario, if they were indeed waiting for direction from *Brown*.

Also, Klein Lawyers' representation to this Court that "more than 800 putative class members in British Columbia have retained our firm to represent their interests in the litigation",[14] is incorrect. The *Russell* action is not certified. Presumably, at best, Klein Lawyers has been retained by only the representative plaintiff to prosecute the *Russell* case – not the prospective individual class members. Moreover, B.C. is an "opt in" jurisdiction that would require a certified class action before the membership and size of the class could ever be determined. In other

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[11] See page 2 of letter of Klein Lawyers to the Court dated April 12, 2017.
[12] See *Brown v. Canada (Attorney General)*, 2013 ONSC 5637 at para. 60, aff'd 2014 ONSC 6967 (Div. Ct.).
[13] See page 2 of letter of Klein Lawyers to the Court dated April 12, 2017.
[14] See page 2 of letter of Klein Lawyers to the Court dated April 12, 2017.

KOSKIE MINSKY
JUSTICE MATTERS

words, Klein Lawyers cannot be retained by "more than 800 putative class members" at this time.

Lastly, on account of MLG's filing of the *Tanchak* action in December 2016, MLG and Klein Lawyers now have competing, un-certified "Sixties Scoop" claims in B.C. A carriage motion will indeed be necessary there as well.

Conclusion

Accordingly, based on the above discussion, in view of the *White* plaintiff, a Dispute Resolution Conference conducted under the framework of the Federal Court would not solve the many issues indicated above. It should therefore not be ordered at this time. A carriage motion should be scheduled and heard forthwith during the summer of 2017.

Please contact me should you have any questions or issues. Thank you.

Yours truly,

KOSKIE MINSKY LLP

Kirk M. Baert
KMB:ls
cc

Celeste Poltak (cpoltak@kmlaw.ca) / Scott Robinson (srobinson@kmlaw.ca) – Koskie Minsky
Tony Merchant (tmerchant@merchantlaw.com) / Anthony Tibbs (atibbs@merchantlaw.com) / Steven Roxborough (sroxborough@merchantlaw.com) – Merchant Law Group
David Klein (dklein@callkleinlawyers.com) – Klein Lawyers
Barney Brucker (Barney.Brucker@justice.gc.ca) / Travis Henderson (Travis.Henderson@justice.gc.ca) / Catherine Moore (Catharine.Moore@justice.gc.ca) / Genevieve Chabot (genevieve.chabot@justice.gc.ca) / Andrew Fox (andrew.fox@justice.gc.ca) – Justice Canada

THIS IS EXHIBIT "89" 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

KLEIN•LAWYERS LLP
Personal Injury & Class Action Law

April 28, 2017

VIA EMAIL

The Honourable Justice Micheal D. Manson
Federal Court of Canada
Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B6

Your Honour:

RE: ***Charlie* v. *Canada (Attorney General)***
Court File No.: T-421-17
Sixties Scoop Class Action

I write further to the case management conference of April 21, 2017, and this Honourable Court's direction that the parties report by April 28, 2017 on whether they wish to schedule a dispute resolution conference. I confirm that my clients in the Charlie Action wish to schedule such a conference, and we submit that it offers the quickest and most cost effective means to bring this litigation to a just conclusion. We note as follows:

1. Jurisdiction: The *Federal Courts Rules* provide for dispute resolution conferences under Rules 386 and 387, and they empower a case management judge under Rule 385(c) "to fix and conduct any dispute resolution or pre-trial conferences that he or she considers necessary".

2. Practice Guidelines: Part III.A of the *Federal Courts Practice Guidelines for Aboriginal Law Proceedings, April 2016* encourages the use of dispute resolution for claims involving the federal Crown and aboriginal peoples. This reflects the historic, ongoing and special relationship between the Crown and First Nations which is best honoured through dialogue.

3. The Government Wants to Settle: On February 1, 2017, the Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs publicly announced the federal government's willingness to resolve Sixties Scoop litigation. It cannot be assumed that such willingness will continue indefinitely. Governments change. Policies change. Budgetary envelopes change. The window for settling a case can close. Where a defendant wants to settle, the plaintiffs and the court should explore that possibility without delay rather than indulging in intra-plaintiff disputes that needlessly increase litigation costs and that may cause the opportunity for settlement to be squandered.

4. Carriage Motions Will be Inconclusive or Interminable: Koskie Minsky, plaintiff counsel in the White Action, believes that the first order of business in this litigation should be a carriage motion. The reality, however, is that Koskie Minsky and the Merchant Law Group have been engaged in carriage battles in Alberta, Saskatchewan and Manitoba for over a year now. When

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one law firm appears to gain the upper-hand in one province, this has only resulted in further proceedings, with Koskie Minsky having filed an appeal in Saskatchewan and these firms both having argued an appeal in Manitoba. A carriage decision from this Honourable Court will continue this cycle of appeals.

Moreover, a carriage decision in the Federal Court will not bring peace to the many outstanding provincial court actions. Rather, such provincial cases can continue notwithstanding a carriage decision, or a certification decision, in the Federal Court.[1] Furthermore, carriage decisions remain conditional and interlocutory. These decisions can be revisited and may be the subject of further motions. For example, if some class members are dissatisfied with the job being done by counsel who was initially granted carriage, then those class members can bring a subsequent motion to challenge that appointment, and the court will sometimes replace existing counsel with new counsel.[2]

5. In Class Actions it is Not Required for Everyone to Attend a Settlement Conference: If counsel in the White Action does not wish to attend a dispute resolution conference, then they do not have to and the conference can proceed without them. The nature of class actions is such that it is not possible for all class members to attend a settlement meeting. There are too many people spread too widely across the country for such an approach to be meaningful. Instead, only some plaintiffs and their counsel attend. If those in attendance are able to negotiate a proposed settlement agreement, there is then a process for the court to review the reasonableness of that agreement. Other class members are provided an opportunity to review and consider the proposal, to participate in it, object to it, or exclude themselves from it.

A proposed settlement in a class action is operative only if approved by the court as fair and reasonable and in the best interests of the class as whole.[3] Once a proposed settlement is announced, class members are notified and are invited to make their views known to the court.[4] At this point, some class members may choose to opt out of the proposed settlement and pursue their own individual actions.[5] Other class members may choose to remain within the class, but object to some or all of the terms of the settlement. If a proposed settlement is rejected as unreasonable, it may be that new counsel will be appointed by the court, and they will then take over the case. In effect, the settlement approval hearing functions as its own carriage motion, recognizing the conditional nature of such counsel appointments.

The point is that with a large and diverse class such as this one, encompassing aboriginal peoples from many different parts of the country, whose varied injuries may extend back many decades, all of whom have their right to participate in this case, it is inevitable that there will a diversity of

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[1] See, for example, *Horstman* v. *Canada*, 2014 SKQB 114; *Ewert* v. *Canada (Attorney General)*, 2012 BCSC 61; and *Brittin* v. *Saskatchewan (Ministry of Human Resources)*, 2013 SKQB 318

[2] *Major c. Wainberg*, 2016 QCCS 902; *Richard v. HMTQ*, 2007 BCSC 1107

[3] Rule 334.29(1) of the *Federal Courts Rules*; *Parsons* v. *Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 (Ont. S.C.J.)

[4] Rule 334.34 of the *Federal Courts Rules*

[5] Rule 334.21(1) of the *Federal Courts Rules*

opinion about any proposed settlement that might be negotiated no matter what happens on the issue of carriage. Given this reality, a carriage motion will not end any debates about potential settlement of this litigation. It will only postpone such debates, while driving up litigation costs.

In the present circumstances, where the defendant wants to settle, the best use of judicial resources is to move directly to the settlement stage.

6. The Best Interests of Class Members: This case involves allegations that date back to the 1950s. It involves a large and aging class. For every month that settlement is postponed there will be class members who will pass away without ever having received justice. This tragedy can be avoided if the parties talk to each other now. Moreover, if a dispute resolution conference is held quickly and it fails, nothing is lost by the attempt. The steps leading to a carriage motion can nevertheless proceed in tandem, and need not be delayed by a dispute resolution conference. Rather, such a conference may focus everyone's minds on reaching a just settlement now, rather than continue with potentially endless intra-plaintiff bickering.

7. The Carriage Motion: The Court made no request for argument on the carriage issues. We will address Mr. Baert's allegations in our response to the carriage application.

8. Conclusion: My colleagues and I have good availability to attend a dispute resolution conference anytime after May 24, 2017. We request that the court fix the earliest available date for a conference for all parties who wish to attend.

Best Regards,

David A. Klein

cc. Kirk Baert
Celeste Poltak
Tony Merchant
Scott Robinson
Anthony Tibbs
Catherine Moore
Travis Henderson
Barney Brucker
Andrew Fox
Genevieve Chabot

THIS IS EXHIBIT "90" 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

Department of Justice
Canada

Ministère de la Justice
Canada

50 O'Connor Street
Ottawa, Ontario
K1A 0H8

Telephone: (613) 670-6390
Fax: (613) 941-5879
Email: Catharine.moore@justice.gc.ca

April 28, 2017

Our File Number: 8917395

BY ELECTRONIC MAIL

Registrar
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa, Ontario
K1A 0H9

Dear Registrar:

Re: WHITE, Wendy Lee v. The Attorney General of Canada (T-294-17)
CHARLIE, Catriona v. HMTQ (T-421-17)
RIDDLE, Jessica v. HMTQ (T-2212-16)

In accordance with the direction issued by Justice Manson dated April 24th, 2017 please deliver this letter and enclosed draft order concerning the above noted files to Justice Manson.

The Defendant confirms its preference for a negotiated, pan-Canadian resolution and remains open to alternative dispute resolution processes; however, even if the unwillingness of counsel for *White* could be overcome, national resolution cannot be achieved with only the counsel in these three actions.

Furthermore, the Defendant takes no position on the outcome of the carriage motion nor how carriage should be determined and will not oppose any process agreed upon by the three plaintiffs' counsel in that regard; however, a determination of carriage in this Court will similarly not resolve carriage of the claims in the provincial superior courts.

With respect to the Court's Direction of April 24, we did circulate a draft Order earlier this week; however, our Draft reflected our notes from the case management conference of April 21. Our understanding is that the Order under discussion was that the Defendant not file its Statement of Defence unless and until one of the claims is certified. All

plaintiffs' counsel have indicated their consent to such an Order. The Direction further required the Order stay "subsequent steps on these Actions" and we have included that in our enclosed draft Order; however, we note the possibility of stay applications pursuant to sections 50 and 50.1 of the Federal Court Act.

Yours truly,

Catharine Moore
General Counsel
Department of Justice
National Litigation Sector

Andrew Fox
Senior Counsel,
Department of Justice
Northwest Territories Regional Office

Encls.

c.c. Kirk M. Baert; Koskie Minsky, LLP
Celeste Poltak; Koskie Minsky, LLP
David A. Klein, Klein Lawyers, LLP
Angela Bespflug, Klein Lawyers, LLP
E.F. Anthony Merchant, Merchant Law Group
Steve Roxborough, Merchant law Group
Travis Henderson; Department of Justice
Barney Brucker, Department of Justice

Federal Court  Cour fédérale

Date: _____

Docket: T-2212-16 / T-294-17 / T-421-17

Ottawa, Ontario, April ____, 2017

PRESENT: Justice Manson

Court File No: T-294-17

PROPOSED CLASS PROCEEDING

BETWEEN:

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Court File No: T-421-17

PROPOSED CLASS PROCEEDING

BETWEEN:

CATRIONA CHARLIE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Court File No: T-2212-16

PROPOSED CLASS PROCEEDING

BETWEEN:

JESSICA RIDDLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

IT IS ORDERED:

1. that the Defendant shall not be required to file a Statement of Defence unless and until one of these actions is certified by the Court as a class proceeding; and further,

2. that subsequent steps on these Actions shall be stayed pending resolution of the carriage Motion or such further Order of this Court.

_____

Justice Manson

APPROVED AS TO FORM AND CONTENT:

Per: Koskie Minsky LLP
Counsel for the Plaintiff in T-294-17

APPROVED AS TO FORM AND CONTENT:

Per: Merchant Law Group
Counsel for the Plaintiff in T-2212-16

APPROVED AS TO FORM AND CONTENT:

Per: Klein Lawyers
Counsel for the Plaintiff in T-421-17

APPROVED AS TO FORM AND CONTENT:

Per: Attorney General of Canada
Counsel for the Defendant

THIS IS EXHIBIT "91" 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

MLG | MERCHANT LAW GROUP LLP

2401 Saskatchewan Drive
Regina, Saskatchewan
S4P 4H8

E.F.A Merchant Q.C.
lcovill@merchantlaw.com
(306) 539-7777

May 1, 2017

Federal Court
Vancouver Local Office

BY EMAIL. Amanda.Dunn@cas-satj.gc.ca

Attention: Amanda Dunn, Registry Officer

Dear Ms. Dunn:

Re: T-294-17 - *White v. Attorney General of Canada*
T-421-17 - *Charlie v. Her Majesty the Queen*
T -2212-16 - *Jessica Riddle v. Her Majesty the Queen*
Our File 7700 0617 - Adopt Indian Métis

Please draw this letter to the attention of the Honourable Mr. Justice Mason.

Page 2 of the letter from Klein Lawyers and page 1 of the letter from Catharine Moore are attached to this letter. In those references:

Federal Justice alludes (1) to Kirk Baert expressing the current intention not to join in judicial mediation and (2) that additionally the *Brown* action in the Ontario Superior Court is extant.

Klein Lawyers encourages the Court to convene a dispute resolution conference stressing the Federal Court focus in part III.A to address aboriginal issues through mediation.

In no particular order, judicial mediation might assist in any one of the following possibilities.

- Consent Federal Court certification for British Columbia.
- Consent Federal Court certification for the North.
- Agree on the terms of settlement or some of the terms of settlement which, on a without prejudice basis, could be circulated to non attending parties.
- A plan to address why Koskie Minsky, and possibly counsel in *Brown* as well, had avoided judicial mediation and ideas for contact with those counsel that might overcome their concerns about joining in judicial mediation.
- Consider ideas that might shorten or focus the carriage hearing.

The Court should judge the importance of the situation and the harm being done to the victims, the relationship between indigenous peoples and the Government of Canada, and the reputation of the judicial system. Even if the Court is of the view that there is only a minimal chance that the use of the Court's good offices will assist the parties, because of the importance and extent of the issue, the Court ought to put forth that effort.

The Government of Canada, through the announcement of the Honourable Dr. Carolyn Bennett, indicated a preparedness to settle and that meetings were arranged. This raised the expectation of the victims, indigenous people generally, and all Canadians. That process having come unstuck, because some of the parties will not attend, does damage to the victims, the indigenous community, and the reputation of the judicial system. Moreover, as Mr. Klein points out, litigation over carriage in four courts is causing delay beyond the control of the Federal Court. For example, in Saskatchewan carriage has not been argued, and no dates for argument have been scheduled. The Saskatchewan appeal has not even been argued. It may not be argued. But this means that Saskatchewan carriage, at the earliest, will be scheduled for sometime in 2018[1], while the Federal Court, through judicial mediation, may be of assistance in addressing issues nationally, the Federal Court in itself cannot speed the process in other courts.

The effort potentially lost when weighed against the importance of the problem justifies the wasted effort by way of a determined attempt to potentially assist in anyway possible.

Scheduling judicial mediation where the Defendant Government prefers a negotiated settlement and has created expectations in the public by way of late 2016 announcements, scheduling negotiations in circumstances where the system of justice generally, which includes lawyers, will be the subject of opprobrium as a result of delay, scheduling judicial mediation which may not be successful but taking the chance of success is important and worthwhile in a matter of significance with the eyes of Canada and indigenous people particularly looking on and soon to be wondering, if not angry, about the delays, and scheduling judicial mediation when just one year ago in April of 2016 the Federal Court brought forth the *Federal Courts Practice Guidelines for Aboriginal Law Proceedings* recognizing the special nature of the Federal Court dealing regularly with matters involving indigenous people, all augers strongly in favour of judicial mediation being arranged. If some of the parties do not give instructions to their lawyers to attend, nonetheless judicial mediation should proceed and accomplish whatever might be accomplished, which may only be to meet and consider issues, and then convene another date with a renewed invitation for everyone to attend.

Mr. Klein indicated he and his colleagues have good availability to attend a dispute resolution conference at any time after May 24. Within reason, I would attend at any time set.

Yours truly,

MERCHANT LAW GROUP LLP

Per: 

E.F. ANTHONY MERCHANT, Q.C.
EFAM*lc

cc. srobinson@kmlaw.ca; dklein@callkleinlawyers.com; abespflug@callkleinlawyers.com; Travis.Henderson@justice.gc.ca; Barney.Brucker@justice.gc.ca; Andrew.Fox@justice.gc.ca; Catharine.Moore@justice.gc.ca; James.Moores@justice.gc.ca; Kathy.Craigie@cas-satj.gc.ca; kmbaert@kmlaw.ca; cpoltak@kmlaw.ca; smineiro@kmlaw.ca; lseto@kmlaw.ca; sroxborough@merchantlaw.com

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[1] Only urgent matters are scheduled during long vacation and in view of Supreme Court's mandate regarding criminal matters, the Saskatchewan and other courts are blocked. Mandates are difficult to obtain.

THIS IS EXHIBIT "92" 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

Federal Court  Cour fédérale

Date: 20170501

Dockets: T-2212-16
T-294-17
T-421-17

Vancouver, British Columbia, May 1, 2017

PRESENT: The Honourable Mr. Justice Manson

Docket: T-2212-16

BETWEEN

JESSICA RIDDLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-294-17

BETWEEN

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-421-17

BETWEEN

CATRIONA CHARLIE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON the joint case management conference convened on Friday, April 21, 2017 between the parties in proposed class proceedings T-2212-16, T-294-17 and T-421-17;

AND UPON reading the written submissions and hearing the oral submissions of counsel for the parties;

AND UPON the Court's direction to the parties dated April 24, 2017;

THIS COURT ORDERS the following:

1. Counsel for the plaintiff in action T-294-17 must serve and file any notice of motion for carriage and any supporting affidavits by or on May 26, 2017;

2. Counsel for the plaintiffs in actions T-2212-16 and T-421-17 must serve and file any responding carriage affidavits by or on June 20, 2017; and

3. Within ten (10) days of the last responding affidavit being served, the parties will requisition another joint case management conference with the Court.

"Michael D. Manson"
Case Management Judge

THIS IS EXHIBIT "93" 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

Federal Court  Cour fédérale

Date: 20170501

Dockets: T-2212-16
T-294-17
T-421-17

Vancouver, British Columbia, May 1, 2017

PRESENT: The Honourable Mr. Justice Manson

Docket: T-2212-16

BETWEEN

JESSICA RIDDLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-294-17

BETWEEN

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-421-17

BETWEEN

CATRIONA CHARLIE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON the joint case management conference convened on Friday, April 21, 2017 between the parties in proposed class proceedings T-2212-16, T-294-17 and T-421-17;

AND UPON reading the written submissions and hearing the oral submissions of counsel for the parties;

AND UPON the Court's direction to the parties dated April 24, 2017;

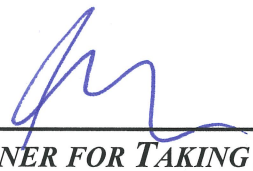
THIS COURT ORDERS that:

1. The Defendant shall not be required to file a Statement of Defence unless and until one of these actions is certified by the Court as a class proceeding; and

2. Subsequent steps on these Actions shall be stayed pending resolution of the carriage Motion or such further Order of this Court.

"Michael D. Manson"
Case Management Judge

THIS IS EXHIBIT "94" 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

Federal Court  Cour fédérale

Date: 20170705

Dockets: T-2212-16
T-294-17
T-421-17

Toronto, Ontario, July 5, 2017

PRESENT: The Honourable Mr. Justice Manson

Docket: T-2212-16

BETWEEN:

JESSICA RIDDLE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

Docket: T-294-17

AND BETWEEN:

WENDY LEE WHITE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-421-17

AND BETWEEN:

CATRIONA CHARLIE

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON the joint case management conference convened on Thursday, June 29, 2017, between the parties in proposed class proceedings T-2212-16, T-294-17 and T-421-17;

AND UPON reading the written submissions and hearing the oral submissions of counsel for the parties;

AND UPON the Court's direction to the parties dated June 29, 2017;

THIS COURT ORDERS that:

1. The timetable for the motion for carriage in the actions T-294-17, T-2212-16 and T-421-17 shall be as follows:

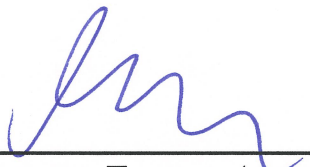
   a. Cross-examinations on affidavits to be completed by or on August 25, 2017;

   b. Memoranda of Fact and Law to be served on the parties and filed with the Court by or on September 15, 2017; and

c. Hearing of the motion for carriage on October 17 and 18, 2017, in Vancouver, British Columbia.

"Michael D. Manson"
Judge

THIS IS EXHIBIT "95" 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

September 6, 2017

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

E-mail & Fax (Amanda.Dunn@cas-satj.gc.ca)

The Honourable Justice Michael D. Manson
c/o Amanda Dunn (Registry Officer, Vancouver Local Office)
Federal Court of Canada, Ottawa, Ontario, K1A 0H9

Dear Justice Manson:

Re: White v Attorney General of Canada; Court File No. T-294-17
Charlie v Her Majesty the Queen; Court File No. T-421-17
Riddle v Her Majesty the Queen; Court File No. T-2212-16
Our File No.: 17/0499

We write on the agreement and consent of all Plaintiffs in the three (3) abovementioned actions, *White v. Canada*, *Riddle v. Canada* and *Charlie v. Canada* and the carriage motion currently scheduled to be heard by your Honour in Vancouver on October 17 and 18, 2017. Plaintiffs' counsel in the three competing actions can advise the Court that the motion dates may be vacated as a carriage motion shall no longer be necessary to adjudicate amongst these three (3) competing claims. The attendant timetable which your Honour approved on June 29, 2017 leading up to the motions has of course now become moot as a result.

Should the court have any questions arising, counsel would of course be pleased to make themselves available at your convenience.

Yours truly,

KOSKIE MINSKY LLP

Celeste Poltak
CP:jr

cc Kirk M Baert / Garth Myers– Koskie Minsky
Tony Merchant (tmerchant@merchantlaw.com) / Steven Roxborough (sroxborough@merchantlaw.com) – Merchant Law Group
David Klein (dklein@callkleinlawyers.com) – Klein Lawyers
Travis Henderson (Travis.Henderson@justice.gc.ca) / Catharine Moore (Catharine.Moore@justice.gc.ca) / Barney Brucker (Barney.Brucker@justice.gc.ca) – Justice Canada
Justice Michel M.J. Shore (yanick.gagnon@cas-satj.gc.ca) – Federal Court of Canada

KM-2964548v1

THIS IS EXHIBIT "96" 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: Kirk M. Baert
Sent: September-06-17 12:33 PM
To: 'Dunn, Amanda'; Jasmine Randhawa
Cc: 'tmerchant@merchantlaw.com'; 'sroxborough@merchantlaw.com'; 'dklein@callkleinlawyers.com'; 'Henderson, Travis (Travis.Henderson@justice.gc.ca)'; 'Catharine.Moore@justice.gc.ca'; 'Barney.Brucker@justice.gc.ca'; Gagnon, Yanick; Celeste Poltak; Garth Myers; Craigie, Kathy; Lori Seto; Sylvia Tse
Subject: RE: White v Attorney General of Canada (T-294-17); Charlie v Her Majesty the Queen (T-421-17); Riddle v Her Majesty the Queen (T-2212-16)

We wish to adjourn the motions sine die. Thank you Ms. Dunn.

KMB

From: Dunn, Amanda [mailto:Amanda.Dunn@cas-satj.gc.ca]
Sent: September-06-17 12:28 PM
To: Jasmine Randhawa
Cc: 'tmerchant@merchantlaw.com'; 'sroxborough@merchantlaw.com'; 'dklein@callkleinlawyers.com'; 'Henderson, Travis (Travis.Henderson@justice.gc.ca)'; 'Catharine.Moore@justice.gc.ca'; 'Barney.Brucker@justice.gc.ca'; Gagnon, Yanick; Celeste Poltak; Kirk M. Baert; Garth Myers; Craigie, Kathy
Subject: RE: White v Attorney General of Canada (T-294-17); Charlie v Her Majesty the Queen (T-421-17); Riddle v Her Majesty the Queen (T-2212-16)

Dear Counsel-

Could the parties please advise the Court whether the parties will be a) filing a Notice of Abandonment of Motion or b) filing a Draft Order, on Consent, adjourning the Motions sine die.

Please advise at your earliest convenience.

Amanda Dunn

A/Senior Registry Officer

Vancouver Local Office

Court's Administration Service

604-666-6269

From: Jasmine Randhawa [mailto:jrandhawa@kmlaw.ca]
Sent: September-06-17 7:58 AM
To: Dunn, Amanda
Cc: 'tmerchant@merchantlaw.com'; 'sroxborough@merchantlaw.com'; 'dklein@callkleinlawyers.com'; 'Henderson, Travis (Travis.Henderson@justice.gc.ca)'; 'Catharine.Moore@justice.gc.ca'; 'Barney.Brucker@justice.gc.ca'; Gagnon, Yanick; Celeste Poltak; Kirk M. Baert; Garth Myers
Subject: White v Attorney General of Canada (T-294-17); Charlie v Her Majesty the Queen (T-421-17); Riddle v Her Majesty the Queen (T-2212-16)

Dear Counsel,

Please find attached Ms. Poltak's letter of today's date.

Thank you

<http://www.kmlaw.ca/>

Jasmine Randhawa
Legal Assistant to David Rosenfeld and Brittany Tovee
T: +1 416-595-2138 | E: jrandhawa@kmlaw.ca
Koskie Minsky LLP, 20 Queen Street West, Suite 900, Toronto, ON. M5H 3R3
kmlaw.ca <http://www.kmlaw.ca/>

THIS IS EXHIBIT "97" 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 T-1412-17

FEDERAL COURT

PROPOSED CLASS PROCEEDINGS

BETWEEN:

GLORIA TOPILIKON AND THERESA DOREEN STEVENS

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

Brought pursuant to the *Federal Court Rules*, SOR/98-106

STATEMENT OF CLAIM TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: SEP 19 2017

Issued by: ORIGINAL SIGNED BY FRANK FEDORAK
(Registry Officer) A SIGNÉ L'ORIGINAL

Address of local office: **Pacific Centre**
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

TO: **Office of the Deputy Attorney General of Canada**
British Columbia Regional
Department of Justice Canada
90-840 Howe Street
Vancouver, British Columbia
V6Z2S9

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the SEP 19 2017 day of A.D. 20

Dated this SEP 19 2017 day of 20

FRANK FEDORAK
REGISTRY OFFICER
AGENT DU GREFFE

CLAIM

1. The Plaintiffs, Gloria Topilikon and Theresa Doreen Stevens, claim on their own behalf and on behalf of class members as follows:

   a. an order certifying this action as a class action and appointing the Plaintiffs as the Representative Plaintiffs under Part 5.1 – Class Proceedings of the *Federal Court Rules*;

   b. a declaration that the Defendant breached its fiduciary duties to the Plaintiffs and the class members 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 members by reason of the events described in this action;

   d. general and special damages;

   e. aggravated damages;

   f. exemplary and punitive damages;

   g. pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

   h. costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;

   i. the costs of notice and of administering the plan of distribution of the recovery of this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and

   j. such further and other relief as this Honourable Court may deem just and appropriate.

PARTIES

2. There are two Plaintiffs, each of whom proposes to represent the class members: (a) Gloria Topilikon; and (b) Theresa Doreen Stevens.

3. Plaintiff No. 1, Gloria Topilikon, currently resides in Regina, Saskatchewan ("**Plaintiff No. 1**"). Plaintiff No. 1 was born on June 1, 1965 in Regina. Her biological mother was Cree from the Ochapowace Nation. Her biological father is unknown.

4. Plaintiff No. 2, Theresa Doreen Stevens, currently resides on Kitigan Zibi Reserve, Québec ("**Plaintiff No. 2**"). Plaintiff No. 2 was born in Maniwaki, Québec, on May 24, 1961. Her parents are Thèrese Dube and Charles Paul Mongo-Stevens.

5. The class members consist 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 British Columbia, Alberta, Saskatchewan and Québec (the "**Provinces**") and placed either in foster homes of non-Aboriginal families or given up for adoption to non-Aboriginal families.

6. The Defendant is Her Majesty the Queen in Right of Canada, as represented by the Attorney General of Canada, who was responsible for delegating child welfare services to the Provinces. While the dates of these delegation agreements, arrangements or programs between the Defendant and the Provinces vary, the practise of apprehending Aboriginal children commenced around 1951, with the amendment to Section 88 of the Indian Act, and continued until around the 1990's.

BACKGROUND

7. This claim relates to the Defendant's discriminatory child welfare policies that targeted Aboriginal people including the Plaintiffs and the class members. The adverse impact of these policies on the Aboriginal people was such that this period came to be infamously known as the "sixties scoop." The words "sixties scoop" refer to the practise of the scooping of children from their biological Aboriginal families, without their consent and/or knowledge. These children who were scooped up were then placed either in foster homes or adopted out to non-Aboriginal families.

8. The right to provide child care services to Aboriginal people falls within the jurisdiction of the Defendant and is derived *inter alia* from the treaties that were entered into between the Defendant and the First Nations communities, subsection 91(24) of *The Constitution Act*, 1867, applicable and binding case authorities of the highest courts, and Section 35(1) of *The Constitution Act*, 1982. In 1951 Section 88 of the Indian Act extended "all laws of general application..... in force in any province" to Aboriginal people in the province.

9. However, the extension of these general provincial laws was 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 the Defendant'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.

10. The Defendant, sometime in or around 1960, began delegating Aboriginal child welfare services to provincial child welfare departments through financial arrangements or agreements, thus enabling the provincial welfare departments to expand their services to Aboriginal families and their children. In addition to these financial arrangements, in some jurisdictions special programs such as the Adopt Indian and Metis program ("AIM") were introduced with Federal assistance to facilitate the adoption of the Aboriginal children to non-Aboriginal families.

11. Much like its predecessor, the Residential School System, the arrangements or agreements and/or special programs were predicated on the assimilation of Aboriginal children into mainstream Caucasian society. In doing so, the Plaintiffs and the class members lost their identity, culture, language, heritage and all family ties. Many of these adoptions and foster care placements were undertaken without the consent and knowledge of their biological parents. Further, the adoption and foster placement of the class members into non-Aboriginal families almost always resulted in physical, emotional and psychological abuse and/or trauma. Many of the class members were also sexually abused.

12. The Defendant, having placed the Plaintiffs and the class members in non-Aboriginal foster or adoptive homes, did not at any time inform the Plaintiffs and the class members about their Aboriginal status and also their right and entitlement to Aboriginal-related monetary benefits. Hence, the Plaintiffs and the class members had no way of learning about their Aboriginal identity or knowing about the various federal entitlements due to them because of their status.

Plaintiff No. 1

13. When Plaintiff No. 1 was approximately 8 months old she was taken away from her biological mother and grandmother. Plaintiff No. 1 was adopted by a non-Aboriginal couple who lived in the farming community of Kindersley, Saskatchewan. Her adoptive mother was Donalda Bowers and her adoptive father was George Bowers (the "**Adoptive Parents**").

14. Plaintiff No. 1 recalls Kindersley as having very few First Nations people. She also recalled the non-Aboriginal community of Kindersley being racist towards First Nations individuals, including herself. As a result, she was constantly called names by the children in Kindersley.

15. When living with the Adoptive Parents Plaintiff No. 1 was removed from them and put in Kilbourn Hall for a period of approximately 4-6 months. She was then returned to the Adoptive Parents.

Kilbourn Hall was a place for children who had committed crimes. Plaintiff No. 1 had not committed any crimes.

16. At a later point Plaintiff No. 1 was removed from the Adoptive Parents and put in a foster home for approximately 1 month with non-Aboriginal foster parents who lived near Swift Current, Saskatchewan. She was then returned to the Adoptive Parents.

17. On another occasion Plaintiff No. 1 was removed from the Adoptive Parents and placed with non-Aboriginal foster parents near Kindersley for approximately 3 months. She was then returned to the Adoptive Parents.

18. While living with the Adoptive Parents Plaintiff No. 1 was never told by them or the Defendant who her birth mother was, where she was from, or how she could contact her. Plaintiff No. 1 was thus deprived of any opportunity to establish connections with her biological mother, relatives, and her Aboriginal community. While she was living with the Adoptive Parents she was given no opportunity to exercise her Aboriginal rights.

19. As she was taken away from her Aboriginal family at the age of approximately 8 months, and she was never taught her native language by the Adoptive Parents, she was deprived of the opportunity to learn and speak her native language.

20. As she was never taught about her culture by the Adoptive Parents, she was deprived of the opportunity of learning her native culture.

21. As she was never taught about her native spirituality by the Adoptive Parents, she was deprived of learning her native spirituality.

22. Plaintiff No. 1 entered adulthood with no knowledge of what it meant to be an Aboriginal person.

23. The Defendant and the Adoptive Parents never provided Plaintiff No. 1 any information or documentation that would enable her to exercise the educational and financial benefits she was entitled to under the Indian Act.

24. When Plaintiff No. 1 was in her twenties she sought to make a connection with her biological family. During this time she was advised that she should apply to get a status card.

25. Plaintiff No. 1 then learned she may be eligible for educational funding. She also only then learned she was entitled to certain health benefits.

26. Plaintiff No. 1 went to Ochapowace Nation as an adult to connect with her biological family and her community. When she got there she felt lost.

27. Plaintiff No. 1 found it difficult to relate to the people in Ochapowace as she did not know the language, culture, and etiquette of her people.

28. Plaintiff No. 1 could not, and still cannot, grasp fully what it means to be a First Nations individual.

29. As a result of her identity crisis, Plaintiff No. 1 has suffered from depression, frustration, and self-esteem issues.

30. Plaintiff No. 1 has spent time in counselling due to identity issues.

31. As a result of what Plaintiff No. 1 went through, her children also struggle with their identities. Further, her children do not know their language and culture.

Plaintiff No. 2

32. Plaintiff No. 2 was raised as a child on the Garden River, Maniwaki Indian Reserve. It is now known as Kitigan Zibi Reserve.

33. When she was approximately 11 years old, Plaintiff No. 2 was taken away from her parents and from her reserve and was placed with a non-Aboriginal foster family in Montcerf, Québec for approximately 6 months.

34. When she was approximately 12 years old Plaintiff No. 2 was placed in a non-Aboriginal foster home with Mary-Anne Comtois and her husband.

35. While Plaintiff No. 2 was staying at the Comtois' home she asked a social services worker to allow her to go back to her reserve. The social services worker denied her request.

36. After spending approximately 1 year with the Comtois', she was placed in a non-Aboriginal foster home in Gatineau, Québec, where she remained until she was 18 years old. Her foster mother there was Monique Beauvais. Her foster father was Michel Beauvais. While living with the Beauvais' she asked them on several occasions if she could go to her reserve but they denied her requests.

37. While residing with the Beauvais' she was never provided an opportunity or encouraged to speak her native language by her foster parents. As a result she lost most of her ability to speak her native language.

38. While residing with the Beauvais' she was not encouraged by them or given an opportunity to learn or practice her culture.

39. While residing with the Beauvais' she was not encouraged by them or given an opportunity to practice her native spirituality.

40. The Defendant and the Beauvais' never provided Plaintiff No. 2 any information or documentation that would have enabled her to exercise the educational and financial benefits she was entitled to under the Indian Act.

41. At the age of 18, the Beauvais' advised her that she was to leave as they were not receiving any more money from the Government.

The Defendant's Common Law Duty of Care

42. At all material times the Defendant was responsible for the care and protection of the Plaintiffs and the class members. This duty of care was confirmed by Canadian court rulings during the time in question. Canadian courts consistently held that the Defendant'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 peoples' connection to their Aboriginal heritage.

43. The Defendant also had a positive duty to consult the First Nations bands. The source of the Defendant's duty to consult arises from a special and long-standing historical and constitutional relationship between the Defendant 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 people 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.

The Defendant's Fiduciary duty

44. The Defendant owes a fiduciary duty to the Plaintiffs and the class members 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 the Defendant has an on-going obligation of consultation on matters relating to the language and culture of Aboriginal people. These Constitutional obligations also require the Defendant to take steps to monitor, safeguard and secure the interests of the Plaintiffs and the class members 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.

45. The Defendant'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 the Defendant had a constitutional obligation to consult First Nations bands prior to imposing provincial welfare laws on the Plaintiffs and the class members. The Defendant also had a duty to monitor, safeguard and secure the culture and language of the Plaintiffs and the class members, which it failed to do, resulting in the loss of their ability to learn their language and culture. Further, the Defendant had a duty to inform the Plaintiffs and the class members regarding their Aboriginal identity and status and the resulting financial benefits and entitlements.

46. The Defendant also had a duty to ensure that the provincial welfare laws and policies applied equally to the population in general and not exclusively to the Aboriginal people.

The Defendant's acts and omission resulting in damages

47. The Defendant at all material times had constitutional obligations and fiduciary and common law duties to act in the best interest of the Plaintiffs and the class members.

48. Prior to extending provincial welfare laws and entering into agreements or arrangements with the Provinces and/or implementing programs the Defendant had a duty to consult and obtain the approval of the First Nations 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 the Defendant would cause loss or harm to the Plaintiffs and the class members. Such loss or harm would include the systemic eradication of the language and heritage of the Plaintiffs and the class members 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 the class members being denied information regarding their

Aboriginal identity and status and consequently loss of their right to educational and financial entitlements under the Indian Act.

49. At all material times, the Defendant was fully aware of its legal duty to protect the Plaintiffs and the class members from injury, economic loss and damages from the application of the welfare laws of the Provinces and from the agreements and/or arrangements or programs. The Defendant failed to take any positive steps to protect the Plaintiffs and the class members.

50. The Defendant, during the period in question, 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 Nations bands in the Provinces prior to extending social welfare laws to the Aboriginal people;
2) failing to consult the First Nations bands in the Provinces prior to the negotiation and implementation of the agreements or arrangements and/or programs;
3) failing to monitor, safeguard and secure the identity, culture and language of the Plaintiffs and the class members during the application of the Provincial child welfare laws;
4) failing to educate the Plaintiffs and the class members in their Aboriginal language and cultural practices during the period in question;
5) knowingly accepting and willfully promoting a policy of cultural assimilation;
6) through its agents, systemically removing Aboriginal children from their natural homes without consulting the First Nations Bands and/or without the knowledge and/or consent of their biological parents;
7) failing to provide adequate care and protection to the Plaintiffs and the class members with regard to their Aboriginal identity, heritage, culture and language when placing them in homes of non-Aboriginal foster families and/or adoptive families;
8) failing to provide adequate care and protection to the Plaintiffs and the class members 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;
9) failing to ensure that the Plaintiffs and the class members were made aware of their status as Aboriginal people when they were placed in non-Aboriginal foster or adoptive families;
10) failing to protect the identity, language and culture of the Plaintiffs and the class members as a constitutional and inherent Aboriginal right;
11) failing to instruct the non-Aboriginal foster families and/or adoptive parents to inform the Plaintiffs and the class members of their Aboriginal identity and their right to Federal benefits and financial entitlements;

12) denying the Plaintiffs and the class members the right to obtain Indian status;

13) denying the Plaintiffs and the class members access to Federal benefits and financial entitlements;

14) exposing the Plaintiffs and the class members 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; and
v) inability to obtain proper education or employment.

General and special damages

51. As a result of the Defendant's acts and omissions and above-mentioned breaches of legal duties and obligations the Plaintiffs and the class members 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

52. The Plaintiffs plead that the Defendant at all material times had complete disregard for the widespread mental, emotional and physical abuse perpetrated upon the class members that

occurred during the period in question due to the application of the provincial welfare laws and the agreements, arrangements and/or programs.

53. The length of the period in question and the manner in which the Plaintiffs and the class members were treated resulted in aggravated and increased, *inter alia*, mental, emotional, spiritual, and physical suffering. The Defendant's actions have irreparably impacted and forever changed the lives of the Plaintiffs and the class members.

Québec class members

54. Insofar as any of the impugned acts and omissions of the Defendant and its delegates - all as pleaded and detailed in this Statement of Claim - occurred in the Province of Québec, they constitute:

a. fault giving rise to the extra-contractual liability of the Defendant pursuant to the *Civil Code of Québec*, S.Q. 1991, c.64;

b. fault giving rise to the extra-contractual liability of the Defendant, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 3, and the *Interpretation Act*, R.S.C. 1985, c. 1-16, s. 8.1; and

c. fault giving rise to the liability of the Defendant to pay damages, including punitive damages to the Plaintiffs and the class members pursuant to the *Civil Code of Québec*, S.Q. 1991, c.64.

55. In all circumstances where such laws of the province of Québec will govern, the Plaintiffs and the Class Members have been unable to act within the meaning of Article 2904 of the *Civil Code of Québec*, S.Q. 1991, c. 64.

Legislation

56. The Plaintiffs plead and rely upon:

a. *Federal Court Rules*, SOR/98-106;

b. *Federal Court Act*, R.S.C., 1985, c. F-7;

c. *The Constitution Act*, 1867 (UK), 30 & 31 Victoria, c 3;

d. *The Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11;

e. *Indian Act*, R.S.C. 1985 c.I-5;

f. *The Civil Code of Québec*, S.Q. 1991, c.64;

g. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

h. *The Interpretation Act*, R.S.C. 1985, c. 1-16; and

i. Common Law.

Place of Trial

The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: September 19, 2017

Per: **Stephen J. Bronstein**
Tel: 604-739-7920
Fax: 604-739-7983

BRONSTEIN & COMPANY
BARRISTER & SOLICITOR
500 - 777 WEST BROADWAY
VANCOUVER, BC V5Z 4J7

(Lawyers for the Plaintiffs)

THIS IS EXHIBIT "98" 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 No.: T-1811-17

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

VICTOR BIRD and LEONA PAUL

PLAINTIFFS

And

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

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 solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules* serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by: _____
(Registry Officer)

Address of local office: _____

TO: **The Attorney General of Canada**
Prairie Regional Office - Calgary
Department of Justice Canada
Suite 601, 606 4th Street SW
Calgary, Alberta T2P 1T1

CLAIM

1. 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 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 $1,000,000,000 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 *Federal Courts Act*, R.S.C. 1985, c F-7;

   i) Solicitor-client costs on a full indemnity basis;

   j) The costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and

   k) Such further relief as this Court deems just.

PARTIES

2. The Plaintiff Victor Bird ("Bird") resides in Edmonton, Alberta and is an Indian as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

3. Bird is 47 years old. He is a member of the Paul Band.

4. 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.

5. Paul is 48 years old. She currently resides in Hinton, Alberta.

6. 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

7. (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 1950s 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) "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

8. The Proposed Class constitutes those Aboriginals in Canada, 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, excluding those individuals bound by the decision in *Brown v. Canada (Attorney General)*, 2017 ONSC 251

BACKGROUND

9. Commencing in or about the early 1950's, Canada implemented two practices involving the Class, which practices are central to the claim of the Class.

10. 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.

11. This practice of Displacement has come to be known, somewhat crudely, as the Sixties Scoop.

12. 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 33 below.

13. 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.

14. S. 91(24) of the *Constitution Act* historically has been interpreted to include the members of the Class.

15. 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.

16. 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".

17. 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".

18. 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.

19. 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.

20. 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

21. In assuming exclusive jurisdiction, Canada undertook a fiduciary responsibility towards Aboriginal people.

22. 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.

23. 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.

24. 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.

25. That positive obligation undertaken by Canada created a fiduciary duty to the members of the Class.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. 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; and

h) Allowing Class members to be placed at risk of sexual, physical, mental, emotional abuse and torture in foster or adoptive homes.

33. 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; and

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

34. 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; and

n) Inability to appreciate fundamental values and way of life as an Aboriginal person.

PUNITIVE DAMAGES

35. 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

36. Bird was placed in foster care at the age of one or two years. He suffered a loss of Aboriginal culture.

37. Bird was treated in a discriminatory fashion because of his Aboriginal identity.

38. 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.

39. At the age of 10, Bird returned to the Paul Band.

40. 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

41. 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.

42. 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.

43. 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

44. 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

45. 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

46. The class action is more efficient and would serve the ends of justice better than a great number of individual claims.

47. The prosecution of a similar class action claim has been concluded with a judgment against Canada in Ontario in *Brown v. Canada (Attorney-General of Canada)*, 2017 ONSC 251 for damages respecting loss of culture caused to the plaintiff and class members in that action.

48. 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.

49. The Plaintiffs propose that this action be tried at Calgary, Alberta.

DATED at Calgary, Alberta, this 24th day of November, 2017

Per: William S. Klym
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