Form 10
Rule 3.25

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COURT	Court of King's Bench of Alberta
JUDICIAL CENTRE	Calgary
PLAINTIFF	Natasha Dawn Yellowknee
DEFENDANTS	His Majesty the King in right of Alberta and Attorney General of Canada
DOCUMENT	**STATEMENT OF CLAIM** Brought under the *Class Proceedings Act*, SA 2003, c C-16.5

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO DEFENDANTS

You are being sued. You are a Defendant.

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

Note: State below only facts and not evidence (Rule 13.6).

Statement of facts relied on:

I. Definitions

1. In this Statement of Claim, in addition to the terms defined therein, the following terms have the following meanings:

   a. "**Alberta**" means His Majesty the King in right of Alberta, and all of his agents, including but not limited to:

      (i) The former Ministry of Children and Youth Services;

(ii) The former Ministry of Community and Social Services;

(iii) The former Ministry of Family and Social Services;

(iv) The former Ministry of Health and Wellness;

(v) The former Ministry of Human Services;

(vi) The former Ministry of Learning;

(vii) The Ministry of Children's Services;

(viii) The Ministry of Education;

(ix) The Ministry of Health;

(x) The Ministers of all of those ministries;

(xi) All Children's Services offices connected to one of those ministries or any CFSA (the "**CSOs**");

(xii) All Child and Family Services Authorities (the "**CFSAs**") recognized under the CFSA Act;

(xiii) All directors as defined in section 1(1)(j) of the CYFE Act; and

(xiv) All Settlements Offices.

b. "**Canada**" means His Majesty the King in right of Canada and all of his agents, including but not limited to:

(i) The former Department of Indian Affairs and Northern Development;

(ii) The former Indian and Northern Affairs Canada;

(iii) The former Aboriginal Affairs and Northern Development Canada;

(iv) Indigenous Services Canada;

(v) Crown-Indigenous Relations and Northern Affairs Canada; and

(vi) The Ministers of all of those departments;

c. "**CFSA Act**" means the *Child and Family Services Authorities Act*, RSA 2000, c C-11;

d. "**Charter**" means the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11;

e. "**Class**" means:

(i) First Nations individuals not ordinarily resident on a reserve, and Inuit and Métis individuals whether or not resident on a reserve, who:

(1) Were taken into out-of-home state care in Alberta,

(2) During the Class Period,

(3) While they were under the age of 18, and

(4) Do not meet the definition of the Removed Child Class certified by the Federal Court of Canada in *Moushoom v Canada*, 2021 FC 1225 (Federal Court File Nos. T-402-19 and T-141-20) ("***Moushoom***"), only to the extent that such claims are captured by *Moushoom* (the "**Removed Child Class**");

(ii) Indigenous individuals who:

(1) Had a confirmed need for an essential service (inclusive of essential products),

(2) Faced a delay, denial, or service gap in the receipt of that essential service during the Class Period on grounds including but not limited to lack of funding, lack of jurisdiction, or a jurisdictional dispute with another government, another level of government, or another government department,

(3) While they were under the age of 18, and

(4) Do not meet the definition of the Jordan's Class certified by the Federal Court in *Moushoom* and the claims of individuals who meet the definition of the Child Class certified by the Federal Court in *Trout v Canada*, 2022 FC

149 (Federal Court File No. T-1120-21) ("***Trout***"), only to the extent that those claims are captured by *Moushoom* or *Trout* (the "**Essential Services Class**"); and

(iii) the caregiving parents or grandparents of all members of the Removed Child Class or the Essential Services Class (the "**Family Class**");

f. "**Class Period**" means the period of time between January 1, 1992 and the date of certification of this action as a class proceeding or such other date determined to be appropriate by the Court;

g. "***CPA***" means the *Class Proceedings Act*, SA 2003, c C-16.5;

h. "**CSA Act**" means the *Children's Special Allowances Act*, SC 1992, c 48, Sch;

i. "**CYA Act**" means the *Child and Youth Advocate Act*, SA 2011, c C-11.5;

j. "**CYFE Act**" means the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12;

k. "**CYFE Regulation**" means the *Child, Youth and Family Enhancement Regulation*, Alta Reg 160/2004;

l. "**Indigenous**" includes First Nations, Inuit, and Métis individuals;

m. "**Minimum Standards Act**" means *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24;

n. "**PSEC Act**" means the *Protection of Sexually Exploited Children Act*, RSA 2000, c P-30.3; and

o. "**Settlements Offices**" means the Indigenous, First Nation, and Métis Settlements Offices.

II. Facts

A. Overview

2. Indigenous children and their families in Alberta seek justice in this proceeding for decades of discrimination and harm inflicted on them by a discriminatory child welfare system and the lack of other essential health and social services.

3. The governments of Canada and Alberta perpetuated and worsened a dark history of cultural genocide aimed at Indigenous children and families in Alberta. This claim covers one aspect of that cultural genocide: the defendants' design and operation of child welfare services and other essential health and social services for Indigenous children since 1992.

4. Alberta systemically prioritized the apprehension of Indigenous children from their families over culturally appropriate prevention services aimed at keeping Indigenous children within their homes and families.

5. Canada, for its part, left these Indigenous children and families to their fate at the hands of the province. Despite its constitutional, legal, and historic obligations to Indigenous peoples, Canada adopted a policy of abandonment, avoidance, and apathy. Canada arbitrarily restricted its funding of services to some subsets of Indigenous peoples (e.g., First Nations children ordinarily resident on-reserve, where Canada has also failed for decades to provide non-discriminatory services, although Canada's on-reserve discrimination is not the primary subject of this action).

6. Canada and Alberta's conduct directly and foreseeably resulted in the dramatic overrepresentation of Indigenous children in state care in Alberta during the Class Period.

7. The discrimination did not stop at the child and family services program. During the Class Period, the defendants also failed to comply with their constitutional and legal obligations to Indigenous children in Alberta who needed an essential service. The defendants gave such children the runaround with a variety of excuses, such as underfunding, lack of jurisdiction, or the existence of a jurisdictional dispute between Canada and Alberta or other governments or governmental departments. As a result, Indigenous children faced unreasonable delays, denials, and service gaps with respect to the essential services that they needed.

8. The defendants have been aware of the egregious overrepresentation of Indigenous children in state care, in what has become known as the Millenium Scoop, and have been aware of the equally egregious denial of essential services to Indigenous children. Over the course of the Class Period, numerous independent reviews, parliamentary reports, and audits identified these deficiencies and described their increasingly devastating impact on Indigenous children and families.

9. Despite this knowledge, the defendants' discriminatory conduct has continued, and they have failed to appropriately and reasonably remedy their impugned conduct.

10. The defendants violated Indigenous children's and families' rights under the Charter, and they breached their fiduciary duties and duty of care owed to Indigenous children and families in Alberta.

11. The plaintiffs seek to end the systemic discrimination perpetrated by Canada and Alberta in the provision of child welfare services and other essential services to Indigenous children and their families, and they seek to recover compensation for the harm caused to the survivors.

B. The Defendants' Legacy of Cultural Genocide

12. This claim addresses harms caused by Alberta and Canada since 1992, but to understand the context and nature of those harms, and why they exacerbated intergenerational trauma, it is necessary to place them in their historical context.

i. Indian Residential Schools

13. Starting in the 19th Century, Canada systematically separated Indigenous children from their families and placed them in residential schools.

14. In Alberta, these institutions operated continuously between 1862 and 1988.

15. From 1920, the *Indian Act* required all Indigenous children between the ages of 7 and 15 to attend a designated school. Parents were given no say in the matter, and were generally not allowed to see their children, because the entire system was conceived as a means to break down familial, community, and cultural ties.

16. Additionally, in Alberta, agents would sometimes buy Indigenous children from poor parents, providing a "loan" that they would not collect if the parents sent their children to residential schools. Due to their poverty and given that their children might be taken anyways if they refused, parents often had no choice but to accept the "purchase" of their children.

17. In June 2008, as part of a class action settlement relating to the Indian residential schools, Canada set up a commission of inquiry – the Truth and Reconciliation Commission ("**TRC**") – to hear from witnesses and to report on the full horrors of residential schools. The TRC produced its report in 2015 (the "**TRC Report**"), comprehensively documenting the horrors of residential schools. In brief, the TRC concluded that:

a. Roughly 150,000 Indigenous children were forced to attend residential schools; many were taken forcibly from their parents and were not allowed to return for years at a time;

b. Residential schools were characterized by institutionalized neglect, physical and sexual abuse, and death rates so much higher than the population average that children were buried in unmarked, mass graves;

c. The fundamental premise behind residential schools was that Indigenous parents were unfit to be parents – a racist assumption that was demonstrably false;

d. The goal of residential schools was not to educate Indigenous children, but rather to break the links that Indigenous children had to their families and cultures, which amounted to cultural genocide; and

e. Overall, residential schools were a “systemic, government-sponsored attempt to destroy Aboriginal cultures and languages and to assimilate Aboriginal peoples so that they no longer existed as distinct peoples.”

18. Alberta had the largest number of residential schools in Canada, and they persisted for more than a century. The last residential school in Alberta did

not close until 1988. The fact that these institutions persisted for so long created intergenerational trauma.

ii. Alberta Eugenics Board

19. Residential schools were not the only institutions in Alberta that relied on the racist premise that Indigenous parents were unfit to raise their children. From 1928 to 1972, the Alberta Eugenics Board involuntarily sterilized women who were considered "incapable of intelligent parenthood". That included children in care.

20. Indigenous people were overrepresented among those sterilized. On average, while they represented 2.5% of the population, they were 8% of those sterilized. Of all Indigenous cases presented to the Alberta Eugenics Board, about three quarters resulted in sterilization.

21. In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls published its final report (the "**MMIWG Report**"). It endorsed Dr. Dominique Clément's conclusion that Alberta's *Sexual Sterilization Act*:

> was clearly biased … against young adults, women, and First Nations and Métis. The people targeted for sterilization were labelled 'feeble-minded' or 'mentally defective.' Although, on its face, the Act and its amendment applied to both the male and female sexes and did not explicitly target 'Indians,' their effects were disproportionately visited on women and Indigenous Peoples. For example, in Alberta, First Nations women were the most likely to be sterilized, in relation to their per capita population in the province.

22. By the time residential schools and involuntary sterilization ended, Alberta and Canada had already devised a new method to take Indigenous children away from their families, communities, and cultures: child and family services.

iii. Sixties Scoop

23. In 1909, Alberta passed *The Children's Protection Act of Alberta*, SA 1909, c 12. It authorized the apprehension of a "neglected child" by a CSO or the Royal North-West Mounted Police and their placement in a "foster home" or "industrial school".

24. In the early 1960s, Alberta's Department of Neglected Children started closing residential schools and redirecting children to this child services program.

25. By the 1970s, these programs and analogous programs across the country removed more than 1 in 3 Indigenous children from their families, placing approximately 70% of them in non-Indigenous households. The rate was higher in Alberta. This is now known as the "**Sixties Scoop**".

26. Alberta has offered an official apology for the Sixties Scoop, stating:

> Many of you were placed into foster care, with no linkages to your culture, bounced from home to home, place to place, with no stability or sense of who you are and the proud place that you came from. …
>
> Many of you faced terrible abuse – physical abuse, sexual abuse, mental and emotional abuse – forced labour, starvation, and neglect. …

> When you were placed in non-Indigenous homes and communities, the dominance of colonial thinking meant that you regularly faced racism and discrimination. …
>
> The Sixties Scoop was an assault on Indigenous identity, your sense of self and who you are.
>
> As a result, many of you never felt at home anywhere, … not even when you returned home. … Many of you … still experience family dysfunction and difficult relationships … Many of you struggle with self-identity due to losing your culture, your language, and the connection to your families. … Many survivors spoke about poor physical and mental health, about drug and alcohol addiction, about depression and suicide and early deaths amongst families and friends.

27. Despite its name, the Sixties Scoop did not end in the 1960s. The defendants have continued to disproportionately take Indigenous children into care to the present day. The present claim only covers the period beginning on January 1, 1992 because earlier time periods are covered by previous litigation and eventual settlements.

C. Alberta Prioritized Apprehension Over Prevention

i. The Two Models of Child Services

28. Two models of child services exist: “apprehension” and “prevention”.

29. “**Apprehension**” refers to removing a child from their family and placing them in any type or format of out-of-home care. It is meant to be a last resort in child welfare law given its traumatizing and intrusive nature, as it uproots the child from their family and community. If done in a culturally unsafe manner, apprehension can also cut children off from their families,

cultures, languages, and the value systems and spiritual beliefs derived therefrom. This model of child services is also called “removal” or “protection services”. In this claim, this term is being used in a manner broader than apprehension orders under section 19 of the CYFE Act.

30. Overreliance on apprehension was the core problem of the Sixties Scoop. When applied to Indigenous children, apprehension perpetuates the persistent racist premise that Indigenous parents are unfit to raise their own children, and further aggravates intergenerational trauma.

31. “**Prevention**”, also referred to as “enhancement”, refers to child welfare measures short of apprehension. Prevention includes, but is not limited to:

a. Services targeted at the community to prevent hardship to children, such as a hotline for reporting exploitation and human trafficking;

b. Services provided to parents to:

(i) Directly help them care for their children, such as daycare services, access to medical care, parenting skills courses, disability supports and training, and tools to identify warning signs of malnourishment, depression, suicidality, and substance abuse;

(ii) Help them improve their financial state so that they can better care for their children, such as help finding employment or housing; and

(iii) Help them improve their emotional and mental health state so that they can better care for their children, through measures such as cultural or spiritual guidance, counselling, and addiction recovery services; and

c. Services provided to children to:

(i) Proactively build community and friendship ties, such as mentorship, opportunities to connect with community elders, and training in the history, language, or culture of a cultural or racial group with which the child is affiliated; and

(ii) Allow the child to respond to trauma in a healthy way, such as by providing counselling, mental health care, and addiction recovery services.

32. As a child welfare rule, prevention should be preferred to apprehension, for several reasons, including:

a. Apprehension of Indigenous children has, for decades, been systemically discriminatory, perpetuating the stereotype that Indigenous parents are unfit to raise their own children; and

b. Appropriate prevention services have been proven to be generally more effective than apprehension.

33. Prevention, when done properly, is also cheaper than apprehension.

ii. Alberta's Child Welfare Funding Has Systemically Prioritized Apprehension of Indigenous Children

34. To understand how Alberta's child services funding prioritized apprehension over prevention with respect to Indigenous children under provincial jurisdiction, it is useful to describe Canada's funding model for child services directed at First Nations ordinarily resident on a reserve (as defined in section 2(1) of the *Indian Act*, RSC 1985, c I-5), known as Directive 20-1 and the Enhanced Prevention Focused Approach ("**EPFA**").

35. Under Directive 20-1 and the EPFA, Canada's funding was a function of the number of children in care. Child services agencies that apprehended more children received more money. Meanwhile, they were not fully funded for prevention services. For simplicity, this is referred to as a "**Volume Structure of Funding**".

36. Directive 20-1 and the EPFA were challenged as discriminatory before the Canadian Human Rights Tribunal (the "**CHRT**"). In its landmark decision on the merits of that challenge, reported as 2016 CHRT 2 ("**CHRT Decision**"), the CHRT held that this Volume Structure of Funding discriminated against First Nations children. It created a perverse incentive to focus efforts on the apprehension of First Nations children over prevention services, pressuring child services agencies to take more children into care just to be able to balance their budgets. This inflicted

and reinforced the same type of intergenerational trauma caused by the Indian residential schools and the Sixties Scoop.

37. Alberta's child services program also uses a similar Volume Structure of Funding.

38. Additionally, Alberta made funding agreements with CSOs separately from the service agreements with those CSOs. As a result, the funding provided was not matched to the services that CSOs were required to provide.

39. Alberta's funding was systemically insufficient, forcing CSOs to divert money away from prevention services – most of which are not statutorily required – towards apprehension. In short, whenever there is a budget shortfall for either type of service, prevention programming takes the biggest hit.

iii. Alberta Has Failed to Fund Culturally Appropriate Prevention Services

40. Alberta does not fund necessary prevention programs, even those identified as necessary by the Office of the Child and Youth Advocate of Alberta (the "**OCYA**"). The OCYA was created in 1989, in response to the death of Richard Cardinal, an Indigenous child in foster care. The OCYA's mandate is to investigate deaths of children in care, determine the causes of those deaths, and produce a report with recommendations to Alberta (pre-2012), or later to the Legislative Assembly of Alberta (post-2012).

41. The OCYA has repeatedly recommended more prevention funding, especially funding for poverty reduction and suicide prevention, noting that failure to provide additional funding will increase apprehension and suicide. For example, in its 2016 report titled “Toward a Better Tomorrow”, the OCYA explained:

> A large number of Aboriginal people live in communities that have notably high levels of poverty, poor housing conditions and limited health services. … underfunding of important resources and services (such as education and health) significantly contributes to the poor health situation that many Aboriginal Peoples currently experience …
>
> In some cases, children may be taken into care because of their family’s circumstances, which can disrupt their emotional and cultural connections and cause additional feelings of grief and loss. This compounds the risk factors for suicide that were already present.

42. Similar recommendations were made in the 2015 report of Tim Richter and the Implementation Oversight Committee (the “**Richter Report**”), the 2016 report by the Auditor General of Alberta on child welfare (the “**Auditor General Report**”), and the 2017 report of the Ministerial Panel on Child Intervention (the “**Ministerial Panel Report**”), all of which were commissioned by Alberta, funded by Alberta, and presented to Alberta.

43. In addition to generally recommending increased prevention services, the various OCYA reports, the Richter Report, the Auditor General Report, and the Ministerial Panel Report specifically recommended funding for:

a. Suicide prevention programs with peer support components in schools;

b. Supports for Indigenous children who have lost someone due to suicide;

c. Indigenous cultural programs taught in schools;

d. Community-based historic trauma healing services, with access to ceremony and cultural healing; and

e. Mental health services that are sensitive to traditional values and cultural practices relevant to Indigenous children.

44. Alberta did not heed these recommendations and continues to under value prevention services – even when these prevention services are enshrined in legislation.

45. For example, although the CYFE Act requires CSOs to consult an Indigenous band representative before apprehending an Indigenous child,Alberta did not provide the necessary funding to create such a position, so the position was systemically unfilled, and this legislative requirement was ignored.

46. As a result of both the Volume Structure of Funding and the limited dedicated prevention funding, the vast majority of funds have gone towards the apprehension of Indigenous children. In 2010, 80% of

Alberta's child services funding was used for apprehension, whereas only 4% was used for prevention.

47. Even when prevention services are available and successful, funding is precarious. For example, from 2009, the Grande Prairie Friendship Centre had an Indigenous-run prevention program that was designed to support the re-unification of Indigenous families at risk. This program was successful and lauded for over a decade as a model for the rest of the province. By 2021, the need for this type of prevention services had only increased, but Alberta stopped funding the program and instead diverted the funds to a non-Indigenous organization. No proposals from Indigenous friendship centres were funded that year.

iv. Kinship Care is Underfunded and Underused

48. In many Indigenous cultures, the raising of children is a communal responsibility with the immediate and extended family carrying the primary responsibility. A child may eat at or sleep in any of their extended family's homes, and a non-parent may primarily oversee the child's development, but the child does not lose contact with their parents. This is known as "**Kinship Care**" or "customary care", and it is the best alternative to apprehension when prevention alone is insufficient. On average, children placed in Kinship Care have better outcomes than those placed in foster care, group homes and other child welfare placement types.

49. In a 2013 report titled “Remembering Brian: An Investigative Review” (the “**Brian Report**”), the OCYA concluded that Brian’s death was partially caused by the CSO providing less funding to his Kinship Caregivers than it gave to foster parents because of:

> … an all-too-common perception that, as persons already familiar with the children in their care, kinship caregivers do not require as much support as other caregivers … In reality, kinship caregiving is a specialized and demanding role requiring unique assessment, preparation and support that goes well beyond financial resources.

50. The Brian Report added that the CSO could not determine which CSO was responsible for supporting the Kinship Caregiver, the criteria for transferring Brian’s case to that CSO, or the contact person for Kinship Care at that CSO. As a result, Brian’s file was never transferred, and his Kinship Caregiver never received support. Nor was the CSO aware of any of the resources in the Kinship Caregiver’s region, depriving her of an opportunity to access those resources.

51. According to the Brian Report, there is a shared understanding between the Ministry and Aboriginal leadership and communities about the need to deliver services that better support Aboriginal children, youth and families.

52. The ALIGN Association of Community Services, an association of CSOs, has also commented on the problem. In its 2021 report titled “Kinship Care Redesign in Alberta” (the “**ALIGN Report**”), it found that:

a. Funding for Kinship Care is based on outdated assumptions about the costs and number of children in Kinship Care;

b. Kinship Care requires more time on the part of kinship coordinators, but kinship coordinators do not have commensurately lower caseloads;

c. CSOs that have more children in Kinship Care than expected face budget shortfalls, creating an incentive to apprehend children and place them in foster care;

d. CSOs cannot give Kinship Caregivers certain prevention services because the child is not officially “in care”;

e. CSOs often fail to inform Kinship Caregivers of the prevention services and funding that are available to them; and

f. On average, Kinship Caregivers need more support than foster parents because they are dealing with more poverty, more complex cases, and intergenerational trauma. However, they, in fact, receive less support and resources than foster parents.

53. As a result of all of the funding and policy limitations above, until 2016, fewer than 30% of children were placed in Kinship Care or parental care. That increased to 39% as of March 2020, but that figure is still low enough to suggest that it is not being considered as a first choice.

v. Alberta Prioritized Apprehensions

54. The ALIGN Report also found that some prevention services could only be provided if the child was already in state care. Thus, Indigenous parents whose children needed those services had no choice but to consent to having their children apprehended.

vi. Training & Culture Prioritize Apprehension

55. Various OCYA Reports, the Richter Report, the Auditor General Report, and the Ministerial Panel Report have all identified systemic gaps in training CSO workers. For example, workers lack adequate training in:

a. Helping Indigenous parents with addictions, as an alternative to apprehending children;

b. Workers' obligation to prepare comprehensive care plans to ensure that workers consider maintaining family, community, and cultural connections;

c. What it means to provide "culturally appropriate" services; and

d. "Aboriginal competency", which includes awareness of residential schools, the Sixties Scoop, intergenerational trauma, lasting effects of colonization, overrepresentation of Indigenous children in the child welfare system, racism, and Indigenous traditions and cultural practices.

56. These gaps result in CSO workers failing to provide enough prevention services, and being too quick to resort to apprehension.

57. The case of an Indigenous woman in Alberta identified as “Cora” is particularly striking, but also emblematic of the effects of a lack of training in cultural sensitivity. In 2013, Cora gave birth to her son at a Calgary hospital. Four days later, a CSO worker came to the hospital to see her. Cora admitted that she wanted counselling for being raped in her home as a child. On the basis of this request for services that qualify as prevention, the CSO worker apprehended her child. The worker’s notes impugned Cora for returning to her home after the rape, and explained that her child was being apprehended because of Cora’s “inability to protect herself” from the rape. The worker’s application to the court for apprehension listed “domestic violence in the home, the parent’s coping abilities and ability to make appropriate choices” as the bases for the apprehension. It took Cora eight months to recover her child, but not before she had to retain a lawyer, take parenting classes, undergo a parenting assessment, and pay for counselling out of pocket.

vi. Indigenous Cases Are Reviewed Differently

58. The Auditor General Report found that when CSOs are deciding whether to apprehend, they treat Indigenous children differently from non-Indigenous children:

a. In 2014-2015, 43.73% of non-Indigenous children receiving services were receiving in-home prevention services, instead of apprehension. By contrast, prevention without apprehension was only available to 30.49% of Métis children and to 13.41% of First Nations children in Alberta.

b. In 2014-2015, 13% of non-Indigenous children receiving services had had a case closed within the past 12 months. By contrast, recurrence was registered for 23% of Indigenous children. This indicates that Alberta was almost twice as likely to inappropriately close a file for an Indigenous child as for a non-Indigenous child, cutting them off from prevention sooner.

c. In 2014-2015, 9% of non-Indigenous children receiving services did not remain with their families throughout Alberta's involvement. By contrast, that rate doubled to 18% for Indigenous children. Thus, Alberta's involvement was twice as likely to break up an Indigenous child from their family than a non-Indigenous child.

59. Decisions on whether to apprehend are also informed by long-standing systemic racist stereotypes about Indigenous parents. Several OCYA reports speak to this. For example, the Brian Report notes that a CSO worker decided whether to apprehend Brian based on drug tests of his mother. The focus on these drug tests "was not balanced with a similar level of focus on the needs of her children". The worker had "questions

about Brian's emotional state", but did not follow up, perform an assessment, or offer counselling supports. Had she done so, Brian might still be alive today.

vii. Indigenous Children are Disproportionately Apprehended

60. As a result of all of the issues described above, Indigenous children are heavily overrepresented in state care and their over-representation continues to be worsened by the defendants' conduct impugned herein.

61. Indigenous children represent only 10% of all children in Alberta, while a much larger – and growing – fraction of Indigenous children are apprehended and placed into state care:

a. In 1993, 50% of apprehended children were Indigenous.

b. In 2022, 73% of apprehended children were Indigenous.

D. Apprehensions of Indigenous Children Were Culturally Unsafe

62. Once the decision has been made to apprehend an Indigenous child, there are a number of ways for the province to limit the disruption caused. They can be placed in the care of family members, in their own communities, or with Indigenous parents. They can be placed in the same home as their siblings. They can be provided with opportunities to connect with their families, communities, and cultures. Their situations can be regularly monitored so that they can return to their parents if circumstances improve. None of this happened.

i. Indigenous Children Are Disconnected from their Communities & Cultures

63. The Auditor General Report found that CSOs off reserves only place 28% of Indigenous children with Indigenous caregivers.

64. Various OCYA reports and the Ministerial Panel Report have concluded that there is insufficient focus on maintaining ties between Indigenous children in care and their parents, siblings, communities, cultures, traditional activities, languages, knowledge, or worldviews.

ii. Indigenous Children in Care Are Not Regularly Monitored

65. The Auditor General Report showed that CSOs off reserves follow up less often with Indigenous children than with non-Indigenous children:

a. The CYFE Act requires CSOs to create a care plan for every apprehended child. These plans are meant to force CSOs to review whether continued apprehension is necessary. In 2014-2015, CSOs only failed to review a care plan every 3 months for 3.59% of non-Indigenous children. By contrast, they failed to do so for 11.15% of Indigenous children – three times as often.

b. In 2014-2015, CSOs only failed to establish face-to-face contact every 3 months with 26.01% of non-Indigenous children. By contrast, they failed to do so for 36.43% of Indigenous children.

E. Essential Services and Jordan's Principle

66. In addition to systemically taking Indigenous children into care and placing them in culturally unsafe situations once they were in care, the defendants failed to provide substantively (or even formally) equal essential services to the Indigenous children in Alberta. Examples of such essential services include, but are not limited to, health and social services (e.g., medications, medical treatments, transportation to treatments, equipment, supplies, counselling, mental healthcare, respite care, oral healthcare, and vision care).

67. Instead, Indigenous children in Alberta routinely faced unreasonable delays, denials or service gaps in the receipt of such essential services.

i. Background

68. For decades, both defendants knew or ought to have known that their funding formulas as well as their approach to jurisdictional barriers systemically denied Indigenous children the essential services that they needed contrary to those children's constitutional equality and human rights. Prior to and over the course of the Class Period, independent reviews and parliamentary reports identified these deficiencies and decried their devastating impact on Indigenous children and families.

69. The House of Commons' Special Committee on the Disabled and the Handicapped issued a report in 1981 where it stated:

Jurisdictional Disputes Between Governments

> The Federal Government delivers services to Status Indians on reserves, and is willing to pay for services for the first year for those individuals who leave the reserve. In recent times, because of greatly increased migration of Status Indians from the reserves to urban centres, a dispute has developed between the Federal and Provincial Governments regarding the responsibility for delivering services to those individuals who are away from the reserve for more than a year. Some provinces, for their part, are reluctant or unwilling to foot the bill for a service that they consider to be the responsibility of the Federal Government. … The dispute over this matter of service to Status Indians away from the reserve leaves the Indians themselves confused since they are frequently left without any services while the two Governments are arguing over ultimate responsibility. [emphasis added]

70. Twelve years later in 1993, the House of Commons' Standing Committee on Human Rights and the Status of Disabled Persons issued a follow-up report stating: "the situation of these [Indigenous] people has not improved during the past decade". The report further stated:

> Aboriginal people must not only contend with the fragmented nature of federal programs, but have to overcome the barriers imposed by federal/provincial jurisdictions. Like other disability issues, those related to Aboriginal people either cross federal/provincial boundaries or lie in an area of exclusive provincial responsibility.
> …
> The federal/provincial jurisdictional logjam shows up most graphically in the provisions of health and social services to Aboriginal people…. In all of this wrangling, both levels of government appear to have forgotten the needs of the people themselves. In this complex and overlapping web of service structures, some people even find themselves falling through the cracks and unequally treated compared to their fellow citizens. [emphasis added]

71. The Committee made the following recommendation:

> The federal government should prepare, no later than 1 November 1993, a tripartite federal / provincial-territorial / band governmental action plan that will ensure ongoing consultation, co-operation and collaboration on all issues pertaining to Aboriginal people with disabilities. This action plan must contain specific agendas, realistic target dates and evaluation mechanisms. It should deal with existing or proposed transfers of the delivery of services to ensure that these transfers meet the needs of Aboriginal people with disabilities.

72. The Royal Commission on Aboriginal Peoples (1996) called on governments, including the defendants, to resolve the "program and jurisdiction rigidities" plaguing the provision of services to the Class. The Royal Commission made the following recommendations, amongst others, in this respect:

> Governments recognize that the health of a people is a matter of vital concern to its life, welfare, identity and culture and is therefore a core area for the exercise of self-government by Aboriginal nations.
>
> Governments act promptly to
>
> (a) conclude agreements recognizing their respective jurisdictions in areas touching directly on Aboriginal health;
> (b) agree on appropriate arrangements for funding health services under Aboriginal jurisdiction; and
> (c) establish a framework, until institutions of Aboriginal self-government exist, whereby agencies mandated by Aboriginal governments or identified by Aboriginal organizations or communities can deliver health and social services operating under provincial or territorial jurisdiction.

73. In 2000, the Joint National Policy Review highlighted some of these issues and made the following recommendation:

> [The former Department of Indian Affairs and Northern Development], Health Canada, the provinces/territories and First Nation agencies must give priority to clarifying jurisdiction and resourcing issues related to responsibility for programming and funding for children with complex needs such as handicapped children, children with emotional and/or medical needs. Services provided to these children must incorporate the importance of cultural heritage and identity.

74. In 2005, *Wen:De: We are Coming to the Light of Day* ("***Wen:De***") reported on a survey of First Nations Child and Family Services program agencies regarding the jurisdictional and funding barriers faced by the Class. Survey responses "indicated that the 12 agencies had experienced 393 jurisdictional disputes this past year requiring an average of 54.25 person hours to resolve each incident".

ii. Jordan's Principle

75. *Wen:De* proposed a "Jordan's Principle" in honour of Jordan River Anderson, a child born to a family of the Norway House Cree Nation in Manitoba in 1999. Jordan had a serious medical condition, and due to lack of services his family surrendered him to provincial care to get the medical treatment that he needed. After spending the first two years in a hospital, he could have gone into care at a specialized foster home close to his medical facilities in Winnipeg. However, for the next two years, Canada and the province argued over who should pay for Jordan's foster home costs while Jordan remained in the hospital. They were still arguing about

jurisdiction when Jordan passed away in 2005, at the age of five, having spent his entire life in the hospital.

76. *Wen:De* stated that despite section 15 of the Charter and international law requiring that First Nations children receive equal benefit under the law, the governments' apathy and inaction denied them that protection:

> This continual jurisdictional wrangling results in program fragmentation, problems with coordinating programs and reporting mechanisms, gaps in service delivery - thereby leaving First Nations children to fall through the cracks. In short, neither the federal or provincial/territorial governments have effectively addressed the community needs of First Nations despite awareness of the impact of "policies of avoidance".
>
> … We recommend that a child first principle be adopted whereby the government (provincial or federal) who first receives a request for payment of services for a First Nations child will pay without disruption or delay when these services are otherwise available to non Aboriginal children in similar circumstances. The government then has the option of referring the matter to a jurisdictional dispute resolution process.
>
> … In Jordan's memory we recommend that this new child first approach to resolving jurisdictional disputes be called Jordan's Principle and be implemented without delay.

77. On December 12, 2007, the House of Commons unanimously passed Motion 296, stating: "That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children". This motion came about as a result of the federal and provincial governments' persistent violation of the Class Members'

equality rights described above. Motion 296 was not a statute that created statutory rights, but a motion affirming existing constitutional and quasi-constitutional equality rights to substantively equal access to essential services.

78. Canada and Alberta did nothing to address these long-standing problems for years to come. They opted instead for neglect and avoidance.

79. In 2016, the CHRT Decision held that Canada had discriminated against First Nations children throughout Canada by not honouring Jordan's Principle. The reason why the CHRT Decision focussed on First Nations children as opposed to all Indigenous children was that the human rights complaint underlying that matter related to First Nations only. However, the same individual rights and state obligations applied and apply to Inuit and Métis individuals in Alberta.

80. The CHRT held that the equality protections owed under the rubric of Jordan's Principle include, amongst others, the following:

a. The equality protections embedded in Jordan's Principle make it a child-first principle that applies equally to all First Nations children, whether resident on- or off-reserve. They are not limited to children with disabilities, or those with discrete short-term issues creating critical needs for health and social supports or affecting their activities of daily living.

b. The equality protections embedded in Jordan's Principle address the needs of children by ensuring there are no gaps in government services to them. They can address, for example, but are not limited to, gaps in such services as mental health, special education, dental, physical therapy, speech therapy, medical equipment, and physiotherapy.

c. When a government service, including a service assessment, is available to all other children, the government department of first contact should pay for that service to a First Nations child, without engaging in administrative case conferencing, policy review, service navigation or any other similar administrative procedure before the recommended service is approved and funding is provided. The government may only engage in clinical case conferencing with professionals with relevant competence and training before the recommended service is approved and funding is provided to the extent that such consultations are reasonably necessary to determine the requestor's clinical needs. Where professionals with relevant competence and training are already involved in a First Nation child's case, the government should consult those professionals and should only involve other professionals to the extent that those professionals already involved cannot provide the necessary clinical information. The government may also consult with the family, First Nation community or service providers to fund services.

After the recommended service is approved and funding is provided, the government department of first contact can seek reimbursement from another department/government.

d. When a government service, including a service assessment, is not necessarily available to all non-First Nations children or is beyond the normative standard of care, the government department of first contact must still evaluate the individual needs of the First Nation child to determine if the requested service should be provided to ensure substantive equality in the provision of services to the First Nation child, to ensure culturally appropriate services to the child and/or to safeguard the best interests of the child.

e. While the equality protections embedded in Jordan's Principle can apply to jurisdictional disputes between governments (*i.e.*, between federal, provincial or territorial governments) and to jurisdictional disputes between departments within the same government, a dispute amongst government departments or between governments is not a necessary requirement for the children's entitlement to substantively equal services.

81. On or about September 10, 2018, Canada established the Inuit Child First Initiative to extend its Jordan's Principle program mandated by the CHRT to the Inuit children, although the Inuit have continued to suffer service gaps, denials and delays in essential services despite the Inuit Child First

Initiative. Canada has done nothing to assist Métis children in this regard unless they live on a reserve.

82. Alberta has likewise done little in this regard during the Class Period. As the OCYA explained in a 2016 report titled "Voices for Change: Aboriginal Child Welfare in Alberta" (the "**Voices for Change Report**"):

> Too often, confusion over which government has responsibility for which issue has resulted in Aboriginal children and families falling through the cracks. …
>
> Jordan's Principle was unanimously passed in the House of Commons in 2007, but neither the federal government nor provincial and territorial governments have fully implemented it. …
>
> The Advocate recommends that the Government of Alberta vigorously adopt Jordan's Principle in respect of Aboriginal children who interact with the child welfare system. …
>
> The spirit of Jordan's Principle also has application in an intra-provincial context. … For example, if an Aboriginal child has a need for specialized support that is not purely related to health but is driven by a health circumstance, should that be addressed through Alberta Human Services, or through Alberta Health? A vigorous commitment to Jordan's Principle would generate the answer, 'It doesn't matter. Just get the child the support he needs, and then we will sort out who is responsible for the money.' This is the kind of spirit that should be shared across the entire Government of Alberta when it comes to assisting children and families.

iii. Scope of Essential Services Class Claims

83. *Moushoom* and *Trout* hold Canada accountable for its failure to provide essential services to First Nations children who had a confirmed need for an essential service but faced an unreasonable delay, denial or service gap between April 1, 1991 and November 2, 2017.

84. Canada has faced no accountability for discriminating against Inuit and Métis children in Alberta who experienced the same deprivations of needed essential services. To the extent that Essential Services Class Members are not covered by *Moushoom* or *Trout*, the plaintiffs and the Essential Services Class Members advance those claims against Canada in this proceeding.

85. Alberta has faced no accountability for the delays, denials and service gaps that Indigenous children faced in Alberta in the receipt of essential services during the Class Period. The plaintiffs and the Essential Services Class Members seek to hold Alberta accountable for its joint and several liability to the Class.

F. The Representative Plaintiff's Experience

86. Natasha Dawn Yellowknee is a Nehiyaw (Cree) person and a status Indian registered with the Wabasca / Bigstone Cree Nation. She was born on January 2, 1986 in Red Deer, Alberta.

87. In 1996, she and her two siblings who live off-reserve were apprehended by a CSO. Natasha was in care between September 1996 and June 1997, and then returned to her family. During this time, Natasha was first placed briefly with her aunt, then apprehended again and placed in the care of a non-Indigenous family in Slave Lake with no connection to her community.

88. As a result of being apprehended, Natasha experienced severe loneliness. She had to attend a different school, disconnected from her

friends and family, and experienced exclusion and racism in her new environment. Her only connection with her community were the few times her mother was allowed to visit. She was otherwise denied the opportunity to connect with her Cree community and culture.

89. Looking back, Natasha now recognizes that what happened to her was traumatic and negatively impacted her sense of identity, to the point that she wished she were white. She is now working to heal and to connect with her Indigenous roots.

III. Causes of Action

A. The Defendants' Duties

90. The defendants owed duties to the Class that generally required them to:

a. act in the best interests of Indigenous children and their families;

b. provide Indigenous children with non-discriminatory child services;

c. provide Indigenous children with substantively equal services to those provided to non-Indigenous children;

d. prioritize prevention over apprehension for Indigenous children;

e. not exacerbate the stereotype that Indigenous parents are unfit to raise their own children;

f. prioritize Kinship Care over apprehension where in-home care with adequate prevention could not keep Indigenous children safe;

g. ensure that apprehension was culturally safe, maintaining and fostering family, community, and cultural ties of Indigenous children in care;

h. provide adequate programming on Indigenous history, heritage, identity, culture, spirituality, language, and traditions for Indigenous children in care;

i. provide Indigenous children with the essential services that the need free of delays, denials or service gaps; and

j. follow not only the letter but also the spirit of Jordan's Principle.

i. Constitutional Duties

91. Both defendants are responsible for Indigenous children and families in the Province of Alberta:

a. Canada has jurisdiction over "Indians" under section 91(24) of *The Constitution Act, 1867*, 30 & 31 Vict, c 3, which imposes a constitutional duty to all Indigenous people.

b. Alberta exercises jurisdiction over child services under section 92(13) of *The Constitution Act, 1867*. It designed, managed, operated, administered, and funded the Ministry, and exercises control over child welfare at the heart of this action. Alberta controls all aspects of the lives of Indigenous children in its care following apprehension, and acts *in loco parentis* or pursuant to *parens patriae* powers.

92. Both defendants are bound by the Charter.

ii. Statutory Duties

93. Alberta and Canada have each passed legislation pursuant to which they undertook duties to act in the best interests of Indigenous children, and to take positive steps to reduce the number of Indigenous in care in Alberta:

a. Alberta and Canada have committed to ensuring that Indigenous children are not apprehended without considering the effect of such a decision on the child's connections with their family, community, and culture. This commitment is enshrined, amongst others, in sections 2(1)(c)-(e), 58.1(d), and 58.1(g)-(i) of the CYFE Act and section 10(3) of the Minimum Standards Act.

b. Canada has committed to prioritizing Kinship Care over foster care. This commitment is enshrined, amongst others, in section 16(2.1) of the Minimum Standards Act.

c. Alberta has committed to prioritizing prevention over apprehension. This commitment is enshrined in sections 9(b), 17(b), 18(1)(b), 21(11)(a), 31(1)(b), and 34(1)(b) of the CYFE Act.

d. Alberta has committed to informing a band representative of apprehensions of First Nations children, and allowing band representatives to participate in proceedings to place those children.

This commitment is enshrined, amongst others, in sections 1.1(d), 53(1.1), 53.1, 63(1)(a)(v), 67, and 107(1)-(3) of the CYFE Act.

94. Alberta and Canada have also passed legislation pursuant to which they undertook to maintain family, community, and cultural ties when apprehension is inevitable:

a. Alberta and Canada have committed to prioritizing placements with a parent first, then with another family member, then with another person belonging to the same Indigenous group, then with another Indigenous person, and only then considering placements with non-Indigenous persons. This commitment is enshrined, amongst others, in sections 2(1)(j)(i)-(iv) of the CYFE Act and section 16(1) of the Minimum Standards Act.

b. Alberta has undertaken to ensure that Indigenous children can be told about their biological parents, and vice versa. This is enshrined, amongst others, in sections 74.2(2)-(3), 74.4(1)-(3), 74.4(5), and 74.5(2)-(5) of the CYFE Act.

c. Canada has committed to ensuring that siblings who are apprehended are not split up. This is enshrined, amongst others, in section 16(2) of the Minimum Standards Act.

d. Alberta has committed to preparing a plan to respect, support and preserve, and in fact respecting, supporting, and preserving the

Indigenous identity, culture, heritage, spirituality, language, and traditions of Indigenous children in care. This is enshrined, amongst others, in sections 52(1.3), 57.01(a), 63(1)(f), 63(2)(f), 63(3)(f), and 71.1(a) of the CYFE Act.

e. Alberta has committed to paying for the cost of an Indigenous child travelling to their band, community, extended family, or other setting that will enable the child to connect with their Indigenous identity, culture, heritage, spirituality, language, or traditions. This is enshrined, amongst others, in sections 10(2)(c) of the CYFE Regulation.

f. Canada has committed to ensuring that all services provided to Indigenous children in care take into account the child's culture. This is enshrined, amongst others, in section 11 of the Minimum Standards Act.

95. These statutory duties inform the contents of the defendants' constitutional, fiduciary duties and duty of care to the Class.

iii. International Law Duties

96. Canada has ratified international treaties and other international instruments containing obligations relating to the rights of the Class, including but not limited to:

a. The *United Nations Declaration on the Rights of Indigenous Peoples*;

b. The *Convention on the Rights of the Child*;

c. The *Convention for the Elimination of All Forms of Racial Discrimination*;

d. The *Convention on the Elimination of All Forms of Discrimination Against Women*;

e. The *International Covenant on Economic, Social, and Cultural Rights*; and

f. The *International Covenant on Civil and Political Rights*.

97. These instruments codify rights:

a. of Indigenous children, not to be separated from a parent through discrimination;

b. of Indigenous children separated from their parents, to maintain personal relations and direct contact with their family on a regular basis;

c. of Indigenous families and communities, to retain shared responsibility for the upbringing of their children;

d. of children, to preserve their identity; and

e. of all people, not to be subjected to forced assimilation or destruction of culture.

98. These international commitments inform the contents of Canada's constitutional duties, fiduciary duties and common law duty of care to the Class.

iv. Fiduciary Duties

99. Both defendant crowns are in a continuing fiduciary relationship with the Class.

100. Furthermore, the circumstances of this case gave rise to fiduciary duties on both defendants with respect to the Class.

101. The defendants control all aspects of the lives of Indigenous children in their care following apprehension as well as the lives of Indigenous children who need other essential services. The defendants' support for the Indian residential schools and the Sixties Scoop made Indigenous children and families even more dependent on these governments for child and family, and other essential services.

102. The Class was at all times vulnerable to the defendants' exercise, or failure to exercise, their discretion and the power that the defendants had over them as fiduciaries.

103. Both defendants specifically undertook—amongst others, through the statutory, international and other documents particularized herein—to act in the best interests of the Class, particularly the Indigenous children.

104. Furthermore, the honour of the crown is at stake in every dealing with Indigenous peoples. It requires that the defendants act honourably and in good faith in each such dealing. The honour of the crown and the crown's fiduciary duties owed to Indigenous peoples are not in competition. The court may find that Canada and Alberta simultaneously breached the honour of the crown and their respective fiduciary obligations in their dealings with the Class.

v. Duty of Care

105. Canada and Alberta had the responsibility of designing, funding and overseeing the services at issue during the Class Period.

106. Throughout the Class Period, the defendants owed a common law duty of care to the plaintiffs and the other Class Members to take steps to sufficiently fund and operate Indigenous child and family services and the operational and other costs of child and family and other essential services, including by ensuring that reasonable appropriate preventative measures, child and family services, and other essential services were made available and provided to the Class Members.

107. The defendants owed this duty of care by virtue of their constitutional responsibilities as well as their statutory and international undertakings and obligations.

(a) Alberta's Duty of Care

108. In addition, a common law duty of care arises by virtue of the proximity of Alberta to the Class. Alberta has directly undertaken to administer child and family services for the Class. This relationship is paternalistic and involves significant and direct interference in the lives of the Class Members.

109. It is reasonably foreseeable that, as a result of Alberta's operation of Indigenous child and family services, harm might come to both the Indigenous children and their families. It is further reasonable for the Class to rely on Alberta to execute this duty with a considerable level of care.

110. Regardless of the source, the content of Alberta's duty may be informed by the provisions in the statutes particularized herein, which reaffirm and list a variety of existing principles that must inform Alberta's administration of child and family services. These duties can be broadly summarized as requiring Alberta to, amongst others:

a. Provide the Class with substantively equal child and family services respectful of their indigeneity;

b. Recognizes Indigenous cultures, heritages, traditions, connection to community, and the concept of the extended family;

c. Ensure that Indigenous families and communities are involved in the upbringing of First Nations children living off-reserve, and Métis, and

Inuit children, and that those children were able to remain in their communities and to learn about and practice their traditions, culture, and language; and

d. Ensure that Indigenous children receive their needed essential services.

(b) Canada's Duty of Care

111. Canada owes a duty of care to the Class in funding and otherwise administering child and family services and other essential services. This duty arises from Canada's unique statutory and constitutional relationship detailed above, which creates a close and trust-like proximity between Canada and Indigenous peoples.

112. It is reasonably foreseeable that Canada's failure to take reasonable care might harm the Class. It is also reasonably foreseeable that Canada's inaction and avoidance would harm the Class.

113. Canada was required to fund provincial child and family services and other essential services in a manner that: (i) does not discriminate against Indigenous children; (ii) prioritizes support for and preservation of Indigenous traditions, culture and language; (iii) does not subject Indigenous children in need of an essential service to delays, denial and service gaps.

114. Alberta's discrimination and problematic operation of child welfare did not absolve Canada of the standard of care that it was required to meet.

B. Constitutional Claims

i. Breach of Section 15 of the Charter

115. As particularized herein, Alberta prioritized apprehension over prevention, resulting in the increasing overrepresentation of Indigenous children in care. Alberta's funding decisions and policies imposed disparate impacts on members of the Removed Child Class.

116. By the same token, Alberta disproportionately deprived Indigenous parents of the ability to raise their children, and of the companionship of those children. Thus, Alberta also imposed disparate impacts on members of the Family Class.

117. Once Indigenous children were taken into care, Alberta provided culturally unsafe services, which further aggravated the disparate impacts on members of the Removed Child Class.

118. Canada had jurisdiction over Indigenous child services, and owed various duties to the Class. Collectively, that jurisdiction and those duties required Canada to prevent Alberta from imposing disparate impacts on members of the Removed Child Class through its provision of child services, or to provide enough funding and oversight to compensate for those disparate impacts. Despite actual knowledge of the disparate impacts, Canada

failed to prevent or compensate for them, and so was complicit in imposing disparate impacts on members of the Removed Child Class and the Family Class.

119. The defendants also jointly delayed or denied essential services to members of the Essential Services Class. These types of delays and denials disproportionately affected Indigenous children.

120. By the same token, the defendants' conduct disproportionately forced Indigenous parents to find and pay for essential services themselves if they could afford them, or suffer the consequences of a child going without access to an essential service. If they could not find or afford those services, they would be deprived of the ability to take proper care of their children. Thus, the defendants also imposed disparate impacts on the Family Class.

121. The disparate impacts described above exacerbated the historical disadvantage of the Class, creating headwinds for the Class. For example, the defendants' actions and inactions:

a. Disconnected members of the Removed Child Class from their families, communities, cultures, languages, and the value systems and spiritual beliefs derived therefrom;

b. Reinforced the stereotype that Indigenous parents, and especially the Family Class, are unfit to raise their children;

c. Perpetuated the intergenerational trauma of residential schools, the Alberta Eugenics Board, and the Sixties Scoop, confirming to Indigenous communities that not even multiple apologies and settlements would stop the state from the cycle of taking away their children; and

d. Left Indigenous children facing delays, denials or service gaps for services that were essential to their health and wellbeing.

122. Additionally, the defendants created many of these stereotypes and intergenerational trauma in the first place, through their creation of and support for residential schools, the Eugenics Board, and the Sixties Scoop. Thus, failing to correct these disparate impacts not only constituted an absence of accommodation for the Class, but also aggravated their situation.

123. The disproportionate adverse impact of the defendants' conduct reinforced, perpetuated, and exacerbated the Class's disadvantage as Indigenous people in Alberta.

124. The defendants' conduct creates and contributes to a disproportionate impact on the Class based on protected grounds. The disparate impacts, headwinds, and lack of accommodation described above were imposed based on the enumerated grounds of race, ethnic origin, and nationality and the analogous grounds of family status and Indigeneity, in breach of section 15 of the Charter.

125. The conduct described herein cannot be justified under section 1 of the Charter. There is no pressing or substantial objective for the defendants' conduct, such as prioritizing apprehension over prevention, having culturally unsafe apprehension, or disproportionately delaying or denying essential services. Nor is there a rational connection between any pressing or substantial objective and any of the defendants' actions and inactions.

ii. Breach of Section 7 of the Charter

126. The defendants delayed and denied essential services to members of the Essential Services Class. These delays and denials deprived members of the Essential Services Class of their lives or security of the person. These deprivations were arbitrary and overbroad, and were not justified on the basis of any principles of fundamental justice.

127. Compounding the harm caused to the Class, the lack of those essential services often ensured that the Class would be removed from their families. The effects are properly characterized as violence against the Class and caused the Class to suffer abuse and exploitation.

128. Further, Alberta apprehended members of the Removed Child Class and placed many in culturally unsafe situations. These decisions deprived members of the Removed Child Class of their liberty, and in many cases also their lives or security of the person. These deprivations were likewise

arbitrary and overbroad, and were not justified on the basis of any principles of fundamental justice.

129. The defendants' conduct was arbitrary and overbroad with respect to the Class: Alberta's prioritizing apprehensions over culturally-safe prevention services arbitrarily and overbroadly singled out Indigenous children and families and disproportionately impacted their life, freedom and security of the person.

130. The defendants' conduct was overbroad because the limits imposed by them on Indigenous children and families in Alberta do not have a rational connection to the defendants' stated purposes or their constitutional, statutory, international, common law and equitable duties to the Class as particularized above.

131. Likewise, the grossly disproportionate effect of the defendants' conduct on the Class has no connection with the defendants' stated purposes and obligations towards Indigenous children and families in Alberta, and it is therefore arbitrary.

C. Breach of Fiduciary Duty

i. Alberta Breached its Fiduciary Duties to the Class

132. Alberta was required to act in the best interests of the Class by, amongst others:

a. respecting the Class Members' constitutional substantive equality rights as Indigenous people;

b. prioritizing access to adequate prevention services;

c. not structuring its funding to require service providers to prioritize apprehension over preventive services; and

d. not causing delays, denials or service gaps in the Essential Service Class Members' access to essential services.

133. The Class was adversely affected by Alberta's exercise of discretion and control. The Family Class's right to take care of their own children was undermined by Alberta's exercise of discretion and control under statute.

134. By engaging in the conduct particularized herein, Alberta breached its fiduciary duty owed to the Class. These actions amounted to Alberta prioritizing its own interests ahead of those of the Class, and committing acts that harmed the plaintiffs and the Class in a way that amounted to betrayal of trust and to disloyalty.

135. As a result of Alberta's breach of fiduciary duty, the plaintiffs and the Class have suffered loss and damage as particularized herein.

ii. Canada Breached its Fiduciary Duties to the Class

136. Canada's fiduciary duty required it to act loyally and in the best interests of the Class by, amongst others, the following:

a. Canada is required not to abandon Indigenous children and families to their fate at the hands of the province.

b. Canada has a positive duty to act in the best interests of Indigenous children and families to ensure the provision of substantively equal, adequate and culturally appropriate child welfare services off-reserve. This includes responsibilities to: (i) protect Indigenous children and families from separation; (ii) take reasonable steps to prevent injury and loss to those off-reserve Indigenous children of their identity, culture, heritage, language, family, and federal benefits; (iii) protect removed off-reserve Indigenous children from harm when in state care; and (iv) not cause delays, denials and service gaps in the Essential Service Class Members' access to essential services.

c. Canada's constitutional and statutory obligations, policies, and the common law empowered and required it to take steps to monitor, fund, influence, safeguard, secure, and otherwise protect the vital interests of the plaintiffs and the Class. These obligations required particular care with respect to the interests of children and their families, whose wellbeing and security were vulnerable to Canada's exercise of its discretion as well as to Canada's failure to exercise its discretion to act in the best interests of the Class.

d. Canada had discretionary power to remedy inadequacies in Alberta's provision of child and family services. Accordingly, Canada was, at all

material times, acting in its capacity as a fiduciary with respect to the Class.

137. Canada's fiduciary duties owed to the Class were not delegable to the province. It was empowered and obligated to monitor and remedy the many gaps in Alberta's provision of child and family services and other essential services.

138. The mere fact that Alberta was the party providing the discriminatory services did not absolve Canada of its own fiduciary obligations. Members of the Class were harmed by Canada's exercise, or lack thereof, of discretion or control in these circumstances.

139. As particularized herein, Canada was alerted numerous times to the discriminatory inadequacies of the provincial child and family services provided to the Class. Canada knew or reasonably ought to have known of all of the inadequacies of Alberta's services with respect to Indigenous children and families and, in breach of the honour of the crown and its fiduciary duties, did nothing to intervene or meet its duties owed to the Class.

140. Canada adopted a policy of denial and avoidance. By deliberately failing or neglecting to remedy blatant inadequacies in Alberta's child and family services program and the delivery of other essential services with respect to Indigenous children and families, Canada breached the fiduciary duties it owed to the Class. Canada's deliberate inaction amounted to it putting

its own interests ahead of those of the Class, and harmed the Class in a way that amounted to betrayal of trust and to disloyalty.

D. Systemic Negligence

i. Alberta's Negligence

141. Alberta breached its duty of care to the Class as detailed in this claim, including by:

a. Providing discriminatorily deficient services to the Class;

b. Underfunding child and family services to the Class;

c. Failing to provide appropriate prevention services;

d. Prioritizing apprehensions over culturally appropriate prevention services; and

e. Failing to provide essential services to Indigenous children free of delays, denials, and service gaps.

ii. Canada's Negligence

142. Canada breached its duty of care to the Class as detailed herein, including by:

a. Completely abandoning the Class to their fate at the hands of Alberta;

b. Failing to cure the discriminatory deficiencies in Alberta's child and family services to the Class even years after Canada had started making efforts to do so for Indigenous child services on-reserve, contrary to repeated reports and judicial findings;

c. Failing to fund non-discriminatory Indigenous child and family services off-reserve; and

d. Failing to provide substantively equal access to essential services.

143. The reasonably foreseeable effects of the defendants' negligence include the harm and damages particularized below.

E. Damages and Remedies

i. Damages

144. The Class suffered injuries and damages, including but not limited to:

a. Class Members were denied non-discriminatory child and family services and other essential services;

b. Removed Child Class Members were removed from their homes and families to be placed in state care, with resulting, foreseeable harms and losses, such as being disconnected from their families, communities, cultures, languages, and value systems and spiritual beliefs derived therefrom, pain and suffering, mental health problems,

addiction problems, emotional anguish, suicidality, and emotional anguish;

c. Removed Child Class Members and the Essential Services Class Members who were placed in state care suffered sexual, physical, and emotional abuse;

d. Essential Services Class Members lost the opportunity to access essential public services in a timely manner resulting in personal injuries, exacerbated disabilities, pain and suffering, mental health problems, addiction problems, emotional anguish, suicidality, and out-of-pocket payments;

e. Essential Services Class Members and their associated Family Class Members had to fund out of pocket substitutes, where available, for essential services delayed or improperly denied by the defendants;

f. Family Class Members lost their children to a recidivist systemically discriminatory child welfare system;

g. Family Class Members were disconnected from their children; suffered pain and suffering, mental health problems, addiction problems, emotional anguish, and suicidality;

h. Family Class Members suffered loss of guidance, care and companionship, family bonds, language, culture, community ties, and resultant psychological trauma;

i. Family Class Members suffered the loss and witnessed the pain and suffering of their children without receiving services essential to their health and wellbeing to assist them in caring for their children at home or to meet the needs of their children for essential services; and

j. Family Class Members have had to pay for or otherwise shoulder the provision of essential services that their children needed.

ii. Charter Remedies

145. The appropriate remedies under section 24(1) of the Charter are:

a. Charter damages to vindicate and compensate for the losses suffered by the Class to date; and

b. Declarations that the defendants' conduct is unconstitutional, to vindicate the Class's rights and prevent recurrence of this unconstitutional conduct.

iii. Equitable Compensation and Disgorgement

146. The defendants' conduct toward Indigenous children and families in Alberta, particularly their failure to provide adequate and equal services and products to the Class Members, constituted a breach of their fiduciary duties, through which the defendants inequitably obtained quantifiable monetary benefits over the course of the Class Period.

147. The defendants should be required to disgorge those benefits, plus interest.

148. Further, Alberta withheld special allowance payments from members of the Removed Child Class. By doing so, in breach of its fiduciary duties, Alberta obtained a quantifiable monetary benefit at the expense of the Removed Child Class. Alberta should be required to pay equitable compensation in an amount equal to the value of the special allowance payments it withheld from the Removed Child Class, plus interest.

iv. Punitive and Exemplary Damages

149. The high-handed way that the defendants conducted their affairs warrants the condemnation of this Court. The defendants, including their agents, had complete knowledge of the fact and effect of their negligent and discriminatory conduct with respect to the provision of public services and products to Class Members.

150. For decades, Canada and Alberta commissioned, wrote, and received reports showing that the Alberta child welfare services resulted in disproportionately taking Indigenous children into care, and delayed or denied their access to other services essential to their health and wellbeing. This includes:

a. The Wen: De Report (2005);

b. The Brian Report (2013);

c. Six other OCYA reports (2014-2021);

d. The Richter Report (2015);

e. The TRC Report (2015);

f. The Auditor General Report (2016);

g. The Voices for Change Report (2016);

h. The Ministerial Panel Report (2017);

i. The MMIWG Report (2019); and

j. The ALIGN Report (2021).

151. Those reports repeatedly identified the problems described above and offered recommendations on how to resolve them. Nevertheless, the defendants chose to ignore their own reports and apologies and have yet to fix the problems plaguing Indigenous child welfare and other essential services. This was best stated in the Voices for Change Report six years ago:

> This is not a new problem. This overrepresentation began long ago, accelerated in the 1960s, and has become more pronounced in recent decades. Despite a series of reports drawing attention to the issue, and to other difficulties experienced by Aboriginal young people in child welfare systems, there has been little meaningful change.

152. Moreover, Canada and Alberta knew that many of these problems arose from the racist assumptions underlying the Indian residential schools and

the Sixties Scoop, and that failing to fix these problems would exacerbate the intergenerational trauma inflicted by these institutions. More generally, Canada and Alberta's actions during the Class Period reflected, reinforced, and reinvigorated the cultural genocide inflicted on Indigenous communities through residential schools and the Sixties Scoop.

153. This warrants awards of punitive damages and exemplary damages.

IV. Legislation

154. The plaintiffs plead and rely on various statutes, regulations, and international instruments, including:

a. *An Act Respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24;

b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;

c. *Child and Family Services Authorities Act*, RSA 2000, c C-11;

d. *Child and Youth Advocate Act*, SA 2011, c C-11.5;

e. *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12;

f. *Child, Youth and Family Enhancement Regulation*, Alta Reg 160/2004;

g. *Children's Special Allowances Act*, SC 1992, c 48, Sch;

h. *Class Proceedings Act*, SA 2003, c C-16.5;

i. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK);

j. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982 c 11;

k. *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979;

l. *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3;

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

n. *Crown's Right of Recovery Act*, SA 2009, c C-35;

o. *Department of Indigenous Services Act*, SC 2019, c 29, s 336;

p. *Indian Act,* RSC 1985, c I-5;

q. *International Convention on the Elimination of All Forms of Racial Discrimination*, 26 October 1966, 660 UNTS 195;

r. *International Covenant on Civil and Political Rights*, 16 December 1966;

s. *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966;

t. *Judgment Interest Act*, RSA 2000, c J-1;

u. *Limitations Act,* RSA 2000, c. L-12;

v. *Proceedings Against the Crown Act*, RSA 2000, c P-25;

w. *Protection of Sexually Exploited Children Act*, RSA 2000, c P-30.3;

x. *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; and

y. All other comparable and relevant acts and regulations and their predecessors and successors.

Remedy sought:

155. The plaintiff claims, on her own behalf and on behalf of the Class:

a. An order certifying this action as a class proceeding and appointing representative plaintiffs for the Class;

b. A declaration that Alberta and Canada breached section 15 of the Charter and that breach was not saved under section 1 of the Charter;

c. A declaration that Alberta and Canada breached section 7 of the Charter and that breach was not in accordance with the principles of fundamental justice;

d. Damages under section 24 of the Charter;

e. Special, general, and aggravated damages against Alberta and Canada, jointly and severally, for breach of fiduciary duty, breach of the honour of the crown, and negligence;

f. Disgorgement in an amount equal to what the defendants ought to have paid to avoid breaching their fiduciary duty and the honour of the crown;

g. Equitable compensation in an amount equal to the value of the special allowance payments it withheld from the Removed Child Class;

h. Punitive and exemplary damages in the amount of $100,000,000;

i. The costs of notice and distribution pursuant to sections 25(1) and 33(6)(a) of the CPA;

j. Pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, RSA 2000, c J-1;

k. Costs on a full indemnity basis; and

l. Such further and other relief as this court may deem just.

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 King's Bench at Calgary, Alberta, AND by serving your statement of defence or a demand for notice on the plaintiff'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 against you.