Court File No: T-620-20

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

CHEYENNE WALTERS AND LORI-LYNN DAVID

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

FURTHER AMENDED STATEMENT OF CLAIM

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 defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, 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 Courts 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
Pacific Centre
PO Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B67

TO: Her Majesty the Queen
Department of Justice Canada
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Relief Sought

1. The Plaintiffs, Cheyenne Walters, Steven Hicks and Lori-Lynn David, claim on their own behalf and on behalf of proposed classes of similarly situated persons:

a. an order certifying this action as a class proceeding and appointing Cheyenne Walters and Steven Hicks as Representative Plaintiffs for the Primary Class and Lori-Lynn David as Representative Plaintiff for the Family Class;

b. a declaration that the Defendant was unjustly enriched and breached ~~fiduciary and~~ its common law duty and ~~duties and~~ breached the Plaintiffs' and other Class Members' section 7 and 15 rights under 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 and the *Charter of Human Rights and Freedoms*, CQLR c C-12;

c. general damages for the Defendant's several liability;

d. special damages~~, including but not limited to past and future loss of income, medical expenses and out-of-pocket expenses~~;

e. damages pursuant to the *Canadian Charter of Rights and Freedoms*, section 24(1);

f. ~~symbolic damages on an aggregate basis;~~

g. exemplary, aggravated and punitive damages;

h. punitive damages pursuant to the *Charter of Human Rights and Freedoms* and the *Civil Code of Quebec*, CQLR c C-1991;

i. ~~disgorgement~~ restitution by the Defendant of its wrongful gains; ~~the economic benefits it gained in failing to advise Class Members' of federal financial benefits to which they were entitled~~ its profits;

j. damages equal to the costs of administering notice and the plan of distribution;

k. recovery of health care costs incurred by provincial and territorial health insurers on behalf of the Plaintiffs and other Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;

m. pre-judgment and post-judgment interest;

n. costs; and

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

Nature of the Action

2. This action concerns the loss of Primary Class Members' ~~a~~ Aboriginal identity after they were apprehended and placed in the care of individuals who were not members of their Indigenous community, group or people. ~~the removal of disproportionately high numbers of Indigenous children and youth from their homes and their placement into the care of individuals who were not members of their Indigenous community, group or people. This practice furthered the Defendant's policy of culturally assimilating Indigenous persons into mainstream Canadian society.~~

3. At all material times, the Defendant had a duty to protect and preserve the ~~cultural a~~ Aboriginal identity of apprehended Indigenous children and youth. The Defendant's duty is grounded in the honour of the Crown, the special and long-standing fiduciary relationship between the Defendant and Indigenous peoples, and the Defendant's constitutional responsibility for all Indigenous peoples – including Status Indians (regardless of whether they reside on or off reserve land), Non-Status Indians, Métis peoples, and Inuit peoples. This duty entailed, in part, an obligation on the Defendant to provide information and documentation – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' ~~a~~ Aboriginal identity and biological ancestry, ~~a~~ Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled.

4. This duty was heightened because of the inherent right of Indigenous peoples to self-determination, which included jurisdiction over child and family services, including in relation to, *inter alia*, customary adoption and child rearing. This right is ~~was~~ recognized and affirmed by section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1992* (UK), 1982 c 11.

5. The Defendant's duty was not negated because child welfare is otherwise a matter within provincial legislative competence, or because Indigenous children and youth were apprehended by provincial authorities and child welfare agencies ("Child Welfare Agencies"). ~~and had a duty to safeguard them from physical, sexual, spiritual and psychological harm.~~

6. In breach of its constitutional responsibilities and contrary ~~Contrary~~ to its common law duty of care and Class Members' section 7 and 15 rights under the *Canadian Charter of Rights*

and Freedoms (the "*Charter*"), ~~these duties~~, the Defendant unreasonably denied Indigenous peoples' their inherent right to jurisdiction over child and family services and failed to take reasonable steps to protect and preserve the ~~a~~ Aboriginal identity of ~~ensure that~~ Primary Class Members ~~Indigenous children~~ who were apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people. The Defendant failed to provide information and documentation – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' ~~a~~ Aboriginal identity and biological ancestry, ~~a~~ Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled. ~~had an ongoing relationship with their families and with the Indigenous groups, communities or peoples to whom they belonged; the Defendant failed to preserve their Indigenous identity and connections to their culture.~~

7. Indigenous children, youth and families were treated differently than non-Indigenous persons in Canada.

~~8. The Defendant denied Indigenous peoples their constitutional right to self-determination, which included jurisdiction in relation to child and family services. Having failed to recognize this inherent right, the Defendant should have ensured that uniform national standards existed throughout Canada with respect to the provision of child welfare services to Indigenous children, and should have ensured that the best interests of the child was a primary consideration in the making of decisions or the taking of actions in that context. And, in the case of decisions or actions related to child apprehension, the Defendant should have ensured that the best interests of the child was the paramount consideration.~~

~~9. When considering the best interests of the child, primary consideration should have been given to preserving the child's connections to their culture, and the importance - for that child - of having an ongoing relationship with their family and with the Indigenous group, community or people to which they belonged.~~

~~10. The Defendant also should have prioritized preventative care for Indigenous families, including the provision of sufficient funding for those services, and the Defendant should have~~

~~ensured that no gap or delay existed in the provision of preventative services because of disputes over jurisdiction or funding.~~

~~11. The Defendant's conduct in the operation, administration and management of child and family services systems for Indigenous children, youth and families - and its inequitable funding of those services systems - was systemic and discriminatory, and caused ongoing harm to the Plaintiffs and other Class Members.~~

~~12. Indigenous children, youth and families were treated differently than non-Indigenous persons in Canada. The Defendant's conduct was in breach of its fiduciary and common law~~ duty ~~duties, and it was contrary to the Defendant's constitutional obligations and the honour of the Crown. The Defendant's conduct also breached the Plaintiffs' and other Class Member's section 7 and 15 rights under the *Canadian Charter of Rights and Freedoms*.~~

13. As a consequence of the Defendant's discriminatory ~~policies,~~ practices, acts and omissions, ~~and conduct, First Nations,~~ Status Indian, Non-Status Indian, Inuit, and Métis children and youth endured significant, total or near-total loss of and harm to their ~~lost their cultural a~~ Aboriginal identity. ~~and suffered physical, sexual, spiritual and psychological harm.~~ They were also deprived of their ~~a~~ Aboriginal and treaty rights, and were deprived of federal financial benefits and programs that they were entitled to because of their Indigenous status. ~~and denied membership in their Indigenous communities.~~ The parents and grandparents of these children and youth also suffered harm.

14. Through this action, the Plaintiffs seek redress for Indigenous children and youth who endured significant, total or near-total loss of and harm to their ~~lost their a~~ Aboriginal identity after being apprehended and ~~were~~ removed from their homes by Child Welfare Agencies between January 1, 1992 to December 31, 2019 (the "Class Period") and placed in the care of individuals who were not members of their Indigenous community, group or people. ~~(the "Class Period").~~ The Plaintiffs also seek redress for the parents and grandparents of these children and youth.

15. The Plaintiffs and Class Members seek, *inter alia*, general damages for the Defendant's several liability, punitive damages, *Charter* damages, and restitution by the Defendant of ~~the economic benefits it gained in~~ its wrongful financial gains and enrichment caused by its failure ~~failing~~ to advise Primary Class Members~~'~~ of federal financial benefits and programs to which they were entitled and by its failure to provide them – or the individuals in whose care they were placed – with the information and documentation that they required in order to be eligible for Status and federal financial benefits and programs for Indigenous peoples.

The Parties

16. The Plaintiff, Cheyenne Walters, is an Indian within the meaning of section 91(24) of the *Constitution Act, 1867*, and ~~an~~ a member of an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*~~, being Schedule B to the *Canada Act 1992* (UK), 1982 c 11~~. Cheyenne is a member of the Muscowpetung Saulteaux Band, which is part of the Cree ~~First~~ Nation. When Cheyenne was 8 years old, she was forcibly apprehended, off reserve, and removed from her mother's care and placed in the care of individuals who were not members of her Indigenous community, group or people. She remained in foster care until she was 18. ~~During this time~~

17. After she was apprehended, Cheyenne was denied an ongoing relationship with her Muscowpetung Saulteaux Band and her Cree family. No reasonable steps ~~efforts~~ were ~~made~~ taken by the Defendant to prevent ~~preserve~~ Cheyenne~~'s~~ from enduring loss of ~~losing~~ her Cree identity. The Defendant did not provide Cheyenne or her foster parents with information about her Cree identity and biological ancestry, her ~~a~~ Aboriginal and treaty rights, or federal financial benefits and programs to which she was entitled. And the Defendant did not provide Cheyenne or her foster parents with documents relevant to her biological ancestry and Cree lineage or with any name-linking documents. This prevented Cheyenne from obtaining her Indian status card and prevented her from receiving federal financial benefits to which she was entitled. It also impacted her ability to be legally recognized by her Nation, Band, and Reservation as a Status Native under Treaty 4.

18. The proposed Representative Plaintiff, Steven Hicks, is Métis and a member of an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*. In approximately

1996, when Steven was 6 months old, he was apprehended and removed from his home in Kelowna. During his 18 ½ years in the foster care system, he was placed in the care of individuals who were not members of his Métis community.

19. Steven was never advised, while in the foster care system, that he is Métis, and no reasonable steps were taken by the Defendant to prevent Steven from enduring loss of his Métis identity. The Defendant did not provide Steven or his foster parents with any information or documents relevant to his biological ancestry and Métis lineage, his Aboriginal rights, federal financial benefits to which he was entitled, or federal programs in which he was entitled to participate because of his Indigenous status.

20. The Plaintiff, Lori-Lynn David, is an Indian within the meaning of section 91(24) of the *Constitution Act, 1867*, and ~~an~~ a member of an ~~a~~ Aboriginal group within the meaning of section 35 of the *Constitution Act, 1982*. She is Ojibwa and Cree. She was living off reserve when her son, who was 7, was forcibly removed from her care by a Child Welfare Agency and placed in the care of individuals who were not members of his Indigenous community, group or people. ~~He was apprehended against her will and without reasonable cause.~~

21. The Defendant did not take any reasonable steps to prevent Lori-Lynn's son from enduring loss of ~~losing~~ his ~~a~~ Aboriginal identity. The Defendant did not provide Lori-Lynn's son or his foster families with information about his ~~a~~ Aboriginal identity, his ~~a~~ Aboriginal and treaty rights, or federal financial benefits or programs to which he was entitled. The Defendant unreasonably denied Lori-Lynn ~~was denied any reasonable~~ an opportunity to maintain a relationship with her son~~, and unreasonably denied was denied any reasonable~~ and unreasonably denied her and her community the opportunity to ensure that ~~his cultural~~ her son's ~~a~~ Aboriginal identity was preserved and fostered.

22. The Defendant Her Majesty the Queen ("Canada") was, at all material times, required to take reasonable steps (a) to ensure that the system of child welfare and protection put in place in regard to Status Indian, Non-Status Indian, Métis and Inuit children provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture; and (b) to prevent Status Indian, Non-Status Indian, Métis and Inuit children and youth from enduring loss of ~~losing~~ their ~~a~~ Aboriginal identity after they had been apprehended by Child

Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people.

23. Canada's duty was not limited to ~~existed not only with respect to~~ Indigenous children who were apprehended while ordinarily resident on reserve land, but also included ~~also with respect to~~ Indigenous children who were apprehended while ordinarily resident on land other than reserve land, including Indigenous children who were resident in urban and rural communities. Such children were no less Indigenous, no less "Indian" within the meaning of section 91(24) of the *Constitution Act, 1867*, no less under federal legislative responsibility, and no less entitled to the preservation and protection of their Aboriginal identity by virtue of their not being ordinarily resident on a reserve. ~~is responsible for the promotion of the safety, health and well-being of Indigenous Canadians.~~

24. The obligations Canada had and has towards on-reserve Indigenous children and families are at least the same as regards off-reserve Indigenous children. Indeed, Canada's duty in regard to off-reserve Indigenous children was heightened, given their added vulnerability and the inherent increased risk to their Aboriginal identity. At all material times, Canada had a duty to comply with its constitutional obligations and responsibilities under section 91(24) of the *Constitution Act, 1867*~~, 30 & 31 Victoria, c 3 (UK)~~ and section 35 of the *Constitution Act, 1982*, and was required to act in accordance with the honour of the Crown and the special and long-standing fiduciary relationship between Canada and Indigenous peoples. Canada is liable for the acts, omissions and negligence of individuals who at all material times were Canada's employees, agents and servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

The Class

25. The Plaintiffs bring this action on behalf of a proposed class of all First Nations (Status and Non-Status Indians), Inuit and Métis persons who were removed from their homes in Canada between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not members ~~part~~ of the Indigenous group, community or people to which they belonged, excluding on-reserve ~~putative~~ class members in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada* ~~with~~ bearing

court file number T-402-19 (the "Primary Class", to be further defined in the Plaintiffs' application for certification).

~~26. "First Nations" includes persons living on or off reserve who are registered or entitled to be registered under the *Indian Act*, RSC 1985, c I-5 and its predecessor legislation, including those individuals who became entitled to register under the amended provisions of that Act under Bill S-3, and non-status Indians living on or off reserve.~~

27. The Plaintiffs also bring this claim on behalf of a proposed class of the parents and grandparents of Primary Class Members (the "Family Class", to be further defined in the Plaintiffs' application for certification and collectively, with the Primary Class, the "Class" or "Class Members").

Indigenous Child Welfare Services

Aboriginal and Treaty Rights

28. The Plaintiffs and other Class Members are members of "aboriginal peoples of Canada" within the meaning of section 35 of the *Constitution Act, 1982*. The Indigenous peoples ~~from whom~~ of which the Plaintiffs and other Class Members ~~have descended~~ are member have exercised laws, customs and traditions integral to their distinctive societies - including in relation to child and family services, such as parenting, child care and customary adoption – since time immemorial. ~~prior to contact with Europeans.~~ These ~~a~~ Aboriginal and treaty rights ~~were~~ are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Canada's Constitutional Obligations

29. Pursuant to section 91(24) of the *Constitution Act, 1867* and the common law, Canada has exclusive legislative authority ~~over~~ and responsibility ~~for~~ in regard to all Indigenous peoples, including First Nations (Status and Non-Status Indians whether on- or off-reserve), ~~status and non-status),~~ Métis and Inuit persons.

30. Further to its obligations and responsibilities under section 91(24) of the *Constitution Act, 1867*, section 35 of the *Constitution Act, 1982*, the honour of the Crown, the special and long-standing fiduciary relationship between Canada and Indigenous peoples, and the common law,

Canada had a positive obligation to act in the best interests of Indigenous children, youth and families, and to ensure substantive equality between Indigenous Canadians ~~peoples~~ and non-Indigenous Canadians with respect to the provision of child and family services. Canada was required to protect and preserve the ~~a~~ Aboriginal ~~cultural~~ identity of Indigenous children and youth, and their connections to ~~their families and to~~ the Indigenous groups, communities or peoples to which they belonged. This duty was owed by Canada to all Indigenous children who were apprehended, regardless of whether those children ordinarily resided on or off reserve land.

31. Canada also had a constitutional obligation and responsibility to recognize, protect and affirm Indigenous peoples' inherent right of self-government, which included jurisdiction in relation to child and family services.

32. Canada's constitutional obligations and responsibilities and its common law duty were non-delegable.

Departmental Responsibility

33. Despite Canada's constitutional obligations and responsibilities and the common law duty of care that it owed to Indigenous peoples - grounded in the special and long-standing historical and constitutional relationship between Canada and ~~a~~ Aboriginal peoples that ~~has evolved into~~ gave rise to a unique and important fiduciary relationship – ~~it~~ Canada failed to recognize, protect and affirm Indigenous peoples' inherent rights in relation to child and family services, which included jurisdiction in relation to, *inter alia*, customary adoption and child rearing, and failed to protect and preserve the ~~a~~ Aboriginal identity of Indigenous children and youth who were apprehended and placed in the care of individuals who were not members of their Indigenous community, group or people. ~~Instead, Canada undertook responsibility for the provision of child and family services to First Nations children and families on and off reserve (status and non-status), Inuit children and families, and Métis children and families.~~

34. Pursuant to the *Department of Indigenous Services Act*, SC 2019, c 29, s 336, which came into force on July 15, 2019, the Minister of Indigenous Services is responsible for ensuring that ~~the provision of~~ child and family services are provided to Indigenous individuals, including ~~to~~ First

Nations (Status and Non-Status Indians), Inuit and Métis persons,[1] who are eligible to receive those services. ~~and is responsible for the administration, operation, management and funding of Canada's Indigenous child welfare program.~~

35. The Minister of Indigenous Services "may delegate any of his or her powers, duties and functions under [the] Act… to the Minister of Crown-Indigenous Relations or the Minister of Northern Affairs."[2]

36. Historically, Canada's Indigenous child welfare program was administered by Indigenous and Northern Affairs Canada (2015 through 2017), Aboriginal Affairs and Northern Development Canada (2011 through 2015), Indian and Northern Affairs Canada (until 2011), and their predecessor departments. This program itself was inadequate and failed to adequately protect Indigenous children and their families in regard to their Aboriginal identity. Further, the program was almost exclusively directed at on-reserve First Nation children and families. Off-reserve Indigenous children and families were intentionally left behind and treated as already assimilated and outside the scope of federal concern or responsibility.

37. ~~While Canada undertook responsibility and control for Indigenous child and family services - and despite~~ Despite the exclusive legislative authority that Canada has over all Indigenous persons - Canada chose not to pass legislation setting out national requirements and principles for the provision of ~~those~~ child welfare services to First Nations, Métis and Inuit children and families. It was not until *An Act Respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 came into force on January 1, 2020, that Canada set out national legislative requirements for the provision of Indigenous child and family services, including requirements relating to cultural continuity and the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs. ~~the best interests of the child.~~

---

[1] *Department of Indigenous Services Act*, SC 2019, c 29, s. 336, s. 6. Pursuant to section 2 of the Act, "Indigenous peoples has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*". "Aboriginal peoples of Canada" is defined in the *Constitution Act, 1982* as including "the Indian, Inuit and Métis peoples of Canada": *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11, s. 35(2).

[2] *Department of Indigenous Services Act*, *ibid*., s. 14.

38. ~~While Canada did not have a duty to legislate with respect to Indigenous child welfare services, it has~~ At all material times, Canada had the ~~legislative~~ constitutional competence to legislate with respect to Indigenous child welfare services and the protection of the Aboriginal identity of Indigenous children and families, ~~do so,~~ pursuant to section 91(24) of the *Constitution Act, 1867* and the common law.

39. *An Act Respecting First Nations, Inuit and Métis children, youth and families* ~~is the~~ reflects a statutory formulation of Canada's common law duty to act in the best interests of Indigenous children, youth and families and to ensure that Indigenous children and youth who were apprehended by Child Welfare Agencies did not lose their ~~a~~ Aboriginal identity after they were apprehended. The provisions of the Act afford a specific, and useful, standard of the reasonable conduct that was required by Canada during the Class Period.

40. Prior to January 1, 2020, Canada relied on section 88 of the *Indian Act*, which provides that "all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province." Through this provision, provincial child and family services legislation, from time to time in force in a province, was applied to "Indians" within the meaning of the *Indian Act* as well as other Indigenous people.

41. To the extent that Canada may have been permitted at law to delegate its administrative responsibility toward Status Indian, Non-Status Indian, Métis and Inuit children in regard to child welfare and protection to provincial authorities, it did not have the authority to delegate its underlying legal, fiduciary and constitutional responsibility in this regard. At minimum, Canada had a duty to ensure that child welfare and protection regimes applying to such children protected them from unreasonable risk of loss of their Aboriginal identity, language and culture.

42. Instead, Canada retreated from its responsibility and obligations toward such children. Not only did Canada fail to take reasonable measures to protect and preserve their Aboriginal identity, language and culture, it directly contributed to their loss of identity, language and culture by wrongfully treating such children as "assimilated" and therefore no longer truly Indigenous in the eyes of the law. This approach served to justify Canada's wrongful abjuring of its responsibility toward such children and led – directly and indirectly – to the foreseeable harm that followed.

43. While individual provinces amended their child welfare legislation, at various times, to include ~~a~~ Aboriginality as a factor to be considered in Indigenous child protection and placement matters, these amendments did not absolve Canada from its constitutional responsibilities or the common law duty it owed to Class Members during the Class Period.

Apprehension of First Nations, Inuit and Métis Children and Youth

~~44. The apprehension of First Nations, Inuit and Métis children and youth largely took place pursuant to formal and informal bilateral agreements between Canada and each province or territory. Pursuant to these agreements, or other ancillary agreements, provincial and territorial child welfare agencies or other children's aid societies (collectively "Child Welfare Agencies") forcibly removed Indigenous children and youth from their homes and from their Indigenous groups, communities and peoples. First Nations Child and Family Services Agencies ("First Nations Agencies") also apprehended Indigenous children.~~

~~45. The apprehension of First Nations, Inuit and Métis children and youth also took place in the absence of these agreements.~~

~~46. The ability of Child Welfare Agencies and First Nations Agencies to offer effective child welfare services that prioritized cultural continuity and the best interests of the child was stifled because of Canada's flawed Indigenous child welfare program, including Canada's inadequate fixed funding of operational costs, and insufficient funding for preventative care. Canada's flawed Indigenous child welfare program had the effect of incentivizing the removal of First Nations, Inuit and Métis children and youth from their homes, groups, communities and people.~~

47. ~~Pursuant to Canada's Indigenous child welfare program,~~ Throughout the Class Period, Primary Class Members were forcibly removed from their homes and communities by Child Welfare Agencies. ~~and placed in the care of foster or adoptive parents who were not part of the Indigenous group, community or people to which the child belonged.~~

48. While in care, Canada failed to provide information – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' ~~a~~ Aboriginal

identity, ~~a~~ Aboriginal and treaty rights, and federal financial benefits to which Primary Class Members may have been entitled. ~~First Nations, Inuit and Métis children and youth were denied any reasonable opportunity to visit their birth parents and their Indigenous group, community or people. They were~~ Canada denied Primary Class Members any reasonable opportunity to maintain connections to the language and territory of the Indigenous group, community or people to which they belonged, ~~practice and preserve their Indigenous culture, language, customs and heritage,~~ and ~~were~~ Canada denied Primary Class Members any reasonable opportunity to exercise their aboriginal and treaty rights. As a result, ~~they~~ Primary Class Members lost their ~~cultural~~ ~~a~~ Aboriginal identity, including their Indigenous language, heritage, spirituality and traditions. Primary Class Members also did not receive federal financial benefits to which they were entitled or access to federal programs for Indigenous peoples.

~~49. Many First Nations, Inuit and Métis children and youth were also subjected to sexual, physical, psychological, emotional and spiritual abuse while in care.~~

50. Canada's conduct was contrary to the United Nations Convention on the Rights of the Child, which Canada ratified on December 13, 1991, and the International Convention on the Elimination of All Forms of Racial Discrimination, which Canada ratified on October 14, 1970. Its conduct was also contrary to the United Nations Declaration on the Rights of Indigenous Peoples, which Canada – in 2016 – endorsed and committed to fully and effectively implementing. In December 2020, Canada introduced legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples, and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14 received Royal Assent on June 21, 2021.

51. Canada should have taken steps to safeguard the well-being of Primary Class Members. ~~First Nations, Inuit and Métis children, youth and their families.~~ Canada should have protected and preserved the ~~a~~ Aboriginal ~~cultural~~ identity of these children and their ~~a~~ Aboriginal and treaty rights, and should have ensured that they were advised of any federal financial benefits to which they may have been entitled. Canada failed to do so.

52. Canada should have provided the Family Class with reasonable opportunities to preserve the ~~a~~ Aboriginal identity of Primary Class Members who were taken from them. Canada failed to do so.

53. Canada should have recognized the inherent jurisdiction of Indigenous peoples to provide child welfare services within their communities, groups and peoples - and their right to do so in accordance with their customs, heritage and traditions. Canada failed to do so.

54. Canada should have consulted with First Nations, Inuit and Métis communities regarding the content of the child welfare services being provided to their people by Child Welfare Agencies, including how the ~~cultural~~ ~~a~~ Aboriginal identity of their children could best be preserved. Canada failed to do so.

55. Canada was required to take reasonable steps to (a) ensure that the system of child welfare and protection put in place in regard to Status Indian, Non-Status Indian, Métis and Inuit children and youth provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture; and (b) prevent Status Indian, Non-Status Indian, Métis and Inuit children and youth from losing their Aboriginal identity once they had been apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people.

56. Such obligations extended to both on- and off-reserve Indigenous children and families.

~~57. Canada should have ensured that uniform national standards existed throughout Canada with respect to the provision of child welfare services to Indigenous children, youth and families, and youth, and should have ensured that the best interests of the child - including cultural continuity - was a primary consideration in the making of decisions or the taking of actions in that context. And, in the case of decisions or actions related to child apprehension, the Defendant should have ensured that the best interests of the child was the paramount consideration. Canada failed to do so.~~

~~58. Canada's child welfare program should have included and prioritized preventative measures in the provision of child and family services to Indigenous children, and Canada should have sufficiently funded those measures. Reasonable efforts should have been made - prior to the apprehension of First Nations, Inuit and Métis children - to have the child continue to reside with their parents or with another adult member of the child's family. Canada failed to do so. Preventative measures were not prioritized by Canada, nor were they sufficiently funded. Reasonable efforts were not made, prior to apprehension, to keep First Nations, Inuit and Métis children and youth with their parents or grandparents or other adult members of their family. And, in many cases, no such efforts were made.~~

59. Indigenous children, youth and families were treated differently than non-Indigenous children, youth and families in Canada.

60. Canada's conduct was systemic and lasted for decades. Canada's acts and omissions - and those of its servants - ~~eradicated~~ caused a near complete loss of the language, culture and heritage of ~~First Nations~~ Status Indian, Non-Status Indian, Inuit and Métis children and youth in care, caused them to lose, wholly or in substantial part, their ~~a~~ Aboriginal identity, and in doing so caused them ongoing harm. ~~Canada's Indigenous child welfare program promoted the cultural assimilation of First Nations, Inuit and Métis children and youth.~~

61. It also caused significant and ongoing harm to ~~First Nations, Inuit and Métis~~ the parents and grandparents whose children and youth were taken. In many cases, these parents and grandparents never saw their children and grandchildren again.

Number of Indigenous Children in Care

62. According to Census 2016, in Canada, 52.2% of children in foster care are Indigenous, even though they make up only 7.7% of the child population. 14,970 out of 28,665 foster children in private homes under the age of 15 are Indigenous.

An Act Respecting First Nations, Inuit and Métis children, youth and families

63. On January 1, 2020, *An Act Respecting First Nations, Inuit and Métis children, youth and families* came into force (the "Legislation").[3] The Legislation is binding on Canada and on the provinces.[4] ~~and seeks to reduce the number of First Nations, Inuit and Métis children and youth in care.~~

64. In a November 2018 press release, Indigenous Services of Canada stated that "[a] pillar of the legislation will be the right to self-determination of Indigenous peoples to freely determine their laws, policies and practices in relation to Indigenous child and family services."[5] Then-Minister of Indigenous Services, the Honourable Jane Philpott, noted:

> Moving forward with federal legislation on First Nations, Inuit, and Métis Nation child and family services is a vital step toward ensuring Indigenous children are never again forcibly taken from their homes without their parents' consent. Every possible measure should be taken to prevent Indigenous child apprehension and to reunite children with their families. New federal legislation is a powerful tool to support these efforts.[6]

65. The federal Legislation sets out requirements for the provision of child and family services to First Nations, Inuit and Métis[7] children, youth and families, and affirms that Indigenous peoples' "inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* includes jurisdiction in relation to child and family services, including legislative authority in relation to those services and authority to administer and enforce laws made under that legislative authority."[8]

---

[3] SI/2019-96.

[4] *An Act Respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24, s. 7: "This Act is binding on Her Majesty in right of Canada or of a province".

[5] Indigenous Services Canada, Press Release, November 30, 2018: <https://www.canada.ca/en/indigenous-services-canada/news/2018/11/government-of-canada-with-first-nations-inuit-and-metis-nation-leaders-announce-co-developed-legislation-will-be-introduced-on-indigenous-child-and.html>

[6] *Ibid.*

[7] The Legislation states that "Indigenous, when used in respect of a person, also describes a First Nations person, an Inuk or a Métis person" and that "Indigenous peoples has the meaning assigned by the definition of aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*": *An Act Respecting First Nations, Inuit and Métis children, youth and families*, *supra*, s. 1. "Aboriginal peoples of Canada" is defined in the *Constitution Act, 1982* as including "the Indian, Inuit and Métis peoples of Canada": *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11, s. 35(2).

[8] *Ibid.*, s. 18(1).

66. The Legislation is also meant to "contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples" and to "set out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children".[9]

67. The principle of cultural continuity is to be used when administering and interpreting the Legislation. Subsection 9(2) states:

> This Act is to be interpreted and administered in accordance with the principle of cultural continuity as reflected in the following concepts:
>
> a. cultural continuity is essential to the well-being of a child, a family and an Indigenous group, community or people;
>
> b. the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Indigenous peoples is integral to cultural continuity;
>
> c. a child's best interests are often promoted when the child resides with members of his or her family and the culture of the Indigenous group, community or people to which he or she belongs is respected;
>
> d. child and family services provided in relation to an Indigenous child are to be provided in a manner that does not contribute to the assimilation of the Indigenous group, community or people to which the child belongs or to the destruction of the culture of that Indigenous group, community or people; and
>
> e. the characteristics and challenges of the region in which a child, a family or an Indigenous group, community or people is located are to be considered.

68. Pursuant to the Legislation, the "best interests of the child" must be "a primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, the best interests of the child must be the paramount consideration."[10]

---

[9] *Ibid*., s. 8.
[10] *Ibid.*, s. 10(1).

69. When determining the best interests of an Indigenous child, consideration needs to be given to, *inter alia*: "the child's cultural, linguistic, religious and spiritual upbringing and heritage"; "the importance to the child of preserving the child's cultural identity and connections to the language and territory of the Indigenous group, community or people to which the child belongs"; and "any plans for the child's care, including care in accordance with the customs or traditions of the Indigenous group, community or people to which the child belongs".[11] When considering these factors, "primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being, as well as to the importance, for that child, of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture."[12]

70. Section 11 of the Legislation provides:

> Child and family services provided in relation to an Indigenous child are to be provided in a manner that
>
> a. takes into account the child's needs, including with respect to his or her physical, emotional and psychological safety, security and well-being;
>
> b. takes into account the child's culture;
>
> c. allows the child to know his or her family origins; and
>
> d. promotes substantive equality between the child and other children.[13]

71. Section 16 of the Legislation sets out orders of priority with respect to the placement of an Indigenous child:

> The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:
>
> a. with one of the child's parents;
>
> b. with another adult member of the child's family;

---

[11] *Ibid.*, s. 10(3).
[12] *Ibid.*, s. 10(2).
[13] *Ibid.*, s. 11.

c. with an adult who belongs to the same Indigenous group, community or people as the child;

d. with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or

e. with any other adult.[14]

72. The placement of an Indigenous child "must take into account the customs and traditions of Indigenous peoples such as with regards to customary adoption."[15] And where an Indigenous child has not been placed with one of the child's parents or an adult member of the child's family, reassessment must be conducted on an ongoing basis to determine whether it would be appropriate to place the child with one of their parents or with another adult member of the child's family,[16] and "the child's attachment and emotional ties to each such member of his or her family are to be promoted."[17]

73. The Legislation also emphasizes the need for preventative care in the context of providing child and family services in relation to an Indigenous child, and states that "to the extent that providing a service that promotes preventative care to support the child's family is consistent with the best interests of the child, the provision of that service is to be given priority over other services."[18]

74. And section 15.1 of the Legislation places a positive onus on a child and family service provider to demonstrate, prior to the apprehension of an Indigenous child, that reasonable efforts have been made to have the Indigenous child continue to reside with their parent or an adult member of the child's family:

> In the context of providing child and family services in relation to an Indigenous child, unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the service provider must demonstrate

---

[14] *Ibid.*, s. 16(1).
[15] *Ibid.*, s. 16(2.1).
[16] *Ibid.*, s. 16(3).
[17] *Ibid.*, s. 17.
[18] *Ibid.*, s. 14(1).

that he or she made reasonable efforts to have the child continue to reside with that person.[19]

The Representative Plaintiffs

Cheyenne Walters

75. Cheyenne was born on September 21, 1995 in Vancouver, BC. Her mother, a member of the Muscowpetung Saulteaux First Nation (a Cree First Nation), was a survivor of the Sixties Scoop, having been apprehended in 1972 at birth from her own mother (who was a survivor of the Indian Residential School system) in Regina, Saskatchewan, and adopted to a Roman Catholic family in Ontario. Cheyenne's biological father, who was of European descent, has never been present in her life and played no role in raising her.

76. As a young child, Cheyenne resided with her mother in low income housing in the downtown eastside of Vancouver. The majority of their Indigenous family resided in Fort Qu'Appelle (just outside of Regina), and had long-held historical ties to Saskatchewan.

77. When Cheyenne was 8, she was ~~taken~~ removed from her mother's care by the Vancouver Police Department. She recalls being placed in a locked room for a time and then placed with an extended member of her Indigenous family, in Vancouver, while arrangements were made by the Ministry of Child and Family Development ("MCFD") to find a place for her to live. Despite Cheyenne's wishes to stay with this family member long-term, she was removed from his care after a short time and put into a group home. No effort was made to contact any other members of Cheyenne's Cree family, and no attempts were made to explore the possibility of her residing with any of them.

~~78.~~ Throughout her childhood and youth, Cheyenne lived in various group homes and foster homes, all of which were non-Indigenous ~~and many of which were abusive~~. She was rarely in a home for more than a couple of months. ~~Excessive force and psychological abuse were often used to encourage her movement to the next home. These tactics were often reinforced by the MCFD.~~

~~79. Cheyenne was often required to miss school for large chunks of time. She never graduated.~~

[19] *Ibid.*, s. 15.1.

~~80. While in foster care, Cheyenne was psychologically and verbally abused and told that she was "never going to accomplish anything", was a "savage", was "evil spirited" and that her "mother should have had an abortion". She was physically abused and often denied food and other basic human rights. At times, sexual advances were made on her by her foster parents and siblings, and by other youth in her group homes. When she was 16, her foster mother tried to convert her into becoming a Christian. Cheyenne's social worker was aware of this, and participated in trying to convert her.~~

~~81. On more than one occasion, the police showed up at Cheyenne's foster homes and group homes, and the workers encouraged violence towards her and others. The outcome was often violent fighting against an officer or multiple officers at the same time. Cheyenne was involved in many of these fights.~~

82. Cheyenne often ran away to get somewhere safe or return home to her mother.

83. After her apprehension and throughout ~~Throughout~~ her childhood and youth, no reasonable attempts were made by Canada to preserve Cheyenne's relationship with her mother. No reasonable ~~attempts~~ steps were taken by Canada to ~~were made to~~ preserve her ~~Indigenous~~ a Aboriginal identity or her Cree language~~,~~ and culture, ~~or territory,~~ or to connect her with her Muscowpetung Saulteaux First Nation or members of her Indigenous family and community. ~~Cheyenne was rarely asked her opinion. When she was asked her opinion, she was ignored or promises were broken. Her life was dictated to her.~~

84. Canada did not provide Cheyenne or her foster parents with information about her Cree identity and biological ancestry, her Aboriginal and treaty rights, or federal financial benefits and programs to which she was entitled. Neither did Canada provide Cheyenne or her foster parents with documents relevant to her biological ancestry and Cree lineage or with any name-linking documents. This prevented Cheyenne from obtaining her Indian Status Card and prevented her from receiving federal financial benefits to which she was entitled. It also impacted her ability to be legally recognized by her Nation, Band and Reservation as a Status Native under Treaty 4.

~~85.~~ Beginning in her teens, generic and stereotyped attempts - such as making dream catchers - were occasionally made to try to connect Cheyenne to her Indigenous culture. She found these

activities insulting and devoid of actual effort to have her learn about - and maintain connections to - her Cree culture. ~~The MCFD and the Vancouver Aboriginal Child and Family Services Society reinforced this experience, despite her pleas to learn more about the Muscowpetung First Nation and her Cree family and community.~~

86. Throughout her time in foster care and as a consequence of Canada's acts and omissions and the acts and omissions of its servants, Cheyenne was depressed and anxious, often trying to self-harm to escape the trauma she was experiencing. She was put on medication for depression and anxiety, among other things, and eventually tried to take her own life. After that, her suicidal ideation continued. On several occasions, she was committed by force (of the MCFD and the Vancouver Police Department) to hospitals and held, against her will, in their psychiatric wards.

87. When Cheyenne was 18, she was cleared of the majority of the diagnoses that doctors had previously made, many of the diagnoses being deemed inaccurate. This changed Cheyenne's life and what she was told to believe about herself.

88. When Cheyenne was 18, she was accurately diagnosed with post-traumatic stress disorder ("PTSD") and depression from her time in the care of individuals who were not members of her Indigenous group, community or people. ~~the MCFD~~.

89. Cheyenne left the foster system at 18.

90. In her teens and early 20s, Cheyenne - desperate to regain some sense of ~~cultural~~ Aboriginal identity - began self-educating herself on her Cree culture. She has since worked on reframing her belief system and has attempted to reconnect with her Cree family and culture, including learning her Indigenous language (Cree "Y" Dialect). Cheyenne learned she has a half-brother and half-sister in Ontario, and has made efforts to have relationships with them.

91. Cheyenne is now an advocate for other Indigenous youth. She works for the International Institute for Child Rights and Development, helping Indigenous youth learn how to connect with their Indigenous roots and how to survive the child welfare system.

92. Because of her PTSD and depression, Cheyenne was unable to reasonably commence an action in respect of the injuries she suffered as a consequence of losing her ~~a~~ Aboriginal identity

after she was apprehended. ~~being apprehended from her mother and placed in the care of non-Indigenous foster parents and group homes~~. It was not until the spring of 2020 that Cheyenne's psychological state had improved to the point that she could contemplate commencing this claim.

Steven Hicks

93. Steven Hicks was born in Kelowna, British Columbia, on August 10, 1995. He is Métis.

94. When he was 6 months old, he was apprehended and removed from his home in Kelowna. He was placed in a foster home in the care of individuals who were not Métis.

95. On or around October 20, 1998, Steven was adopted. His adoptive parents were not Métis.

96. When he was approximately 11 years old, he was placed back into the foster care system, initially with a foster family and then in group homes in Kamloops and Pinantan Lake, British Columbia. None of the individuals in whose care Steven was placed were Métis.

97. On his 19th birthday, Steven was forced out of the foster care system and had to move out of his foster home, initially with no support. Steven has been on his own since he was 19 years old.

98. During his 18 ½ years in the foster care system, Steven was never placed in the care of individuals who were members of his Métis community.

99. While in the foster care system, Steven was never advised that he was Métis, and no reasonable steps were taken by Canada to prevent Steven from enduring loss of his Métis identity or to help him maintain ties to his Métis community and culture. Canada did not provide Steven or his foster parents with any information or documents relevant to his biological ancestry and Métis lineage, his Aboriginal rights, federal financial benefits to which he was entitled, or federal programs in which he was entitled to participate because of his Indigenous status.

100. During Steven's time in foster care, he was alienated and confused – he never felt part of Caucasian culture or Métis culture. He suffered from anxiety and depression and constantly tried to self-harm.

101. Due to Steven's emotional and psychological injuries caused by his past-traumas in the foster care system, he was unable to endure the stress of contested litigation with respect to the issues raised in this action. It was only in or around late summer 2021 that he was reasonably able to pursue litigation against Canada.

102. Steven has – through his own efforts – begun to reconnect with his Métis community, identity, and culture.

Lori-Lynn David

103. Lori-Lynn is Ojibwa and Cree, and a survivor of the Sixties Scoop.

104. Lori-Lynn was born in 1965 and given the birth name Delor~~a~~es Lynn Mann. At the time of her birth, her mother lived in Pine Falls, Manitoba. After her birth, Lori-Lynn was immediately taken from her mother, and placed in an Indian Hospital for the first 10 months of life, until she was adopted by a British family.

105. On September 24, 1986, Lori-Lynn gave birth to her son, Victor William Arthur David, in Winnipeg, Manitoba. Victor's father was Caucasian. He wasn't involved in Victor's life.

106. In 1988, Lori-Lynn moved her family to the lower mainland, and began residing in Burnaby, BC.

107. ~~Almost immediately, the MCFD began tracking her without cause, often showing up for unscheduled home visits. She was sober and a good mother; there was no reason for them to be constantly checking in on her and Victor.~~ Victor was doing well in her care.

108. In 1993, Lori-Lynn was contacted by the MCFD and Victor's school, and asked to attend a meeting. At the meeting, she was told that she should place Victor in foster care. She was given papers to sign and was pressured to sign them. When she refused, Victor was apprehended anyways and placed in a group home in Maple Ridge. He was later moved to a foster home in Coquitlam and then to another foster home in White Rock.

109. Lori-Lynn made substantial efforts to get her son back, but she constantly faced road blocks and was never given the assistance she needed to track him down and fight for him.

110. In October of 1996, she was denied further visits and contact with Victor. She was told that Victor was no longer able to speak with her or other family members by phone or otherwise.

111. Lori-Lynn has not seen him since.

112. ~~Lori-Lynn was denied any reasonable opportunity to maintain her relationship with Victor, and was denied any reasonable opportunity to ensure that his cultural identity was preserved and protected~~. After Victor was apprehended, Canada did not take any reasonable steps to prevent Victor from losing his ~~a~~ Aboriginal identity. Canada did not provide Victor or his foster families with information about his ~~a~~ Aboriginal identity, his ~~a~~ Aboriginal and treaty rights, or federal financial benefits to which he was entitled. Canada unreasonably denied Lori-Lynn the opportunity to ensure that Victor's Aboriginal identity was preserved and fostered, and took no reasonable steps to ensure that Lori-Lynn and Victor were able to maintain a relationship.

113. After Victor's apprehension and as a consequence of Canada's acts and omissions and the acts and omissions of its servants, Lori-Lynn became extremely depressed and was unable to sleep. She was put on Prozac and then Paxil. These medications made her feel awful.

114. Lori-Lynn eventually gave up on life. By the end of 1997, she had turned to alcohol. She didn't trust shelters, and began sleeping on the street. She was homeless for a couple of years.

115. Lori-Lynn eventually turned her life around, but she has never recovered from the pain of losing her son. She has tried many times to track him down, but none of the relevant agencies have provided her with the information necessary to find him.

116. Because of Lori-Lynn's depression and anxiety, and her dependency on alcohol, Lori-Lynn was unable to reasonably commence an action in respect of the injury she suffered as a consequence of Canada's conduct after her son's apprehension. It was not until this year that Lori-Lynn's psychological state had improved to the point that she understood she could bring an action for the harm she has suffered.

History of Indigenous Child Welfare Proceedings

Sixties Scoop Litigation

117. "Sixties Scoop" refers to the phenomenon that occurred between approximately 1951 and 1991 whereby Indigenous children were taken by the government, Child Welfare Agencies or First Nations ~~Agencies~~ agencies, and ~~into~~ placed into the care of non-Indigenous parents where they were not raised in accordance with their cultural traditions nor taught their traditional languages, heritage or ways of their community and people (the "Sixties Scoop").

118. In November of 2017, Canada entered into a settlement agreement with the plaintiffs in the Federal Court action styled as *Riddle v Her Majesty the Queen* with court file number T-2212-16 and the Ontario Superior Court of Justice Action styled as *Brown v the Attorney General of Canada* with court file number CV-09-00372025CP. The settlement provides compensation to status-Indian and Inuit persons who were removed from their homes in Canada between January l, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.[20] The settlement was approved by the Federal Court in May of 2018.

119. Actions were later commenced on behalf of non-status Indians and Métis persons who were victims of the Sixties Scoop. A carriage motion between the various parties took place in March of 2019, and the Federal Court granted carriage of the litigation to the plaintiff in the Federal Court action styled as *Day v The Attorney General of Canada* with court file number T-2166-18.[21] The action seeks redress for non-status Indians and Métis persons who were "scooped up", beginning in the 1960s and continuing until the early 1990s, 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.

120. Given the *Riddle* and *Day* actions, the within action does not seek redress for survivors of the Sixties Scoop. The Class Period in the within action is limited to the time period following the Sixties Scoop (ie: from January 1, 1992 onwards), and seeks redress for ~~Indigenous~~ Status Indian,

---

[20] Compensation for foster care was available for class members placed in long-term foster care; temporary or short-term foster care placement was not compensable under the settlement.

[21] ~~That decision is currently under appeal.~~ The appeal of that decision was dismissed.

Non-Status Indian, Métis, and Inuit survivors of ~~Canada's~~ the modern Indigenous child welfare system who lost their ~~a~~ Aboriginal identity as a consequence of Canada's ~~and its failures, discrimination~~ discriminatory conduct and breaches of its constitutional responsibilities and duty of care. ~~duties associated with that system.~~

Canadian Human Rights Tribunal Findings

121. In February of 2007, the First Nations Child and Family Caring Society of Canada and the Assembly of First Nations filed a complaint with the Canadian Human Rights Commission, pursuant to section 5 of the *Canadian Human Rights Act*, RSC 1985, c H-6, alleging that Canada discriminates in providing child and family services to First Nations on reserve and in the Yukon on the basis of race and national or ethnic origin, by providing inequitable and insufficient funding for those services. On October 14, 2008, the Commission referred the Complaint to the Canadian Human Rights Tribunal for inquiry.

122. In January of 2016, the Panel found that the Complaint was substantiated and held that Canada had engaged in systemic discrimination, contrary to section 5 of the *Canadian Human Rights Act*, in denying First Nations children and families living on reserve and in the Yukon equal child and family services or in differentiating adversely in the provision of those child and family services.

123. The Panel held that First Nations children and families living on reserve and in the Yukon had suffered adverse impacts in the provision of child and family services because of the children's and families' race or national or ethnic origin, and that these adverse impacts perpetuated the historical disadvantage and trauma suffered by Aboriginal people, in particular as a result of the Residential Schools system.

124. The Panel concluded that human rights principles, both domestically and internationally, require Canada to consider the distinct needs and circumstances of First Nations children and families living on-reserve - including their cultural, historical and geographical needs and circumstances - in order to ensure equality in the provision of child and family services.

125. The Panel awarded compensation to each First Nations child removed from their on-reserve home, family and community from January 1, 2006, pursuant to sections 53(2)(e) and 53(3) of the *Canadian Human Rights Act*. Parents and grandparents of First Nations children who were removed from their homes from January 1, 2006 were also awarded compensation.

126. The Complaint - and therefore the Panel's findings - were limited to allegations relating to First Nations children and families living on reserve and in the Yukon. Canada's ~~Indigenous child welfare policies, and its funding and~~ conduct in relation to ~~those policies *vis-a-vis*~~ Métis children and families, Inuit children and families, ~~non-status~~ Non-Status Indian children and families ~~living off reserve~~, and ~~First Nations~~ Status Indian children and families residing off reserve land and in the Northwest Territories and Nunavut were not addressed or adjudicated.[22]

Moushoom Action

127. In March of 2019, a proposed class action was filed in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada* with court file number T-402-19. An amended statement of claim was filed on May 31, 2019.

128. The plaintiffs in that action seek compensation on behalf of two groups of putative class members: 1) an on-reserve class comprised of First Nations individuals who "were under the applicable provincial/territorial age of majority at any time" between April 1, 1991 and March 1, 2019 and who "were taken into out-of-home care" between April 1, 1991 and March 1, 2019 "while they, or at least one of their parent(s), were ordinarily resident on a Reserve"; and 2) a Jordan's Principle class comprised of "all First Nations individuals who were under the applicable provincial/territorial age of majority" and who between April 1, 1991 and March 1, 2019 "were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the ground of lack of funding or lack of jurisdiction, or as a result of a jurisdictional dispute with another government or governmental department".

---

[22] Note that in its reasons relating to the Jordan's Principle, the Panel held that Canada had failed to appropriately interpret and apply the Jordan's Principle and had consequently discriminated against First Nations children living on reserve or off-reserve who, as a result of a gap, delay or denial of services were deprived of essential services and therefore did not benefit from services covered under Jordan's Principle as defined (for example, mental health and suicide preventions services, special education, dental benefits, etc.).

129. The claim defines "First Nations" as "Indigenous peoples in Canada who are neither Inuit nor Métis, including individuals who have Indian status pursuant to the *Indian Act*, are eligible for such status, or are recognized as citizens by their respective First Nation community, including First Nations in the Yukon and Northwest Territories".

130. The plaintiffs in the claim seek compensation for those two classes on the basis that the rulings of the Canadian Human Rights Tribunal (as outlined above) did not adequately compensate class members, and that full and fair compensation is only possible through the mechanism of that action.

131. The proposed class in the within action excludes on-reserve class members in *Moushoom*, and no allegations are made in the within action with respect to Canada's interpretation and implementation of the Jordan's Principle.

Duties of the Defendant

Generally

132. Canada's care and welfare of Indigenous peoples is a political trust of the highest obligation.

133. Pursuant to its constitutional obligations, the honour of the Crown, the doctrine of *parens patriae*, and the common law, Canada owed a special duty of care, honesty, loyalty and good faith to ~~First Nations~~ Status Indians, Non-Status Indians, Inuit and Métis children and youth, and had a duty to act in their best interests and to protect and preserve their ~~a~~ Aboriginal identity. Canada also had a duty to act in the best interests of the parents and grandparents of these children. Canada's duties were non-delegable.

~~134. Canada denied, in substance, Indigenous peoples' constitutional right to freely determine their laws, policies and practices in relation to Indigenous child and family services during the Class Period., Canada undertook control of the provision of those services. Canada was required - in the operation, administration, management and funding of those services - to uphold its~~

~~constitutional duties and the honour of the Crown. Canada had a duty to protect Indigenous children's cultural identities and to take steps to protect them from sexual, physical, psychological and spiritual abuse once they were placed into care. Canada's duties were non-delegable.~~

135. Canada was, at all material times, responsible for the management, operation, administration and funding of Indigenous Services Canada, Crown-Indigenous Relations and Northern Affairs Canada, Indigenous and Northern Affairs Canada, Aboriginal Affairs and Northern Development Canada, Indian and Northern Affairs Canada, and their predecessor departments. Canada was responsible for the policies, procedures, programs, operations management and conduct of these departments and the managers and employees of these departments who were, at all material times, Canada's servants, officers, employees and agents.

136. Matters of Indigenous child protection go to the core of "Indianness" as "matters that could be absolutely indispensable and essential to [Indians'] cultural survival" and therefore fall within Parliament's exclusive jurisdiction under section 91(24) of the *Constitution Act, 1867*. In enacting *An Act respecting First Nations, Inuit and Métis children, youth and families*, Canada has acknowledged and exercised this legislative competence. Such competence includes and applies equally to both on- and off-reserve Indigenous children, youth and families.

137. Canada has, historically, abjured any such responsibility in respect of off-reserve Indigenous children, youth and families. This – in turn – has translated into the near total absence of federal engagement in regard to and support for off-reserve Indigenous children, youth and families. This has led to even greater harm to off-reserve Indigenous children and youth as regards their loss of Aboriginal identity.

138. Canada's inaction in this regard is itself an extension of the policies of assimilation and enfranchisement that have guided federal government policy and Canada's operational decisions and conduct for decades. Historically, Indigenous people were actively forced or encouraged by Canada to renounce or abandon their Aboriginal identity and rights and to join "mainstream" Canadian society, all with a view to eliminating "Indianness" and the existence of "Indians" in Canada. Indigenous people living off-reserve were then treated as assimilated by Canada and therefore no longer within the scope of federal obligation; accordingly, Indigenous people living

off-reserve were afforded even fewer supports in regard to the preservation of their Aboriginal identity than on-reserve Indian children, youth and families. The policies of assimilation and enfranchisement – leading to operational decisions and conduct that harmed the Indigenous population – have since been recognized by Canada and at law as harmful, destructive and at odds with Canada's obligations toward Indigenous peoples.

Honour of the Crown and Fiduciary Relationship ~~Duty~~

139. Canada has a ~~special~~ unique and important fiduciary relationship with ~~First Nation~~ Status Indian, Non-Status Indian, Inuit and Métis peoples in Canada, rooted in the special and long-standing historical and constitutional relationship between Canada and ~~a~~ Aboriginal peoples.

140. The honour of the Crown requires that Canada act honourably and in good faith in all of its dealings with Indigenous peoples. The honour of the Crown is not an incantation, but rather a core precept that finds its application in concrete practices.

~~141.~~ The honour of the Crown gives rise to different duties in different circumstances. ~~Where the Crown has assumed discretionary control over specific Indigenous interests, the honour of the Crown gives rise to a fiduciary duty.~~

~~142. The content of the fiduciary duty may vary to take into account the Crown's other, broader obligations. However, the duty's fulfilment requires that the Crown act with reference to the Indigenous group's best interest in exercising discretionary control over the specific Indigenous interest at stake.~~

~~143. At all material times, Primary Class Members were children and were particularly vulnerable, having been forcibly removed from their parents and their Indigenous groups, communities and peoples. Canada recognized and was aware that First Nation, Inuit and Métis children, youth and families were vulnerable to Canada's control, acts and omissions.~~

~~144. Prior to the implementation of the Legislation, and at all material times during the Class Period, Canada assumed discretionary control over Indigenous child welfare services, and the protection and preservation of Indigenous children's cultural identities in relation to those services.~~

~~Canada stood *in loco parentis* to Primary Class Members. Canada recognized that it was responsible for the health and welfare of these children and undertook to act in their best interests. Canada also undertook to act in the best interests of the Family Class.~~

~~145. The safety and well-being of First Nation, Inuit and Métis children, youth and families - including the protection and preservation of their cultural identities - was a legal or substantial practical interest of these children and families. This interest stood to be adversely affected by Canada's exercise of discretion or control and further to Canada's administration, operation, management and funding of Indigenous child welfare services. At all material times, Canada assumed a degree of discretionary control over the well-being of Indigenous children and youth in care and their families - including the protection and preservation of their cultural identities - that it was equivalent or analogous to a direct administration of that interest.~~

146. Canada had an ongoing obligation and responsibility to consult in good faith with First Nation, Inuit and Métis persons, groups and communities with respect to the provision of Indigenous child welfare services and with respect to ~~ensuring the safety, well-being and~~ preserving the ~~cultural~~ Aboriginal identity of ~~the Plaintiffs~~ Cheyenne and Steven and other Primary Class Members. And Canada had an ongoing ~~obligation~~ duty to monitor, preserve and protect the ~~safety, well-being and cultural a~~ Aboriginal identity of ~~First Nation,~~ Status Indian, Non-Status Indian, Inuit and Métis children and youth in care, and an ongoing obligation to protect their parents and grandparents and to ensure that the parents and grandparents had a reasonable opportunity to maintain connections with and to protect and preserve the ~~a~~ Aboriginal identity of their children and grandchildren.

Common Law Duty and Systemic Negligence

147. At all material times during the Class Period, Canada owed a common law duty of care to ~~First Nation, Inuit and Métis children~~ Primary Class Members to take reasonable steps to (a) ensure that the system of child welfare and protection put in place in regard to Status Indian, Non-Status Indian, Métis and Inuit children and youth provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture; (b) prevent Status Indian, Non-Status Indian, Métis and Inuit children and youth from enduring loss of their

Aboriginal identity after they had been apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people; and (c) provide information – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' Aboriginal identity and biological ancestry, Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled. ~~protect their safety while in care, and to prevent them from losing their cultural~~ aboriginal ~~identities.~~ The duty owed by Canada to Primary Class Members is established in law, or is analogous to a duty established in law. This duty of care was also owed by Canada to the Family Class.

148. In the alternative, a novel duty of care has been established. A relationship of close and trust-like proximity – rooted in the fiduciary relationship that exists between Canada and Indigenous peoples – existed between Canada and First Nation (Status and Non-Status), Inuit and Métis children who were apprehended (whether on or off reserve land) and placed into care during the Class Period, such that failure on the part of Canada to take reasonable steps to protect and preserve the ~~a~~ Aboriginal identity of these children ~~care in the administration, operation, management and funding of its Indigenous child welfare program~~ might foreseeably cause them loss or harm. ~~to the children in care.~~

149. It was reasonably foreseeable that Canada's failure to take reasonable steps to

a. ensure that the system of child welfare and protection put in place in regard to Status Indian, Non-Status Indian, Métis and Inuit children and youth provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture;

b. prevent Status Indian, Non-Status Indian, Métis and Inuit children and youth from enduring loss of their Aboriginal identity after they had been apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people; and

c. provide information – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' Aboriginal identity and biological ancestry, Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled

would foreseeably cause loss and harm to Primary Class Members and Family Class Members.

150. Canada's care and welfare of Indigenous peoples is a political trust of the highest obligation. There can be no doubt that Indigenous peoples' concern to protect and preserve their ~~a~~ Aboriginal identity was and remains an interest of the highest importance. A relationship of proximity existed, at all material times, between Canada and Primary Class Members. This relationship of proximity also existed between Canada and the Family Class.

151. Given Canada's constitutional obligations, the interests involved, and the closeness of the relationship between ~~Class Members~~ Indigenous peoples and Canada, imposing a duty of care on Canada is just and fair, particularly since Primary Class Members were a highly vulnerable group, namely children in need of protection. This duty was heightened because of the ~~constitutional~~ inherent right of Indigenous peoples to self-determination over child and family services,[23] which included jurisdiction in relation to, *inter alia*, customary adoption and child rearing. This ~~constitutional~~ inherent right was, in substance, denied by Canada during the Class Period.~~, and Canada undertook the provision of those services. How Canada carried out those services - including the administration, management and funding of those services - was operational and was subject to a duty of care.~~

152. There are no policy considerations that negate Canada's duties.

~~153. In the further alternative, the terms of the bilateral agreements between Canada and each province or territory with respect to the provision of Indigenous child welfare services created a duty of care between Canada and Primary Class Members, and between Canada and the Family Class. It was a term of each bilateral agreement that Canada undertake to consult with Indigenous groups, communities and peoples in each province and territory - who were third-party beneficiaries to those agreements - regarding the provision of child welfare services to Indigenous children, including the form and manner in which those services should be provided in order to ensure the well-being of Indigenous children in care and the preservation of the children's cultural identities. A special relationship, to which the law attached a duty of care, existed between Canada~~

[23] The Legislation affirms the already existing constitutional right of Indigenous peoples to self-determination over child and family services" and explicitly provides that the Legislation "is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them": *An Act Respecting First Nations, Inuit and Métis children, youth and families*, *supra*, ss. 2 and 18.

~~and these third-party beneficiaries. This special relationship existed, by extension, between Canada and First Nation, Inuit and Métis children who were apprehended and placed into care and, also, between Canada and the parents and grandparents of these children.~~

154. Since Canada can only act through its servants, employees and agents, the duties described in paragraphs 147 through 152 ~~115 through 119~~ were, under the same analyses, owed to the Plaintiffs and other Class Members by Canada's servants, employees and agents.

Breaches of the Defendant's Duties

155. ~~The Indigenous child welfare system created and maintained by~~ Canada's conduct was inadequate to protect the Plaintiffs and other Class Members from harm. Canada's conduct was systemic, caused Primary Class Members to lose their ~~a~~ Aboriginal identity and federal financial benefits to which they were entitled, and had the effect of assimilating Indigenous children and youth into mainstream Canadian society.

156. Canada's systemic breaches of its ~~fiduciary and~~ common law duty ~~duties,~~ and the breaches of its servants, agents and employees during the Class Period, as set out in the whole of this claim, included:

a. failing to have in place management and operations procedures that would reasonably have ensured that the system of child welfare and protection put in place in regard to Primary Class Members provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture;

b. failing to have in place management and operations procedures that would reasonably have prevented Primary Class Members from enduring loss of ~~losing~~ their ~~cultural a~~ Aboriginal identity – including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged – after they had been apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people;

c. failing to advise Primary Class Members – and the individuals in whose care they were placed – about the Indigenous identity and status of Primary Class Members;

d. failing to provide information – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' ~~a~~ Aboriginal

identity and biological ancestry, ~~a~~ Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled;

e. failing to provide documentation – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' parents/grandparents/great-grandparents or their biological ancestry and failing to provide them with the necessary name-linking/biological ancestry documents that would have allowed them to become registered as Status Indians and obtain a status card or secure status card and membership in a First Nation and/or that would have allowed them to take advantage of federal financial benefits and programs – including but not limited to tax exemptions and other benefits, treaty annuity payments, funds for post-secondary education, and non-insured health benefits – that are available to Indigenous peoples;

f. failing to have in place management and operations procedures that would reasonably have ensured, on a national level, that the ~~a~~ Aboriginal identity of Primary Class Members was protected and preserved; ~~the best interests of the child was - in substance - the primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, that the best interests of the child was the paramount consideration;~~

g. failing to take reasonable steps to prevent Primary Class Members from losing their ~~cultural~~ a Aboriginal identity, including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged;

h. failing to affirm Indigenous peoples' inherent right of self-government, which included jurisdiction in relation to child and family services, and failing to take into account the customs and traditions of Indigenous peoples in relation to child and family services, including with respect to customary adoption;

i. failing to take reasonable steps to ensure that apprehended Indigenous children who were placed into care had an ongoing relationship with their families and with the Indigenous groups, communities or peoples to which they belonged;

j. ~~failing to have in place management and operations procedures that would reasonably have prevented the sexual, physical, psychological and spiritual abuse of Primary Class Members;~~

k. ~~failing to take reasonable steps to protect the safety and well-being of Class Members;~~

l. failing to establish, implement and enforce policies and procedures to ensure the ~~safety and~~ cultural continuity of apprehended Indigenous children;

m. failing to have in place management and operations procedures that would reasonably have ~~ensured that~~ monitored the services provided by Child Welfare Agencies, including MCFD, ~~and First Nations Agencies~~ to ensure that they were culturally relevant and that reasonable efforts were undertaken by them ~~these Agencies~~ to ensure the cultural continuity of apprehended Indigenous children, including connections to their cultural, linguistic, religious and spiritual upbringing and heritage;

n. ~~failing to sufficiently fund Indigenous child welfare services and the operational and other costs of Child Welfare Agencies, including MCFD, and First Nations Agencies to ensure that appropriate and reasonable preventative care was provided to Indigenous children, youth and families, and that reasonable efforts were made to have a child continue to reside with their parents or another adult member of the child's family;~~

o. ~~failing to sufficiently and reasonably fund Indigenous child welfare services such that apprehension of Indigenous children and youth was not encouraged or incentivized;~~

p. ~~failing to have in place management and operations procedures that reasonably would have prevented the apprehension of Indigenous children solely on the basis of their socio-economic conditions, including poverty, lack of adequate housing or infrastructure, or the state of health of their parents or care providers;~~

q. ~~in the context of prenatal care, failing to have in place management and operations procedures that reasonably prioritized preventative care over other services, in order to have prevented the apprehension of Indigenous children at the time of their birth;~~

r. ~~failing to reasonably ensure the placement of an apprehended Indigenous child with another adult member of the child's family or with an adult who belonged to the same Indigenous group, community or people as the child;~~

s. ~~failing to reasonably ensure that Primary Class Members were made aware of their aboriginal and treaty rights;~~

t. supporting or acquiescing in denying Primary Class Members a reasonable opportunity to exercise their ~~a~~ Aboriginal and treaty rights;

u. failing to consult with Indigenous groups, communities and peoples in each province and territory regarding the provision of child welfare services to Indigenous children, including the form and manner in which those services should be provided in order to ensure the ~~well-being of Indigenous children in care and the~~ preservation of the children's ~~cultural~~ ~~a~~ Aboriginal identities;

v. failing to have in place management and operations procedures that reasonably would have promoted substantive equality between Indigenous children and families and non-Indigenous children and families in Canada;

w. failing to have in place management and operations procedures that reasonably would have promoted substantive equality between on- and off-reserve Indigenous peoples in the provision of supports and programs to Indigenous children and families in regard to child protection and family services;

x. failing to reasonably ensure that adequate resources were provided to ensure the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of Primary Class Members' Indigenous groups, communities or peoples;

y. actively promoting the assimilation of First Nation, Inuit and Métis children and youth into non-Indigenous Canadian culture;

z. failing to promote substantive equality between Indigenous children and families and non-Indigenous children and families in Canada;

aa. ~~having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect Primary Class Members;~~

bb. acting contrary to and in violation of the United Nations Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination;

cc. failing to contribute to the implementation of the United Nations Declaration on the Rights of Indigenous People; ~~and~~

dd. failing to provide Primary Class Members with federal financial benefits and programs to which they were entitled;

ee. adopting the position that because child welfare is otherwise a matter of provincial legislative competence, Canada has never had a responsibility to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members or, alternatively, adopting the position that once aboriginality was incorporated into provincial child welfare legislation, Canada had no further duty or responsibility to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members;

ff. engaging in circular reasoning to support their position that because they have not acted to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members (whether through the provision of information, monitoring, funding or otherwise), they have no duty to do so; and

gg. failing to take reasonable steps to protect the Family Class, including failing to take reasonable steps to ~~prioritize preventative care and, when it was not reasonable for a child to remain with their parents or grandparents, ensuring~~ ensure that emotional and cultural ties between apprehended children and their parents and grandparents were reasonably maintained and that the Family Class had a reasonable opportunity to promote and preserve the ~~a~~ Aboriginal identity of their children and grandchildren.

157. As a consequence of Canada's negligence ~~and breaches of its fiduciary duty~~ - and the negligent acts of its servants, employees and agents - the Plaintiffs and other Class Members suffered psychological, emotional~~,~~ and spiritual ~~and physical~~ injury.

158. Where the acts and omissions described in paragraph 156 ~~131 122~~ and elsewhere in this claim were those of Canada's servants, employees and agents, Canada is liable for those torts, pursuant to the *Crown Liability and Proceedings Act*. And, in the province of Quebec, Canada is liable for the damage caused by the fault of its servants, employees and agents, also pursuant to the *Crown Liability and Proceedings Act*.

Breach of the Canadian Charter of Rights and Freedoms

Section 15

159. Canada's acts and omissions in failing to take reasonable steps to prevent Primary Class Members from losing their ~~a~~ Aboriginal identity ~~with respect to the provision of Indigenous child and family services~~ during the Class Period, as particularized in paragraph 156 ~~131 141~~ and in the whole of this claim, was discriminatory and was in breach of the Plaintiffs' and other Class Members' rights under section 15 of the ~~*Canadian*~~ *Charter* ~~*of Rights and Freedoms*~~.

160. Section 15 of the ~~*Canadian*~~ *Charter* ~~*of Rights and Freedoms*~~ states:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

161. The Plaintiffs and other Class Members have been discriminated against because of their race, national or ethnic origin (collectively "race").

162. Canada's conduct as set out in paragraph 156 ~~131~~ and in the whole of this claim ~~in the provision, administration, management, operation and funding of Indigenous child welfare services~~ differentiated and adversely impacted Class Members ~~First Nations, Inuit and Métis children, youth and families in the provision of those services~~ because of their race.

163. Canada was aware, at all material times during the Class Period, that First Nations (Status and Non-Status Indians), Inuit and Métis children and youth were being apprehended at disproportionately high rates, as compared to non-Indigenous children and youth in Canada. Despite this knowledge, Canada deliberately or negligently failed to take steps to protect the Plaintiffs and other Class Members.

164. Because of their race, the Plaintiffs and other Class Members were denied benefits that non-Indigenous Canadians were afforded with respect to the provision of child and family services., including reasonable preventative care services, the reasonable funding of those services, and reasonable attempts to maintain emotional and cultural ties between an apprehended child and their family.

165. Canada's conduct created a distinction based on race and created substantive inequality as between Class Members First Nations, Inuit and Métis children, youth and families, and non-Indigenous children, youth and families.

166. This distinction disadvantaged the Plaintiffs and other Class Members by perpetuating stereotypes about and prejudice towards Indigenous peoples, particularly given the socio-political effects of European colonization on Indigenous peoples and efforts to assimilate Indigenous peoples into mainstream Canadian society.

167. Canada further distinguished between on- and off-reserve Indigenous peoples in the provision of supports and programs to Indigenous children and families in regard to child protection and family services. This distinction was unlawful and discriminatory and was predicated on and an extension of Canada's policies of assimilation and enfranchisement.

Section 7

168. Canada's acts and omissions with respect to the provision of Indigenous child and family services during the Class Period, as set out in paragraph 156 131 as particularized in paragraph 141 and in the whole of this claim, was were discriminatory and were was in breach of the Plaintiffs' and other Class Members' rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

169. Section 7 of the ~~*Canadian*~~ *Charter* ~~*of Rights and Freedoms*~~ states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

170. Security of the person under section 7 includes freedom from the threat of psychological~~,~~ and spiritual~~, physical and sexual~~ suffering.

171. Canada's conduct in failing to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members was ~~Indigenous child welfare policies and practices were~~ intended to - and did - perpetuate the assimilation of Indigenous children and youth into mainstream Canadian society.

~~172. Canada was aware, at all material times during the Class Period, that it was underfunding Indigenous child welfare services and that preventative care services were not being adequately or reasonably provided to First Nations, Inuit and Métis children, youth and families.~~

~~173. Canada was aware, at all material times during the Class Period, that the best interests of the Indigenous children were not being adequately or reasonably considered in the making of decisions or the taking of actions in the context of the provision of Indigenous child and family services.~~

174. Canada was aware, at all material times during the Class Period, that apprehended Indigenous children were being placed into the care of individuals who were not members of the Indigenous group, community or people to which the child belonged. Canada knew that reasonable efforts were not being made to preserve an apprehended child's connections to their culture and, as a consequence, apprehended Indigenous children were at significant risk of losing their cultural identities. ~~Canada also knew that a significant percentage of Indigenous children in care were being subjected to physical, sexual, spiritual and psychological abuse.~~

175. Canada was aware, at all material times during the Class Period, that First Nations~~s~~ (Status and Non-Status Indians), Inuit and Métis children and youth were being apprehended at disproportionately high rates, as compared to non-Indigenous children and youth in Canada.

Despite this knowledge, Canada deliberately or negligently failed to take steps to protect the security of the Plaintiffs and other Class Members.

176. Canada's actions resulted in a risk to the Class' life, liberty, and security of the person, which was grossly disproportionate and arbitrary and discriminatory – and therefore contrary to the interests of fundamental justice.

~~177. Canada's conduct, and the exercise of its discretion in the administration, management, operation and funding of Indigenous child welfare services was discriminatory and was contrary to the principles of fundamental justice.~~

Specific Breaches of Sections 15 and 7

178. During the Class Period, Canada breached the section 7 and 15 rights of the Plaintiffs and other Class Members under the ~~*Canadian*~~ *Charter* ~~*of Rights and Freedoms*~~ as set out in the whole of this claim by, *inter alia*:

a. failing to have in place management and operations procedures that would reasonably have ensured that the system of child welfare and protection put in place in regard to Primary Class Members provided for their welfare and, in particular, protected them from unreasonable risk of loss of their Aboriginal identity, language and culture;

b. failing to have in place management and operations procedures that would reasonably have prevented Primary Class Members from enduring loss of ~~losing~~ their ~~cultural a~~ Aboriginal identity – including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged – after they had been apprehended by Child Welfare Agencies and placed in the care of individuals who were not members of their Indigenous community, group or people;

c. failing to advise Primary Class Members – and the individuals in whose care they were placed – about the Indigenous identity and status of Primary Class Members;

d. failing to provide information – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' ~~a~~ Aboriginal identity and biological ancestry, ~~a~~ Aboriginal and treaty rights, and federal financial benefits and programs to which Primary Class Members may have been entitled;

e. failing to provide documentation – to Primary Class Members and to the individuals in whose care they were placed – about Primary Class Members' parents/grandparents/great-grandparents or their biological ancestry and failing to provide them with the necessary name-linking/biological ancestry documents that would have allowed them to become registered as Status Indians and obtain a status card or secure status card and membership in a First Nation and/or that would have allowed them to take advantage of federal financial benefits and programs – including but not limited to tax exemptions and other benefits, treaty annuity payments, funds for post-secondary education, and non-insured health benefits – that are available to Indigenous peoples;

f. failing to have in place management and operations procedures that would reasonably have ensured, on a national level, that the Aboriginal identity of Primary Class Members was protected and preserved; ~~the best interests of the child was - in substance - the primary consideration in the making of decisions or the taking of actions in the context of the provision of child and family services in relation to an Indigenous child and, in the case of decisions or actions related to child apprehension, that the best interests of the child was the paramount consideration;~~

g. failing to take reasonable steps to prevent Primary Class Members from losing their ~~cultural~~ a Aboriginal identity, including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged;

h. failing to affirm Indigenous peoples' inherent right of self-government, which included jurisdiction in relation to child and family services, and failing to take into account the customs and traditions of Indigenous peoples in relation to child and family services, including with respect to customary adoption;

i. failing to take reasonable steps to ensure that apprehended Indigenous children who were placed into care had an ongoing relationship with their parents and grandparents and with the Indigenous groups, communities or peoples to which they belonged;

~~j. failing to have in place management and operations procedures that would reasonably have prevented the sexual, physical, psychological and spiritual abuse of Primary Class Members;~~

~~k. failing to take reasonable steps to protect the safety and well-being of the Plaintiffs and other Class Members;~~

l. failing to establish, implement and enforce policies and procedures to ensure the ~~safety and~~ cultural continuity of apprehended Indigenous children;

m. failing to have in place management and operations procedures that would reasonably have ~~ensured that~~ monitored the services provided by Child Welfare Agencies, including the MCFD, ~~and First Nations Agencies~~ to ensure that they were culturally relevant and that reasonable efforts were undertaken by them ~~these~~

~~Agencies~~ to ensure the cultural continuity of apprehended Indigenous children, including connections to their cultural, linguistic, religious and spiritual upbringing and heritage;

n. failing to sufficiently fund Indigenous child welfare services and the operational and other costs of Child Welfare Agencies, including MCFD, ~~and First Nations Agencies~~ to ensure that appropriate and reasonable preventative care was provided to Primary Class Members ~~Indigenous children, youth and families~~, and that reasonable efforts were made to have Primary Class Members ~~a child~~ continue to reside with their parents or another adult member of the child's family;

~~o. failing to sufficiently and reasonably fund Indigenous child welfare services such that apprehension of Indigenous children and youth was not encouraged or incentivized;~~

p. failing to have in place management and operations procedures that reasonably would have prevented the apprehension of Indigenous children solely on the basis of their socio-economic conditions, including poverty, lack of adequate housing or infrastructure, or the state of health of their parents or care providers;

q. in the context of prenatal care, failing to have in place management and operations procedures that reasonably prioritized preventative care over other services, in order to have prevented the apprehension of Indigenous children at the time of their birth;

r. failing to reasonably ensure the placement of an apprehended ~~Indigenous child~~ Primary Class Member with another adult member of the child's family or with an adult who belonged to the same Indigenous group, community or people as the child;

s. failing to reasonably ensure that Primary Class Members were made aware of their ~~a~~ Aboriginal and treaty rights;

t. supporting or acquiescing in denying Primary Class Members a reasonable opportunity to exercise their ~~a~~ Aboriginal and treaty rights;

u. failing to consult with Indigenous groups, communities and peoples in each province and territory regarding the provision of child welfare services to Indigenous children, including the form and manner in which those services should be provided in order to ensure ~~the well-being of Indigenous children in care and~~ the preservation of the children's ~~cultural a~~ Aboriginal identities;

v. failing to have in place management and operations procedures that reasonably would have promoted substantive equality between Indigenous children and families and non-Indigenous children and families in Canada;

w. failing to have in place management and operations procedures that reasonably would have promoted substantive equality between on- and off-reserve Indigenous

peoples in the provision of supports and programs to Indigenous children and families in regard to child protection and family services;

x. failing to reasonably ensure that adequate resources were provided to ensure the transmission of the languages, cultures, practices, customs, traditions, ceremonies and knowledge of the Plaintiffs' and other Class Members' Indigenous groups, communities or peoples;

y. actively promoting the assimilation of First Nation, Inuit and Métis children and youth into non-Indigenous Canadian culture;

z. failing to promote substantive equality between Indigenous children and families and non-Indigenous children and families in Canada by allowing jurisdictional disputes to result in gaps in child and family services that were provided ~~in~~ to Indigenous children and families;

~~aa. having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect Primary Class Members;~~

bb. acting contrary to and in violation of the United Nations Convention on the Rights of the Child and the International Convention on the Elimination of All Forms of Racial Discrimination;

cc. failing to contribute to the implementation of the United Nations Declaration on the Rights of Indigenous People; ~~and~~

dd. failing to provide Primary Class Members with federal financial benefits and programs to which they were entitled;

ee. adopting the position that because child welfare is otherwise a matter of provincial legislative competence, Canada has never had a responsibility to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members or, alternatively, adopting the position that once aboriginality was incorporated into provincial child welfare legislation, Canada had no further duty or responsibility to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members, thereby perpetuating discrimination and the policies of assimilation and enfranchisement;

ff. engaging in circular reasoning to support their position that because they have not acted to protect and preserve the ~~a~~ Aboriginal identity of Primary Class Members (whether through the provision of information, monitoring, funding or otherwise), they have no duty to do so; and

gg. failing to take reasonable steps to protect the Family Class, including failing to take reasonable steps to prioritize preventative care and, when it was not reasonable for a child to remain with their parents or grandparents, ensuring that emotional and cultural ties between apprehended children and their parents and grandparents were reasonably maintained and that the Family Class had a reasonable opportunity to promote and preserve the ~~a~~ Aboriginal identity of their children and grandchildren.

179. Canada's breaches of the section 7 and 15 rights of the Plaintiffs and other Class Members, as set out above and in the whole of this claim, were not "prescribed by law" and cannot be saved by section 1 of the ~~*Canadian* *Charter* *of Rights and Freedoms*~~. In the alternative, Canada's breaches were not "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

Charter Damages

180. Considering the seriousness of Canada's misconduct and the impact of Canada's breaches on the Plaintiffs and other Class Members, damages under section 24 of the ~~*Canadian*~~ *Charter* ~~*of Rights and Freedoms*~~ are just and appropriate. Damages would, in these circumstances, compensate the Plaintiffs and other Class Members for their losses, vindicate their rights, and deter future violations of these rights by Canada and other state actors.

Restitution – Indigenous Federal Financial Benefits ~~**Disgorgement**~~

181. At all material times during the Class Period, Canada failed to inform Cheyenne and Steven and other Primary Class Members – or the individuals in whose care they were placed – of the federal financial benefits and programs to which they were entitled because of their Indigenous status and failed to provide Cheyenne and Steven and other Primary Class Members with these federal financial benefits and/or failed to provide them with the ability to participate in these programs. Canada also failed to provide them – or the individuals in whose care they were placed – with the information and documentation that they required (including name-linking documents and documents and information about their biological ancestry and their parents/grandparents/great-grandparents) in order to be eligible for Status and certain federal financial benefits and programs. These federal financial benefits and programs included but were not limited to tax exemptions and other tax benefits, treaty annuities, non-insured health benefits, and post-secondary funding.

182. As a consequence of ~~this~~ its conduct and the conduct of its servants, Canada was enriched and received financial benefit and gain. ; Canada spent less on the provision of federal financial benefits and programs for Indigenous peoples than it would have spent had it informed Cheyenne and Steven and other Primary Class Members of their Indigenous identity and of the federal

financial benefits and programs to which they were entitled because of their Indigeneity. Canada spent less on the provision of federal financial benefits and programs for Indigenous peoples than it would have spent had it provided Cheyenne and Steven and other Primary Class Members with the information and documentation about their Indigenous identity that they required (including name-linking documents and documents and information about their biological ancestry and their parents/grandparents/great-grandparents) in order to be eligible for Status and certain federal financial benefits and programs. ~~federal financial benefits and programs to which they were entitled.~~

183. Cheyenne and Steven and other Primary Class Members suffered a corresponding deprivation, having received no federal financial benefits or having received less in federal financial benefits than they were entitled to have received had they been properly informed by Canada of the federal financial benefits and programs to which they were entitled and had they been provided by Canada with the information and documentation about their Indigenous identity that they required (including name-linking documents and documents and information about their biological ancestry and their parents/grandparents/great-grandparents) in order to be eligible for Status and certain federal financial benefits and programs. ~~federal financial benefits to which they were entitled.~~

184. There was no juristic reason for ~~the~~ Canada's enrichment ~~conduct~~ or for the corresponding deprivation of Cheyenne and Steven and the other Primary Class Members. Canada stood in a fiduciary relationship with Cheyenne and Steven and with other Primary Class Members, who were beneficiaries of Canada's Indigenous federal financial benefits programs, and Canada owed duties to them to act in their best interests.

185. Canada has been unjustly enriched at the expense of Cheyenne and Steven and other Primary Class Members, and is required to make restitution to them for its wrongful gains.

~~186. Throughout the Class Period, Canada failed to adequately fund preventative care services and other child welfare services for First Nation, Inuit and Métis children, youth and families.~~

~~187. As a result of Canada's failure to adequately fund Indigenous child welfare services, Canada obtained quantifiable financial benefits.~~

~~188. As set out in this claim, Canada's conduct was in breach of the honour of the Crown and was in breach of Canada's fiduciary duty owed to the Plaintiffs and other Class Members.~~

~~189. Canada should be required to disgorge the financial benefits of its wrongful conduct.~~

Quebec Class Members

190. Canada's conduct and the conduct of its servants, employees and agents during the Class Period - as set out in detail in this claim - constituted an unlawful and intentional interference of Québec Class Members' rights under the *Charter of Human Rights and Freedoms*, CQLR c C-12.

191. Where Canada's conduct and the conduct of its servants, employees and agents took place in Québec, it also constituted fault giving rise to extra-contractual civil liability, pursuant to the *Crown Liability and Proceedings Act*, the *Civil Code of Quebec*, CQLR c CCQ-1991 and the *Interpretation Act*, RSC 1985 c I-21.

192. Québec Class Members are entitled to receive compensation for the moral and material prejudice resulting from Canada's conduct and the conduct of Canada's servants, employees and agents, and are entitled to receive punitive damages as a consequence of that conduct.

Injury and Damage

193. Canada's acts and omissions during the Class Period - and the acts of omissions of its servants, employees and agents during the Class Period - caused the Plaintiffs and other Class Members ongoing loss and damage, including:

a. loss of their ~~cultural~~ ~~a~~ Aboriginal identity;

b. loss of their Indigenous language, customs, traditions, religion and heritage;

c. forced cultural assimilation;

d. loss of the opportunity to exercise their ~~a~~ Aboriginal and treaty rights;

e. inability to have their names added to the Indian Register;

f. inability to obtain their status cards or secure status cards;

g. inability to obtain membership in a First Nation or Band or have recognized treaty status;

h. loss of federal financial benefits;

i. loss of participation in federal programs for Indigenous peoples;

j. ~~physical, sexual,~~ psychological, emotional and spiritual abuse;

k. pain and suffering;

l. post-traumatic stress disorder;

m. substance addiction and abuse;

n. diminished self-worth;

o. suicidal ideation;

p. attempted suicide;

q. constant nightmares;

r. alienation and social dysfunctionality;

s. loss of ability to parent;

t. loss of consortium;

u. insomnia;

v. depression;

w. anxiety;

x. stress;

~~y.~~ ~~physical injury;~~

z. loss of the enjoyment of life;

aa. loss of ability to pass their culture and ~~cultural~~ ~~a~~ a Aboriginal identity on to their children;

~~bb.~~ ~~sexual dysfunctionality;~~

cc. loss of ability to obtain proper education and employment;

dd. loss of past and future income; and

ee. out-of-pocket costs associated with medical, psychological and psychiatric treatments and therapies and related costs.

Punitive Damages

194. As set out in detail in this claim, Canada's conduct throughout the Class Period was systemic, oppressive and high-handed, and showed a marked departure from the ordinary standards of decent behaviour.

195. Canada's conduct was planned and deliberate. It lasted for decades and furthered Canada's policy of culturally assimilating Indigenous peoples into non-Indigenous Canadian society. Canada's conduct merits punishment.

196. An award of punitive damages in this case is necessary to achieve the goals of general and specific deterrence.

Provincial Health Insurers

197. As a consequence of Canada's conduct, acts, and omissions, as set out in this claim, provincial and territorial health insurers have incurred expenses in relation to the provision of health care services to the Plaintiffs and other Class Members. Pursuant to provincial and territorial

health care costs recovery legislation, health insurers have statutory rights of action in respect of these costs, and are entitled to be compensated for their losses.

Legislation

198. The Plaintiffs and other Class Members plead and rely on various statutes and regulations, including but not limited to:

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. *Canadian Human Rights Act*, RSC 1985, c H-6;

d. *Charter of Human Rights and Freedoms*, CQLR c C-12;

e. *Civil Code of Quebec*, CQLR c C-1991;

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

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

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

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

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

k. *Family Law Act*, RSO 1990 c F-3;

l. *Federal Courts Rules*, SOR/98-106;

m. *Health Care Costs Recovery Act*, SBC 2008, c 27;

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

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

p. *Interpretation Act*, RSC 1985 c I-21;

q. *United Nations Declaration on the Rights of Indigenous People*, 13 September 2007, A/RES/61/295; ~~and~~

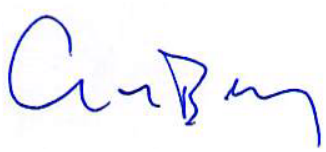
r. *United Nations Declaration on the Rights of Indigenous Peoples Act*, SC 2021, c 14; and

s. all other comparable and relevant acts and regulations in Canada.

Place of Trial

The Plaintiffs propose that the trial be heard in Vancouver, British Columbia.

Date: ~~June 10~~ ~~January 14, 2021~~ September 23, 2021



_____
Lawyers for the Plaintiffs

Angela Bespflug
Janelle O'Connor
Murphy Battista LLP
Suite 2020 – 650 West Georgia Street
Vancouver, BC V6B 4N7
Telephone: 604-683-9621

Maxime Faille
Aaron Christoff
Keith Brown
Gowling WLG (Canada) LLP
Suite 2300 – 550 Burrard Street
Vancouver, BC V6C 2B5
Telephone: 604-683-6498