



Original filed November 16, 2023.

NO. S-224088
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**JESSY RAE DESTINY WE-GYET NEAL,
LAURA JULIE-FAITH DOBSON,
JAKE PHILLIP LOPEZ SMITH and
RACHELLE LYNN DESCHAMPS**

PLAINTIFFS

AND:

**THE ATTORNEY GENERAL OF CANADA and
HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**

DEFENDANTS

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

AMENDED REPLY

Filed by: Jessy Rae Destiny We-Gyet Neal, Laura Julie-Faith Dobson, Jake Phillip Lopez Smith and Rachelle Lynn Deschamps.

In reply to: The amended response to civil claim filed by His Majesty the King in Right of the Province of British Columbia (the "**Province**") on ~~October 16, 2023~~ May 2, 2024 (the "**Amended Response**").

Statutory Immunity Does Not Apply

1. In reply to paragraph 113 of the Amended Response, the defence of statutory immunity does not apply.

- 1.5 The Consolidated Notice of Civil Claim filed on June 5, 2023 (the "**Consolidated Claim**") is not brought against individual Crown employees, servants, or legislative actors, and is not concerned with specific instances of the exercise of statutory power or the performance

of statutory duties. The Consolidated Claim focuses on systemic breaches of rights by the defendants as against Indigenous children and families in British Columbia.

Doctrine of Core Policy Immunity Does Not Bar Relief Sought

2. In reply to paragraphs 11509-1160 of the Amended Response, the plaintiffs' claim of systemic negligence against the Province does not impugn core policy decisions.
3. As pleaded in the ~~Consolidated Notice of Civil Claim filed on June 5, 2023 (the "Consolidated Claim")~~ the Consolidated Claim — including at paragraphs 7, 79-81, 129 and 133 of the Consolidated Claim — the plaintiffs assert that the Province has been systemically negligent in the operational implementation of its own child and family services policies and the delivery of essential services.
4. The doctrine of core policy immunity does not shield the Province from liability in systemic negligence for its operational activities or operational decisions, including the implementation, performance or carrying out of its formulated policies.
5. Further, the funding conduct at issue here does not engage core policy. The plaintiffs' pleading specifically alleges that the Province acted negligently in failing to rationally allocate "pre-existing" resources to prevention services. All or most of the existing funding was geared toward the removal of class members at higher cost, while little or none of the existing resources were allocated to prevention services and culturally appropriate services, amongst others, aimed at helping Indigenous families keep their children at home. The mere presence of budgetary, financial, or resource implications is not determinative ~~determine~~ of whether a decision is core policy.

Discoverability

6. In reply to paragraph 14639 of the Amended Response, the plaintiffs plead and rely on the rules for discoverability under the *Limitation Act*, SBC 2012, c. 13 (the "**Limitation Act**") and the *Limitation Act*, RSBC 1996, c. 266 (the "**1996 Act**").
7. Section 6 of the *1996 Act* and s. 8 of the *Limitation Act* contain special rules for discoverability that centre on reasonableness. Further, both versions of the *Limitation Act*

contain special discoverability rules for “persons under a disability”, such as minors, which state that a limitation period for commencing a claim will not start running until the person is no longer under a disability.

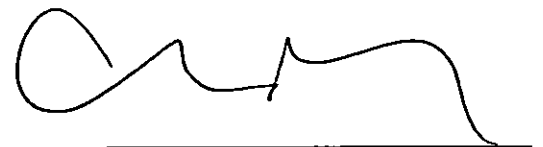
Collateral Attack and Abuse of Process Do Not Apply

8. In reply to paragraphs 147-151 of the Amended Response, the doctrines of collateral attack and abuse of process do not apply.
9. The Consolidated Claim does not impugn the court orders affecting the custody of children, but rather, impugns the Province’s systemic negligence and discrimination that resulted in the Province seeking those custody orders.

Statutory Authority Does Not Apply

10. In reply to paragraph 152 of the Amended Response, the defence of statutory authority does not apply.
11. The Consolidated Claim is not brought against individual Crown employees, servants, or legislative actors, and is not concerned with specific instances of the exercise of statutory power or the performance of statutory duties. The Province is not authorized by statute, court order, or consent to implement unconstitutional and negligent and other policies, the operationalization of which caused the disproportionate apprehension of Indigenous children and their placement into state care and the other harms particularized in the Consolidated Claim.

Dated: ~~November 16, 2023~~ June 4, 2024



Signature of Angela Bessflug,
Lawyer for the Plaintiffs