COURT FILE NUMBER QBG-SA-00760-2022

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFF SAMARAH GENE GENAILLE

DEFENDANTS THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF SASKATCHEWAN

Brought under *The Class Actions Act*, SS 2001, c C-12.01

NOTICE TO DEFENDANTS

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

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

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

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

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

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

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

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

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

5 This Statement of Claim is issued at the above-named judicial centre on the 5th of August, 2022.

"N. Watier"

Local Registrar

TFAX1135737-54 - JC

AMENDED STATEMENT OF CLAIM

Amended without leave pursuant to King's Bench Rule 3-72(a)

THE PARTIES

A. The Representative Plaintiff

i. ~~The plaintiff~~ Samarah Gene Genaille

1. The plaintiff, Samarah Gene Genaille, is an "Indian" within the meaning of s. 91(24) of the *Constitution Act, 1867*~~. Samarah~~ 30 & 31 Vict. c 3 (UK). Ms. Genaille is a ~~status Indian~~ First Nations individual registered with Sturgeon Lake First Nation in Saskatchewan. She was born on March 9, 1998 in Saskatoon, and lived there all her life until she recently moved to Moose Jaw with her young family so she can attend a post-secondary business program at the Moose Jaw campus of Saskatchewan Polytechnic.

2. ~~Samarah~~ Ms. Genaille was apprehended from her family home when she was about 4 or 5 years old, by a ~~P~~provincial child welfare agency in Saskatchewan. She was called into the principal's office while at school and told she was going to a new home. The officials did not explain to ~~Samarah~~ Ms. Genaille why she was being apprehended. She later learned from her mother that their family's landlord reported the family to ~~P~~provincial child welfare authorities, in retaliation, when ~~Samarah's~~ Ms. Genaille's mother refused to sleep with him.

3. For approximately four years – until she was around 8 years old~~, Samarah~~ – Ms. Genaille lived in a very large foster home where a Caucasian foster mother, along with hired staff, fostered anywhere from 12-20 children at a time. ~~Samarah~~ Ms. Genaille describes the foster home as an "assembly line", where children were fed and attended to in massive groups without any individualized care and in a depersonalized environment. Due to the chaos of the situation, ~~Samarah~~ Ms. Genaille does not recall ever being brought to the doctor, dentist, or any other care provider for regular checkups. Dentists have recently told ~~Samarah~~ Ms. Genaille that, if she had received regular dental care as a child, she should have had braces installed at a young age.

TFAX1135737-54 - JC

4. ~~Samarah's~~ Ms. Genaille's foster home included children of all ethnicities, including many Indigenous children. ~~She~~ During her time in foster care, Ms. Genaille was never given any information about her ~~Indigenous~~ Cree culture, language and traditions, and was not even told that she was ~~Indigenous~~ First Nations. ~~Samarah~~ Ms. Genaille made friends with her foster siblings from time to time, but they were periodically removed without her being told, which was very distressing for her. One of ~~Samarah's~~ Ms. Genaille's main memories of this time is ~~the fact that she was~~ being put alone ~~on~~ in a cab, twice a day, ~~which would drive~~ to take her to and from ~~school as a~~ kindergarten~~-age child~~. She ~~was~~ recalls feeling lonely and frightened.

5. ~~Samarah~~ Ms. Genaille was only allowed to visit her parents under direct supervision, in cold government buildings in downtown Saskatoon. Because they were always in the presence of a government employee, ~~Samarah~~ Ms. Genaille and her parents could not have normal family interactions during these visits. She mainly recalls them crying together during the visits until they ended.

6. While at the foster home, ~~Samarah~~ Ms. Genaille often tried to connect directly with her parents, including over the internet and on the phone. Eventually, her foster mother cut off both her phone time and her computer time.

7. When ~~Samarah~~ Ms. Genaille was around 8 years old, she was removed from the foster home and placed in the care of her grandmother, where she lived for the rest of her minor years. ~~Samarah's~~ Ms. Genaille's grandmother was a residential school survivor, and her parents are day school survivors. In retrospect, ~~Samarah~~ Ms. Genaille sees that her grandmother was herself grappling with the effects of residential school, which placed a large burden on her in raising ~~Samarah~~ Ms. Genaille. However, ~~Samarah~~ Ms. Genaille began to be exposed to her Cree heritage ~~in~~ at this time by her grandparents, and learned to smudge, attended cultural events, and was around people speaking Cree.

8. Due to the intergenerational impacts of residential schools, day schools, and the child welfare system that she was involved in, ~~Samarah~~ Ms. Genaille had a very difficult time as a teenager. However, recently, she obtained her high school diploma and driver's licence, and is now in her ~~a~~ post-secondary business

TFAX1135737-54 - JC

program ~~at Saskatchewan Polytechnic in Moose Jaw~~. She is recently married, has an infant son, and is in the process of adopting two of her nieces and one nephew. ~~Samarah~~ Ms. Genaille has a growing group of friends and a faith-based support network in Moose Jaw.

B. The Defendants

9. The defendant, the Attorney General of Canada ("**Canada**"), is the representative of ~~Her Majesty the Queen~~ His Majesty the King in Right of Canada pursuant to s. 23(1) of the Crown Liability and Proceedings Act, RSC 1985, c C-50.

10. Canada asserts jurisdiction over "Indians and lands reserved for the Indians" pursuant to s. 91(24) of the Constitution Act, 1867~~, 30 & 31 Vict, c 3 (UK)~~. Canada's jurisdiction under s. 91(24) includes legislative authority respecting all Indigenous peoples, including ~~status and non-status Indian~~ First Nations, Inuit, and Métis persons.

11. The defendant, ~~Her Majesty the Queen~~ His Majesty the King in Right of the Province of Saskatchewan ("**Province**"), asserts general jurisdiction in relation to the delivery of child and family services in Saskatchewan pursuant to s. 92(13) of the *Constitution Act, 1867* and the common law doctrine of *parens patriae*.

STATEMENT OF FACTS

A. Overview

12. Canada and the Province have systemically discriminated against Indigenous children — and families — in the provision of child and family services in Saskatchewan — because of their race, nationality, and ethnicity.

13. This systemic discrimination, which has occurred for decades and generations, has taken ~~two~~ three primary forms: (i) the underfunding of, or the failure to fund, child and family services for Indigenous children ~~who reside off-reserve~~ placed in provincial child welfare in Saskatchewan; (ii) a systemic prioritization of the removal of Indigenous children from their homes, and a related failure to prioritize culturally-appropriate prevention services for those children and their families; and (iii) the failure to implement and comply with Jordan's Principle, or to

TFAX1135737-54 - JC

otherwise respect the constitutional and legal rights of Indigenous children to access essential health and social services.

14. Canada and the Province have knowingly underfunded child and family prevention services for Indigenous children and their caregivers who are in the provincial child welfare system in Saskatchewan. Since the late 1980s or early 1990s, Canada has expressly chosen not to fund or otherwise provide child and family services for Indigenous children and families residing off-reserve, ~~having treated~~ treating these children and families as already assimilated and, therefore, the responsibility of the Province. For its part, the Province has knowingly underfunded child and family prevention services for First children ordinarily resident off-reserve, Inuit, Metis in Saskatchewan.

15. The chronic underfunding of Indigenous child and family prevention services in Saskatchewan has prevented child and family services agencies from providing adequate public services and products. These public services and products include the provision of adequate preventative care to Indigenous children and families. This has occurred despite the enhanced need for such services and products because of the cultural genocide that has been perpetrated on Canada's Indigenous peoples and the inter-generational trauma that it has caused and continues to cause. Relatedly, the Province has, for decades, knowingly and systemically prioritized the removal of Indigenous children over culturally-appropriate prevention services aimed at keeping Indigenous children within their homes, families, and communities.

16. Numerous independent reviews, parliamentary reports, and audits have identified the severe inadequacies of Canada's and Saskatchewan's funding formulas, policies, and practices vis-à-vis Indigenous children and families in Saskatchewan — and their devastating impacts and harms on these individuals.

17. The Province's funding formulas, policies, and practices mirror Canada's prior funding approach for First Nations children residing on-reserve, which the Canadian Human Rights Tribunal ("**CHRT**") has already found to be discriminatory. While underfunding the delivery of preventative services to Indigenous children who reside off-reserve in Saskatchewan, the Province has

TFAX1135737-54 - JC

fully funded costs associated with removing Indigenous children from their homes, families, and communities — and placing them into out-of-home care. The net effect of this discriminatory approach is that Indigenous children who reside off-reserve often must be apprehended before they can access required services. This is the same "perverse incentive" that the Tribunal ordered Canada to remedy in relation to First Nations children living on-reserve.

18. Removing a child from his or her home must only be used as a last resort, if at all, because of the severe and long-lasting trauma that such removal causes to that child, and to his or her family, and community. However, as a result of the "perverse incentive" that continues to persist~~, Indigenous~~ in Saskatchewan, First Nations children who reside off-reserve, Métis, and Inuit children have been removed from their homes as a first resort, rather than a last resort. This accounts, in substantial part, for the egregious overrepresentation of Indigenous children in care in Saskatchewan. In 2019, 86% of the approximately 3,400 children in care in Saskatchewan were Indigenous, despite representing approximately 16% of all children in the province.

19. The incentivized removal of off-reserve Indigenous children from their homes, families, and communities has caused enduring trauma to those children, their families and caregivers, and their communities.

20. ~~Second~~ Further, despite Canada and the Province having declared their commitment to implement and comply with Jordan's Principle, both have failed to meet that commitment. Jordan's Principle is a legal requirement intended to safeguard ~~Indigenous~~ First Nations children's substantive equality rights that are guaranteed by 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 ("***Charter***"). ~~It requires~~ The same rights that underlie Jordan's Principle require that all Indigenous children receive the ~~public~~ essential health and social services and products they need, when they need them, and in a manner that is consistent with substantive equality and reflective of their cultural needs.

21. Indeed, the genesis of Jordan's Principle arose from governmental practices of denying, delaying, or disrupting services and products to Indigenous children due

TFAX1135737-54 - JC

to, among other reasons, disputes over jurisdiction and fiscal responsibility within government departments or as between Canada and the provinces or territories. Canada and the Province nonetheless continue to breach Jordan's Principle by denying crucial services and products to Indigenous children in Saskatchewan.

21.1 Canada and the Province likewise continue to deny essential services and products to Indigenous children in Saskatchewan.

21.2 Regardless of Jordan's Principle, Canada and the Province have for decades failed to provide formally or substantively equal access to essential health and social services for Indigenous children in Saskatchewan. Such Indigenous children have instead faced delays, denials, and services gaps in accessing essential services.

22. This action seeks individual compensation for: (i) ~~Indigenous~~ First Nations children ~~who did~~ not ~~reside~~ ordinarily resident on a reserve in Saskatchewan, ~~and~~ Métis children, and Inuit children, who were victims of this systemic discrimination between January 1, 1992 and the date of the certification of this action as a class proceeding ("**Class Period**"); ~~and (ii) the parents, grandparents, and caregivers of those children.~~ (ii) Indigenous children who had a confirmed need for an essential health or social service (inclusive of products) but faced a delay, denial or service gap regarding that service; and (iii) the caregiving parents or caregiving grandparents of the children in (i) and (ii). The action also seeks reforms of the Indigenous child welfare system, pursuant to s. 24(1) of the *Charter*.

B. Protection and Prevention Services

23. Governments and non-Indigenous social workers tend to define or divide child and family services into two main ~~areas of concern~~: "prevention" and protection. They further divide prevention services into three main categories: primary, secondary, and tertiary.

24. Primary prevention services are aimed at the community as a whole. They include the ongoing promotion of public awareness and education about a healthy family and how to prevent or respond to child maltreatment. Secondary

TFAX1135737-54 - JC

prevention services are triggered when concerns begin to arise and early intervention could help avoid a crisis. Tertiary prevention services target specific families when a crisis or risks to a child have been identified. Tertiary prevention services are designed to be "least disruptive measures" that try to mitigate the risks of separating a child from his or her family, rather than separating a child from his or her family.

25. Protection services are triggered when the safety or the well-being of a child is considered to be compromised. If the child cannot live safely in the family home while measures are taken with the family to remedy the situation, child and family service workers will make arrangements for temporary or permanent placement of the child in another home where he or she can be cared for. This is sometimes called placing the child "in care".

25.1 The removal of the child should always be a last resort, as it uproots the child from their family and community. If done in a culturally unsafe manner, apprehension also cuts Indigenous children off from their cultures, languages, identity, and the value systems and spiritual beliefs derived therefrom. Overreliance on apprehension was at the heart of the Sixties Scoop. When applied to Indigenous children, apprehension perpetuates the intergenerational trauma inflicted by residential schools and the Sixties Scoop. It also relies on and perpetuates the racist premise that Indigenous parents are unfit to raise their own children.

25.2 It is well recognized that, within child welfare systems, prevention is preferable to apprehension, for several reasons, including:

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

b. appropriate prevention services have been proven to be generally more effective than apprehension; and

c. prevention, when done properly, is less costly than apprehension.

TFAX1135737-54 - JC

26. Further, Indigenous perspectives on child and family services tend to reject the compartmentalization of "prevention" and "protection" services, and any arbitrary distinction between "levels" of prevention support. Such compartmentalization focuses child and family services only on physical safety, at the cost of relational, cultural, spiritual, and emotional safety.

27. When assessment of the well-being and safety of children is not considered through a holistic approach, it allows for continued harm to be perpetrated on Indigenous children and youth and their families. Indigenous child and family service providers have led the development of lifelong, needs-based, and culturally appropriate wraparound services that prevent poor outcomes (i.e., poverty, homelessness, family violence, mental illness, and drug abuse) and protect children and families from the ongoing harms associated with colonization.

C. Indigenous Child and Family Services in Saskatchewan

i. Historical over-representation of Indigenous children in care

28. Starting in the 19th ~~c~~Century, Indigenous children across Canada, including those residing in Saskatchewan, were systematically separated from their families and placed in Indian Residential Schools and Day Schools. Among other things, these schools were used as "care providers" for Indigenous children who, according to Indian Agents, were allegedly being neglected or otherwise in need of child and family services. Residential schools were intentionally conceived as a means of breaking down familial, community, and cultural ties and assimilating Indigenous children into mainstream Canadian society.

29. In 1951, the introduction of s. 88 to the *Indian Act* made "all laws of general application from time to time in force in any province applicable to and in respect of Indians in the province". The Province asserted its authority, and began to apprehend children living on-reserve and off-reserve, which resulted in an increase in Indigenous children placed in care.

29.1 The result was an epidemic of mass-removals, which later became known as the "Sixties Scoop", referring to the period between 1951 and 1991 when Indigenous

TFAX1135737-54 - JC

children were taken into care *en masse* and placed with non-Indigenous parents where they were not raised in accordance with their cultural traditions, heritage, rights, spiritual beliefs, or language.

30. Before the introduction of s. 88 of the *Indian Act*, Indigenous children accounted for less than 1% of children in care in Saskatchewan. By the mid 1970s, these numbers rose to approximately 63%. During this period, the Adopt Indian and Métis ("**AIM**") program was created to increase the number of adoptions of Indigenous children in Saskatchewan into non-Indigenous families. AIM allowed for the adoption of Indigenous children to take place outside of the provincial adoption system. This program was initially funded by the federal Department of Health and Welfare.

30.1. Only many decades later, on January 7, 2019, did the Province offer an official apology for the Sixties Scoop, acknowledging, *inter alia*, that:

> Thousands of First Nations, Métis and Inuit children were placed in non Indigenous foster and adoptive homes in Saskatchewan, and in some cases across Canada and the United States.
>
> In Saskatchewan, at that time, those who managed the foster and adoption programs believed they had a moral and legal obligation to act.
>
> However, during the Sixties Scoop, not nearly enough consideration was given to the fact that Indigenous children come from communities with their own rich traditions, culture and history.
>
> Some Indigenous children were separated from their families and their communities, and as a result those children were cut off from their culture, and they were cut off from their traditions.
>
> Despite the good intentions of many foster and adoptive parents, too many of these children were caught between two worlds. They were stranded in a sense, with no knowledge of who they were, or where they came from.
>
> The consequences are still being felt by individuals and families to this day.

TFAX1135737-54 - JC

ii. Ongoing over-representation of Indigenous children in care in Saskatchewan

30.2 For decades, the defendants have provided discriminatory and inequitable child welfare services to Indigenous children in Saskatchewan.

31. ~~In the intervening years~~ Through and following the Sixties Scoop, various agreements and funding arrangements ~~have been~~ were entered into and rescinded between Canada and the Province dealing with the delivery of child and family services. ~~Until~~ Of particular significance, until the late 1980s/early 1990s, funding for on- and off-reserve child and family services for Indigenous children and families was provided by Canada. Thereafter, Canada entered into agreements with each province, including the Province of Saskatchewan, under which each province would fund child and family services for off-reserve Indigenous children and families.

31.1 With this shift, Canada arbitrarily limited its funding of child welfare services to First Nations children ordinarily resident on-reserve. In so doing, Canada adopted a policy of abandonment, avoidance, and apathy towards Indigenous children and families living off-reserve in Saskatchewan, leaving these children and families to their fate at the hands of the Province.

32. In 1990, the Federation of Saskatchewan Indian Nations (as it was then, now the Federation of Sovereign Indigenous Nations, "**FSIN**") developed the *Indian Child Welfare and Family Support Act* ("**ICWFSA**"). The ICWFSA included general standards for First Nations child welfare agencies and a provision allowing individual agencies to develop their own standards. Though the Province did not pass the ICWFSA, it did officially recognize it as consistent with provincial legislation and therefore equivalent to ministerial policies and standards.

33. The Province now has its own child and family services legislation, *The Child and Family Services Act*, SS 1989-90, c C-7.2, which is intended to prevent and respond to child maltreatment and promote family wellness. Section 3 of *The Child and Family Services Act* states regarding the general population:

> The purpose of the Act is to promote the well-being of children in need of protection by offering, wherever appropriate,

TFAX1135737-54 - JC

services that are designed to maintain, support and preserve the family in the least disruptive manner.

34. In 1994, the Province amended The Child and Family Services Act to allow the Minister to enter into agreements with a band or any other legal entity, in accordance with the regulations, for the provision of services or the administration of any part of the Act. Other than band notification of court appearances or placement decisions related to children from the band, the Province has yet to further develop any special considerations in *The Child and Family Services Act* for Indigenous children.

35. A number of high-profile incidents involving Indigenous children have occurred in Saskatchewan. One such incident occurred in the fall of 2002 when a 20-month-old boy was seriously abused soon after having been returned home from foster care. Known as the "Baby Andy" case, the incident highlighted various negative issues with the provincial child welfare system, particularly the parallel system of federally funded on-reserve First Nations Child and Family Service Agencies.

36. The reports and reviews which emanated from this tragic case found, among other things, funding discrepancies between the Ministry and on-reserve mandated agencies, and the need for integrated co-ordination of services in the future.

37. Having regard to First Nations children resident on reserve:

   a. The FSIN signed a Memorandum of Understanding with the Province allowing for the development of First Nations Child and Family Service ("**FNCFS**") Agencies. Canada's Indigenous and Northern Affairs Canada (now named Crown -- Indigenous Relations and Northern Affairs Canada) and the Saskatchewan Ministry of Child and Family Services subsequently developed "models of delegated authority for child welfare", formalizing the existence of FNCFS agencies in Saskatchewan through delegation agreements. The first of such agreements was signed in 1993 between the Saskatchewan Department of Child and Family Services and the Touchwood Child and Family Services. Other First Nations signed similar agreements with the Province in order to form FNCFS agencies.

TFAX1135737-54 - JC

~~38~~ b. Today, 17 FNCFS Agencies possess delegated authority to provide child protection services to children and families on-reserve.

c. Indigenous Services Canada allocates funding to FNCFS Agencies and the Ministry of Social Services ("**MSS**") for child welfare services provided to status ~~Indians~~ First Nations individuals living on-reserve.

39. The Province, through MSS, funds and delivers Indigenous child welfare services in Saskatchewan for children who are status ~~Indians and~~ First Nations ordinarily living off-reserve~~,~~; and non-status ~~Indians~~ First Nations, Métis, and Inuit children~~,~~ irrespective of residence. And these children continue to be disproportionately overrepresented in Saskatchewan's child welfare system.

39.1. As of 2010, for example, Saskatchewan's Children's Advocate ("**Advocate**") observed:

> Five per cent of Canada's child population is Aboriginal, compared with 25 per cent of Canada's child-in-care population. So while there is significant over-representation of Aboriginal children in care nationally, **the situation is much more acute in Saskatchewan, where 80 per cent of children in care are Aboriginal compared with 25 per cent of the child population being Aboriginal on the whole**.
>
> [Emphasis added.]

iii. The defendants' knowledge of systemic discrimination in the provision of child and family services to Indigenous children living off-reserve

40. At all material times, the defendants were aware of the chronic problems that existed in the under-provision of child and family services, including insufficient prevention services, to Indigenous children, especially those who resided off-reserve. Over the course of the Class Period, numerous independent reviews, parliamentary reports, and audits identified certain of these deficiencies and described their devastating impact on Indigenous children and families.

41. The Royal Commission on Aboriginal Peoples (1996) and, subsequently, the Report of the Truth and Reconciliation Commission of Canada (2015) each called on the defendants to adequately fund child and family services and fully

TFAX1135737-54 - JC

implement certain principles and equality protections, a concept which has become known as Jordan's Principle, addressed in greater detail below.

42. The Truth and Reconciliation Commission found, among other things, that:

a. 3.6% of all First Nations children under the age of 14 were in out-of-home care, compared with 0.3% of non-Aboriginal children;

b. the rate of investigations involving First Nations children was 4.2 times the rate of non-Aboriginal investigations, and maltreatment allegations were more likely to be substantiated in the cases of First Nations children;

c. investigations of First Nations families for neglect were substantiated at a rate eight times greater than for the non-Aboriginal population;

d. the child welfare system has simply continued the assimilation that the Residential Schools system started; and

e. First Nations children are still being taken away from their parents because of their parents' socioeconomic circumstances.

42.1 These calls to action came after more than a decade of public reviews and reports highlighting the already extreme over-representation of Indigenous children and families in Saskatchewan's child welfare system, and significant gaps and inequity in the provision of care — including preventative care — to those children and families.

42.2 On September 13, 1997, Karen Quill, a 20-month-old Indigenous child, died while in care in a foster home in which "no further children" were to be placed because of overcrowding.

42.3 In response to Karen's death, a child death review was carried out. Through that review, the Advocate's Child Death Multi-Disciplinary Review Team concluded that: (i) Karen's death had been preventable; and (ii) the lack of attention to the quality of care within the child welfare system had been unacceptable and had placed Karen and other children at risk.

TFAX1135737-54 - JC

42.4 In light of those findings, the Province's Minister of Social Services called on the Advocate to complete a comprehensive review of the needs of children living in care in Saskatchewan. The consequence of that review was a report, prepared by the Advocate, titled *Children and Youth in Care: LISTEN to Their Voices*, released in 2000 ("***LISTEN*** **Report**").

42.5 The *LISTEN* Report identified, *inter alia*:

a. a failure to provide adequate training and support for the care workers responsible for administrating child welfare services;

b. a failure to keep accurate and complete records and data on children in care and their families;

c. a failure to implement policies recognizing the importance of family connection and family reunification;

d. a failure to prioritize kinship care options, despite general recognition of the value of such placements;

e. a failure to provide culturally-appropriate placements;

f. a failure to provide adequate, timely, and equitable access to prevention services for Indigenous children and their families; and

g. a failure to provide adequate, timely and equitable access to essential services for Indigenous children with special needs.

42.6 Despite the failures identified in the *LISTEN Report*, the harm to Indigenous children and families in Saskatchewan's child welfare system persisted. In 2009, the Advocate released a further report critical of the Province's child welfare system, titled *A Breach of Trust: An Investigation into Foster Home Overcrowding in the Saskatoon Service Centre* ("***Breach of Trust*** **Report**").

42.7 The *Breach of Trust* Report identified many of the same failures as the Advocate's *LISTEN* Report nine years earlier, including the Province's lack of adequate recordkeeping and data, and the lack of a "well-considered approach to kinship or alternative care in those circumstances where a child has to be

TFAX1135737-54 - JC

removed from the care of biological family members, which would ensure the provision of reasonable compensation to alternative caregivers and appropriate governmental oversight".

43. On November 9, 2009, Saskatchewan's Social Services Minister, Donna Harpauer, announced that the Province intended to undertake a comprehensive review of the child welfare system in Saskatchewan, and the Province appointed a panel to study the issue.

44. The terms of reference of the Panel Report required the panel to "examine the significant over-representation of First Nations and Métis children and youth in care and address how this disparity could be overcome."

45. In November 2010, the panel issued a report entitled *Saskatchewan Child Welfare Review Panel Report: For the Good of Our Children and Youth. – A New Vision, A New Direction* (the "**Panel Report**").

46. Among other things, the Panel Report noted that fiscal arrangements "were made without adequate or equitable funding arrangements for First Nations Child and Family Services Agencies. The result has been a lack of capacity on the part of delegated First Nations Child Welfare agencies to deliver appropriate culturally based services that can effectively respond to community needs. Higher numbers of families and children have come into the child welfare system as a result."

47. The Panel Report noted that "prevention and support services are generally reserved for those families who have met a 'threshold' for intervention. In other words, families in Saskatchewan are often not able to get help through the child welfare system until issues become crises."

48. One participant in the Panel Report process was quoted as follows:

> "Social Services says, 'Well you have to sign her over to the system before we will help her.' It's an awful dilemma to put a grandmother in or to put an auntie in."

48.1 The dilemma is even harder when the same people who provide prevention are also tasked with judging whether the parent who requests prevention is fit to

TFAX1135737-54 - JC

raise their children. They are allowed, even encouraged, to see requests for prevention as evidence that children need to be removed. Unsurprisingly, this causes many Indigenous parents to avoid seeking prevention services for fear of opening the door to their child being taken away by the state.

49. In the cover letter to the Panel Report ~~as~~ submitted to the Minister, the panel stated that it had been "impressed by the strong desire for change, and the extent to which most stakeholders agreed with one another on both the major issues in the system and the way forward." The panel issued twelve recommendations, including creating "an easily accessible preventative family support stream for all families who need it", making "safe, culturally appropriate care for all Aboriginal children and youth a priority through a planned and deliberated transition to First Nations and Metis control of children welfare and preventative family support services".

50. Despite these clear recommendations, the inequities and systemic discrimination for Indigenous children in state care — and their families — persisted. In his 2016 annual report to the Legislature issued pursuant to section 39 of *The Advocate for Children and Youth Act*, SS 2012, c A-5.4, the Saskatchewan Advocate for Children and Youth, Corey O'Soup noted, among other things, that "[w]e must move to a prevention model that prioritizes providing families with the necessary supports to keep their children in their care. Not only do children deserve this, but they have the right to this." The same year, in a special investigation report, titled *Duty to Protect* (October 2016; the "***Duty to Protect* Report**"), the Advocate noted, *inter alia*, an ongoing and problematic lack of clarity within the MSS in distinguishing between prevention and protection services.

51. In August 2017, the Saskatchewan First Nations Family and Community Institute, after an extensive engagement project, released *Voices for Reform: Options for Change to Saskatchewan First Nations Child Welfare*~~,~~ ("***Voices for Reform* Report**"), highlighting ongoing gaps in Indigenous child welfare services in Saskatchewan and making a number of proposals for reform. The ongoing gaps noted in the *Voices for Reform* Report included "overwhelming evidence from research participants regarding the lack of accessibility to services that are

TFAX1135737-54 - JC

culturally appropriate, provided in a timely manner, and in the community", an ongoing lack of adequate preventative care, an ongoing failure to prioritize kinship care and access to culturally-appropriate services, and ongoing funding inequities.

52. In January 2018, an emergency national meeting was hosted by then-Minister of Indigenous Services Canada, Jane Philpott, to discuss the child welfare crisis. At the outset of the meeting, Minister Philpott acknowledged, in her welcome speech:

> We are acutely aware that there are concerns about funding – that it is insufficient, inflexible and incentivizes apprehension. Many have talked to me about how current funding policies don't permit financial support for kinship care. Simply put, funding based on the number of children in care is apprehension-focused and not prevention-focused. The underfunding of prevention services while fully funding maintenance and apprehension expenses creates a perverse incentive.

53. In the 2021 Annual Report to the Legislature, Saskatchewan Advocate for Children and Youth, Dr. Lisa Broda, again highlighted Indigenous overrepresentation in child protection and justice systems in Saskatchewan, as well as the alarming statistics regarding deaths and critical injuries/incidents of Indigenous children and youth:

> It is well-known that Indigenous children are over-represented in both the child protection and justice systems in Saskatchewan and across Canada. Year after year, the deaths and injuries we review are a stark reminder of this dark reality. In 2021, 22 of the 24 deaths (92%) and 23 of the 29 critical injuries/incidents (79%) that came to our attention involved Indigenous children and youth.

53.1 Most recently, in another special report, titled *Desperately Waiting* (March 2022), the Advocate emphasized the Province's ongoing failure to provide Indigenous children and youth with adequate access to culturally-appropriate services, including mental health and addiction services.

TFAX1135737-54 - JC

D. The Canadian Human Rights Tribunal Complaint

53.2 A child welfare system that prioritizes the apprehension of Indigenous children, over prevention services, is inherently discriminatory. This was the subject of a landmark case before the CHRT concerning Canada's funding of child and family services for First Nations children on-reserve.

54. In February 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 s. 5 of the *Canadian Human Rights Act*, RSC 1985, c H-6 (the "**Complaint**").

55. The Complaint alleged that Canada discriminates in providing child and family services to First Nations children on-reserve and in the Yukon ~~under~~ on the basis of race and national or ethnic origin by providing inequitable and insufficient funding. On October 14, 2008, the Commission referred the Complaint to the Canadian Human Rights Tribunal ("**CHRT**") for inquiry.

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

57. The CHRT also found that First Nations children and families living on-reserve and in the Yukon suffered harm in Canada's provision of child and family services because of the children's and families' race or national or ethnic origin, and that this harm perpetuated the historical disadvantage and trauma suffered by Indigenous people, in particular as a result of the Residential School system.

TFAX1135737-54 - JC

58. The CHRT also found the practice of underfunding prevention and least disruptive measures, while fully reimbursing the cost of children when apprehended, created a perverse incentive to remove First Nations children from their homes as a first, not a last, resort, in order to ensure that a child received necessary services.

59. The CHRT concluded that human rights principles, both domestically and internationally, required Canada to consider the distinct needs and circumstances of First Nations children and families living on-reserve in order to ensure substantive equality in the provision of child and family services. Among other things, Canada was ordered to undertake a cost analysis of the First Nations Child and Family Services Program relating to on-reserve individuals, and to fund prevention/least disruptive measures based on actual costs.

59.1. As further particularized below, the CHRT also found that Canada discriminated against all First Nations children living on and off-reserve in the provision of essential health and social services, and thus breached Jordan's Principle.

~~E. Jordan's Principle~~

~~60. Jordan's Principle requires that all Indigenous children receive the public services and/or products they need, when they need them, and in a manner consistent with substantive equality and reflective of their cultural needs. The need for Jordan's Principle arose from governmental practices of denying, delaying or disrupting the services of Indigenous children due to, among other reasons, jurisdictional payment disputes within the federal government or between the federal government and provinces or territories.~~

E. Saskatchewan's Child Welfare System Still Prioritizes Removal of Indigenous Children

60. During the Class Period, Indigenous children and families living off-reserve in Saskatchewan have experienced systemic discrimination and inequity in the Province's child welfare system, including through:

a. the prioritization of Indigenous children's removal, against the backdrop of the underfunding and under-delivery of adequate prevention services;

b. the underfunding and under-delivery of culturally-appropriate prevention services and care for Indigenous children and families off-reserve; and

c. the under-prioritization of kinship care.

TFAX1135737-54 - JC

60.1. In the early 1990s, Indian and Northern Affairs Canada introduced a new funding formula for First Nations children living on-reserve, known as Directive 20-1 and the Enhanced Prevention Focused Approach ("**EPFA**") — a funding model that the CHRT later found to be discriminatory, through the process outlined above.

60.2. Under Directive 20-1 and the EPFA, Canada's funding was a function of the number of children in care. Child services agencies that removed more children received more money. Further, under Directive 20-1, Canada's funding for on-reserve child welfare services in Saskatchewan was limited to operations and maintenance funding, without full funding for prevention services.

60.3. For Indigenous children and families who were outside the purview of the FNCFS (*i.e.*, First Nations living off-reserve, Métis, and Inuit), the Province's own funding model was similarly structured, based on the volume of children in care.

60.4. In 2008, Canada introduced its "Enhanced Prevention-Focused Approach" in Saskatchewan, adding funding for prevention services in addition to operations and maintenance funding ("**Enhanced Prevention Model**"). However, despite adding funding for prevention services, the Enhanced Prevention Model contained many of the same flaws as Directive 20-1 — perpetuating the misalignment between funding and resources, on the one hand, and actual need, on the other.

60.5. A similar misalignment has persisted in the funding models applied by the Province to Indigenous children and families living off-reserve. As noted in a 2010 submission of the Advocate to the Saskatchewan Child Welfare Review ("***Change for Children and Youth* Report**"), "[t]he Government of Saskatchewan continues to invest primarily in post-apprehension residential resource development to treat the problem of more and more children and youth coming into care, while rarely assessing or adequately resourcing comprehensive programming that may prevent those same children and youth from coming into care" — a failure with disproportionate consequences for Indigenous children, including Indigenous children living off-reserve, given the overrepresentation of those children in the child welfare system as a whole. As stated by the Advocate in *Change for Children and Youth* Report:

TFAX1135737-54 - JC

> [W]e will simply advise, once again, that the Government of Saskatchewan needs to assess and resource preventative programming on a much broader scale than ever done before in this province if it is to ever solve the chronic crisis of under resourcing and too many children and youth coming into care of the Minister of Social Services.

60.6. While provincially-funded services delivered off-reserve by the MSS exceeded the funding provided by Canada to FNCFS agencies for the delivery of services on-reserve, delivery of those provincially-funded services continued to fail to meet the substantive needs of Indigenous children and families in the provincial child welfare system.

60.7. Throughout the Class Period, the defendants have failed to adequately fund, and the Province has failed to deliver, culturally-appropriate child welfare prevention services and care to Indigenous children living in Saskatchewan, including those off-reserve while allocating most or all of the existing funding envelop to protection services, removing Indigenous children *en masse*. In many instances, this has gone hand in hand with the serious issue of overcrowding in foster homes in Saskatchewan. As noted in the *Breach of Trust* Report, "[w]hen there are too many children placed in a foster home, it is evident that all of these children's needs, including their cultural, linguistic and spiritual needs, are more likely to be given less consideration and attention". As at 2009, over 66 percent of all children placed in overcrowded foster homes in the Saskatoon Service Centre area were Indigenous. Both the issue of overcrowded foster homes and a lack of cultural connection in care are common to the plaintiff's lived experiences.

60.8. Nor has the Province adequately implemented policies, during the Class Period, directed at promoting permanency planning, including kinship care, for Indigenous children. As observed by the Advocate in the *Breach of Trust* Report, as at 2009:

> Of significant concern to the Children's Advocate Office is that the requirement for permanency planning for children in care, which needs to occur within a "brief, time-limited period" and "minimizes the length of time that a child will live in a setting that lacks the promise of being permanent" is not regularly occurring. The CAO investigators' examination of overcrowded foster homes revealed that there remains an issue, first identified by the

TFAX1135737-54 - JC

> Children's Advocate Office in 2000, that within the Saskatchewan child welfare system, children are languishing in care and not receiving the benefits of systematic planning or case management processes that emphasize regular reviews, contacts and decision making. Key to this permanency planning is the active collaboration among key community agencies, childcare personnel, lawyers, judges and others working with children and their parents.

60.9. In particular, the Province has failed to adequately recognize, permit, consider, direct, and enable kinship care. Kinship care is a uniquely Indigenous institution, in which the raising of children is seen as a communal responsibility with the immediate and extended family carrying the primary responsibility. A child may eat or sleep in any of their extended family's homes, and a non-parent may primarily oversee the child's development, but the child does not lose contact with the parents. In this way, true kinship care preserves family and community ties, even while limiting contact with parents who may be unfit.

60.10. Even when the Province considers kinship care, it uses a diminished definition of kinship care as simply a traditional Western adoption by a family member. Additionally, according to the *Breach of Trust* Report, the Province does not have "a well-considered approach to kinship or alternative care … which would ensure the provision of reasonable compensation to alternative caregivers". The Panel Report explained that funding is only available to kinship caregivers if the child has been apprehended and become a child ward, and even then, "the financial support for the basic care of the child is lower than foster care rates". The Panel Report recommended that the Province design a new system to "ensure that kinship care programming, with an adequate financial support component, is available both for children within the formal child welfare stream, and for children within the preventive family support system". The Province did not follow this recommendation.

60.11. As a result, the contributions of true kinship caregivers are commonly overlooked when the relationship does not look like a traditional Western adoption. This can result in Indigenous children being apprehended for neglect, even when their needs are being met — just by a multitude of caregivers. Even when it does look

TFAX1135737-54 - JC

like a traditional Western adoption, the caregivers are not given the same level of support as foster parents, making it harder for them to avoid charges of neglect.

60.12. These and other gaps have been compounded by the defendants' failure to keep accurate and complete records and data on Indigenous children in care, including those resident off-reserve at the time(s) of entry into the child welfare system, resulting in gaps and breakdowns in care. One example of this is an infant, "Aiden", whose family lived on- and off-reserve. Aiden died at just under three months of age. His story was the subject of the Advocate's *Duty to Protect* Report, released in 2016. As the Advocate observed of Aiden's family:

> It appears there was not clarity within the Ministry or the Agency with respect to the actual residence of the children, as they seemed to be moving back and forth from the First Nation to the city. There is no documentation on the Ministry or Agency files to indicate the Agency was informed of the high risk rating found by the Ministry.

60.13. More than a decade and a half earlier, in the *LISTEN* Report, the Advocate had observed more generally based on a file review:

> A major observation from the file review was that significant amounts of information were not available in the files. Secondly, the information contained in the files was often difficult and time consuming to locate. It was also difficult to determine if all the relevant information about a particular aspect of a child's life had been located.
>
> …
>
> A major consideration in gathering and keeping up-to-date information on children and youth was the impact the information could have in shaping, policy, programs and practice. Appropriate tracking of children and their circumstances would build a knowledge base that would contribute to effective long-term planning.

60.14. Most recently, the Advocate issued a further report dated April 4, 2023, titled *In Their Sufficient Interest? Special Investigation Report* (the "**2023 SI Report**"). In this latest report, the Advocate once again reiterated its previously expressed concerns and admonished: "Without further legislative action, there will continue to be serious gaps and rights infringements which is deeply concerning …".

TFAX1135737-54 - JC

60.15. In the 2023 SI Report, the Advocate also reported on the latest status of the gross over-representation of Indigenous children in out-of-home care. As of March 31, 2023, 2,746 of all children in care in Saskatchewan were Indigenous, while only 572 were non-Indigenous.

F. Essential Services and Jordan's Principle

60.16. In addition to systemically discriminating against — and failing to meet the substantive equality needs of —Indigenous children within the provincial child welfare system, the defendants have also failed to provide adequate and reasonable access to essential health and social services and products to Indigenous children in Saskatchewan.

61. Jordan's Principle is a child-first legal rule that guides the provision of public services and products to Indigenous children. It incorporates the Crown's longstanding obligations to treat Indigenous children without discrimination, and with a view to safeguarding their substantive equality. In 2017 CHRT 35, the CHRT confirmed that Jordan's Principle applies equally to First Nations children who reside ~~on and~~ anywhere in Canada, whether on- or off-reserve.

~~62. Yet Canada and the Province continue to violate Jordan's Principle by playing jurisdictional football – at the expense of Indigenous children and youth – who are denied timely access to the services and products to which they are entitled.~~

62.1. Regardless of the specific term "Jordan's Principle" and its recognition as a principle and legal rule, the constitutional and legal rights of the plaintiff and Class Members, as well as the defendants' constitutional, legal and equitable duties, required both defendants to not cause delays, denials or service gaps in any Indigenous children's access to needed essential services. These obligations existed with respect to all Indigenous children, throughout the Class Period, and bound both defendants.

62.2. The defendants have known, or ought to have known, that the violation of Class Members' rights in accessing essential health and social services has been ongoing for decades. Prior to and over the course of the Class Period,

TFAX1135737-54 - JC

independent reviews and parliamentary reports identified these deficiencies and decried their devastating impact on Indigenous children and families.

62.3. In 1981, the House of Commons Special Committee on the Disabled and the Handicapped issued a report that highlighted these jurisdictional funding issues. The report noted that First Nations were migrating away from reserves in increasing numbers, which had created a dispute as to which government — federal or provincial — would pay for their needed essential services. The report found provinces were reluctant or unwilling to take over funding, and that the dispute created confusion among Indigenous people, as they were frequently left without any services while the two governments disagreed over jurisdiction.

62.4. Twelve years later in 1993, the House of Commons' Standing Committee on Human Rights and the Status of Disabled Persons issued a follow-up report stating that the situation had not improved in the time since the prior report, and that the most glaring issues arose in the provision of health and social services to Indigenous people. The report raised the alarm that Indigenous people were "falling through the cracks" and were being unequally treated compared to non-Indigenous people.

62.5. The Committee recommended Canada to prepare a tripartite action plan between the federal, provincial/territorial, and First Nations governments to ensure consultation and collaboration on any issues regarding Indigenous people with disabilities, including existing or proposed transfers of service delivery to ensure these transfers meet their needs. The Committee further recommended the report be completed no later than November 1, 1993, and that it include specific agendas, realistic target dates, and evaluation mechanisms. No such plan was ever prepared.

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

TFAX1135737-54 - JC

a. that governments recognize the health of a people is of vital importance to its life, welfare, identity, and culture, and is thus a core area for the exercise of self-government by Indigenous nations; and

b. that governments promptly:

i. conclude agreements recognizing Indigenous jurisdiction over areas directly related to Indigenous peoples' health;

ii. create appropriate funding arrangements for funding Indigenous health services; and

iii. establish a framework whereby Indigenous governments, organizations, and communities could mandate agencies to deliver health and social services operating under provincial or territorial jurisdiction, until such time as institutions for Indigenous self-government exist.

62.7. In 2000, the Joint National Policy Review highlighted some of these issues, ultimately recommending that the then-Department of Indian Affairs and Northern Development, Health Canada, all provinces and territories, and First Nations agencies should prioritize creating clarity around jurisdiction and responsibility for programming and funding for Indigenous children with complex needs for essential health and social services.

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

62.9. The *Wen:De* Report proposed a "Jordan's Principle" in honour of Jordan River Anderson, a child born to a family of the Norway House Cree Nation in Manitoba in 1999. Jordan had a serious medical condition, and due to lack of services his family surrendered him to provincial care to get the medical treatment that he needed. After spending the first two years in a hospital, he could have gone into care at a specialized foster home close to his medical facilities in Winnipeg.

TFAX1135737-54 - JC

However, for the next two years, Canada and Manitoba argued over who should pay for Jordan's foster home costs while Jordan remained in the hospital. They were still arguing about jurisdiction when Jordan passed away in 2005, at the age of five, having spent his entire life in the hospital.

62.10. The *Wen:De* Report stated that despite section 15 of the *Charter* and international law requiring that First Nations children receive equal benefit under the law, the governments' apathy and inaction denied them that protection. The *Wen:De* Report noted that "jurisdictional wrangling" had resulted in program fragmentation, coordination and reporting issues, and service gaps that allowed First Nations children to "fall through the cracks". The *Wen:De* Report noted that, despite awareness that their policy of avoidance had real impacts on Indigenous children, neither the federal nor provincial/territorial governments had effectively addressed the community needs of First Nations.

62.11. The *Wen:De* Report proposed the governments adopt Jordan's Principle, a child-first principle whereby the first government (federal or provincial/territorial) to receive a request for payment of services must pay without disruption or delay whenever such services are otherwise available to non-Indigenous children in similar circumstances. To the extent a jurisdictional dispute exists, the government could then refer the matter to a dispute resolution process.

62.12. On December 12, 2007, the House of Commons unanimously passed Motion 296, stating: "That, in the opinion of the House, the government should immediately adopt a child first principle, based on Jordan's Principle, to resolve jurisdictional disputes involving the care of First Nations children". This motion came about as a result of the federal and provincial governments' persistent violation of the Class Members' equality rights described above. Motion 296 was not a statute that created statutory rights, but a resolution affirming existing constitutional and quasi-constitutional equality rights to substantively equal access to essential services.

62.13. In 2009, Canada, the Province and the FSIN reached a tripartite agreement on an interim process to implement Jordan's Principle in Saskatchewan:

TFAX1135737-54 - JC

> Through the agreement, all parties are committing to work together to develop a child-first approach, ensuring the health and well being of First Nation children with multiple disabilities in Saskatchewan take priority over questions of jurisdiction and responsibility of payment for services and health care.

62.14. Failures in the substantive implementation of Jordan's Principle for Indigenous children in Saskatchewan have nevertheless persisted. The Panel Report noted in 2010, with respect to access to essential health and social services:

> Disputes about financial responsibility for First Nations people with complex or urgent needs can occur, especially when families require service and move between reserves and urban settings. We heard that haggling over who will pay sometimes results in tragedy, or ongoing harm to children. Jordan's Principle has been promoted in Canada as a means of resolving jurisdictional disputes between governments regarding the funding of services for First Nations children. Many stakeholders referred to this document, and urged the Saskatchewan government to fully support it as change and improvement in child welfare is contemplated.

62.15. In 2016, the CHRT held that Canada had discriminated against First Nations throughout Canada by failing to comply with Jordan's Principle. The reason why the CHRT in its seminal merits (2016 CHRT 2) and subsequent related decisions focused on First Nations children and Jordan's Principle as opposed to all Indigenous children was that the human rights complaint underlying that matter related to First Nations only and because the parties had framed the equality rights to access essential services in the context of Jordan's Principle. However, the same individual rights and state obligations applied and apply to Inuit and Métis children in Saskatchewan.

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

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

TFAX1135737-54 - JC

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

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

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

TFAX1135737-54 - JC

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

62.17. These findings and principles applied to all Indigenous children in Saskatchewan during the Class Period and equally bind both Canada and the Province in complying with their legal, equitable, and constitutional obligations to the Class, as further particularized below.

62.18. On or about September 10, 2018, Canada established the Inuit Child First Initiative to extend its Jordan's Principle program mandated by the CHRT to Inuit children, although the Inuit have continued to suffer service gaps, denials and delays in essential services despite the Inuit Child First Initiative. Canada has done nothing to assist Métis children in this regard unless they live on a reserve.

G. Scope of Essential Services Claims

62.19. *Moushoom v Canada (Attorney General)*, 2021 FC 1225 (Federal Court File Nos. T- 402-19, T-141-20) ("***Moushoom***") and *Trout et al v. Canada*, 2022 FC 149 (Federal Court File No. T-1120-21) ("***Trout***") hold Canada accountable for its failure to provide essential health and social services to First Nations children who had a confirmed need for an essential service but faced an unreasonable delay, denial or service gap between April 1, 1991 and November 2, 2017.

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

TFAX1135737-54 - JC

62.21. Further, the Province has faced no accountability for the delays, denials and service gaps that Indigenous children — whether First Nations, Métis or Inuit — faced in Saskatchewan in the receipt of essential services during the Class Period. The plaintiff and the Essential Services Class Members seek to hold the Province accountable for its joint and several liability to the Class.

~~F.~~ H. The Class Members

63. The plaintiff brings this action on behalf of ~~three proposed classes~~ the following individuals who were harmed by Canada and the Province during the Class Period:

    a. all ~~status Indians~~ First Nations individuals residing off-reserve ~~and all non-status Indians~~, Inuit~~,~~ and Métis ~~persons~~ individuals (irrespective of residency on- or off-reserve) who were taken into provincial care in Saskatchewan ~~(~~while they were under the age of 18 (the "**Removed Child Class**" or "**Removed Child Class Members**") ~~(the "**Underfunding Class**" or "**Underfunding Class Members**") to be further defined in the plaintiff's application for certification)~~; but excluded from the Removed Child Class's claims are the claims of individuals who meet the definition of the Removed Child Class certified by the Federal Court of Canada in *Moushoom* and settled as approved by order of the Federal Court on October 24, 2023;

    b. all ~~status Indians residing off-reserve and all non-status Indians~~ First Nations, Inuit, and Métis ~~persons~~ individuals (irrespective of residency on- or off-reserve) who ~~were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, in Saskatchewan, on grounds including but not limited to: lack of funding or lack of jurisdiction, or a jurisdictional dispute with another level or government or governmental department (the "**Essential Services Class**" or "**Essential Services Class Members**", to be further defined in the plaintiff's application for certification), except as recognized under 2020 CHRT 20~~:

        i. while they were under the age of 18;

TFAX1135737-54 - JC

ii. had a confirmed need for an essential service (inclusive of essential products); and

iii. faced a delay, denial, or service gap in the receipt of that essential service on grounds including but not limited to lack of funding or lack of jurisdiction, or a jurisdictional dispute with another government, level of government, or another governmental department (the "**Essential Services Class**" or "**Essential Services Class Members**"); but

iv. excluded from the Essential Services Class's claims, only with respect to the defendant Canada, are: (i) the claims of individuals who meet the definition of the Jordan's Class as certified by the Federal Court in *Moushoom*; and (ii) the claims of individuals who meet the definition of the Child Class certified by the Federal Court in *Trout*; but in every case only to the extent that those claims are captured by *Moushoom* or *Trout* as settled and as approved by order of the Federal Court on October 24, 2023; and

c. the caregiving parents~~,~~ or caregiving grandparents~~, and caregivers~~ of members of the above classes (the "**Family Class**" or "**Family Class Members**"~~, to be further defined in the plaintiff's application for certification~~).

64. The classes defined above are collectively referred to as the "**Class**" or "**Class Members**". The plaintiff and other Class Members are members of "Aboriginal peoples of Canada" within the meaning of s. 35(1) of the *Constitution Act, 1982*.

64.1 The Indigenous peoples of which the plaintiff and other Class Members are members have exercised laws, customs and traditions integral to their distinctive societies — including in relation to child and family services, such as parenting, childcare, and customary adoption — since time immemorial. These inherent Aboriginal and treaty rights are recognized and affirmed by s. 35(1) of the *Constitution Act, 1982*.

TFAX1135737-54 - JC

LEGAL BASIS

A. The Defendants' duties to Class Members

i. Constitutional Duties

65. Canada has jurisdiction over "Indians" under section 91(24) of *The Constitution Act, 1867*, 30 & 31 Vict, c 3, which imposes a constitutional duty to all Indigenous people in Saskatchewan. Canada was, at all material times, responsible for the management, operation, administration, and funding of Indigenous Services Canada and Indigenous and Northern Affairs Canada, and all other predecessor and successor departments responsible for the development and operation of policies, procedures, programs, operations, and management relating to the provision of Indigenous child and family services, including the funding arrangements reached with MSS and its predecessor and successor departments.

66. The Province ~~was, at all material times, responsible for the management, operation, administration,~~ exercises jurisdiction over child services under section 92(13) of *The Constitution Act, 1867,* 30 & 31 Vict, c 3. It designed, managed, operated, administered, and ~~funding of~~ funded the MSS, and all predecessor departments responsible for the development and operation of policies, procedures, programs, operations, and management relating to the provision of Indigenous child and family services in Saskatchewan, including the funding arrangements reached with Indigenous Services Canada and Indigenous and Northern Affairs Canada, and all other predecessor and successor departments.

ii. International Duties

66.1 Canada has ratified many international instruments containing obligations relating to the rights of the Class, including, without limitation:

a. the *Declaration on the Rights of Indigenous Peoples*;

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

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

TFAX1135737-54 - JC

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

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

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

66.2 These instruments codify the rights:

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

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

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

d. of children to preserve their identity; and

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

66.3 These international duties clarify and inform the contents of the defendants' constitutional and fiduciary duties as well as their duty of care to the Class.

iii. Statutory Duties

66.4 Recognizing that its actions have been discriminatory, Canada passed legislation undertaking to act in the best interests of the affected Indigenous children and to reduce the number of Indigenous children in care, and maintain family, community, and cultural ties:

a. Canada undertook to ensure that Indigenous children are not apprehended without considering the effects of such a decision on the child's connections with their family, community, and culture. This commitment is enshrined in section 10(3) of the *An Act respecting*

TFAX1135737-54 - JC

First Nations, Inuit and Métis children, youth and families, SC 2019, c 24 (the "**Minimum Standards Act**").

b. Canada committed to prioritizing kinship care over adoptions. Kinship care is a unique Indigenous institution where a community takes care of a child. This commitment is enshrined in section 16(2.1) of the Minimum Standards Act.

c. Canada committed to prioritizing placements with a parent first, then with another family member, then another person belonging to the same Indigenous group, then with another Indigenous person, and only then considering placements with non-Indigenous persons. This commitment is enshrined in section 16(1) of the Minimum Standards Act.

d. Canada committed to ensuring that siblings who are apprehended are not separated. This is enshrined in section 16(2) of the Minimum Standards Act.

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

66.5 These statutory duties clarify and inform the contents of the fiduciary duties and duty of care to the Class, further described below.

66.6 The Supreme Court of Canada upheld the Minimum Standards Act as constitutional and properly in the jurisdiction of Canada.

iv. Fiduciary Duties

67. Canada and the Province each owed a special duty of care, honesty, loyalty and good faith to ~~status and non-Indians~~ First Nations, Inuit and Métis children and youth, including a duty to act in their best interests in relation to the delivery of child and family services. Canada and the Province also had a duty to act in the best interests of the parents, grandparents, and caregivers of those children and youth.

TFAX1135737-54 - JC

68. In all of their dealings with Indigenous peoples, Canada and the Province are required to act honourably, in accordance with their historical and future fiduciary relationship with Indigenous peoples.

B. Common Law Duty and Systemic Negligence

68.1. The Class was at all times vulnerable to the defendants' exercise, or failure to exercise, their discretion and the power that the defendants had over them as fiduciaries. The defendants control all aspects of the lives of Indigenous children in their care following apprehension as well as the lives of Indigenous children who need other essential services. The defendants' support for residential schools and the Sixties Scoop made Indigenous families even more dependent on these governments for child and family, and other essential services.

68.2 Both defendants specifically undertook — through the international treaties, statutes, and other documents particularized herein — to act in the best interests of the Class, particularly the Indigenous children. Both defendants also each owed a special duty of care, honesty, loyalty, and good faith to Indigenous children, especially those in their care and those in need of essential health and social services.

68.3 The defendants' fiduciary duties required the defendants to:

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

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

c. provide Indigenous children with substantively equal access to the same services available to non-Indigenous children;

d. avoid prioritizing the removal of Indigenous children over prevention services;

e. provide Indigenous children with adequate access to prevention services;

TFAX1135737-54 - JC

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

g. ensure that apprehension, where necessary, was culturally safe and directed, wherever possible, at maintaining and fostering family, community and cultural ties for Indigenous children in care;

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

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

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

68.4. As particularized above, the defendants failed to meet these obligations and therefore breached their fiduciary obligations to the Class by, amongst others:

a. funding and delivering child and family services in a manner that incentivizes protection services over prevention, to the Class Members' detriment;

b. failing to ensure Class Members' constitutionally-protected rights are safeguarded in the provision of child and family services;

c. funding and operating an inequitable, discriminatory child welfare regime; and

d. failing to remedy systemic discrimination in the child welfare system despite repeated notice of the harm being caused to the Class.

68.5 As a result of the defendants' breach, the plaintiff and the Class have suffered loss and damage as particularized herein.

v. Duty of Care

TFAX1135737-54 - JC

69. At all material times during the Class Period, the defendants owed a common law duty of care to the plaintiff and other Class Members to take steps to: (i) prioritize culturally-appropriate prevention services for Indigenous children and their families over apprehension; (ii) sufficiently fund Indigenous child and family services and the operational and other costs of child and family service agencies, including by ensuring that reasonable and appropriate levels of preventative care and other child and family services, were made available and provided to Class Members; and (iii) provide access to other essential health and social services and comply with Jordan's Principle. These duties went unmet.

70. The policies and funding formulas (including lack of funding or no funding) employed by the defendants during the Class Period operated to systematically deny Indigenous children in Saskatchewan from accessing the ~~public~~ essential services and products they needed when they needed them in a manner that was consistent with substantive equality and reflective of their cultural and historical needs.

71. The defendants breached these duties and caused corresponding harm to the plaintiff and other Class Members.

B. Failure to Uphold the Honour of the Crown

71.1. The honour of the Crown is always at stake in its dealing with Indigenous peoples. It required that the defendants act honourably and in good faith in each such dealing. Canada and the Province failed to diligently and purposively fulfil the honour of the Crown in the provision of child and family services, and other essential health and social services, to the Class. This failure caused the Class to suffer loss and damage.

71.2. The honour of the Crown and the Crown's fiduciary duties owed to Indigenous peoples are not in competition. The Court may find that Canada and/or the Province simultaneously breached the honour of the Crown and their respective fiduciary obligations in their dealings with the Class.

C. Breach of Section 15 the *Charter of Rights and Freedoms*

TFAX1135737-54 - JC

72. Section 15(1) of the Charter 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.

73. The plaintiff and the other Class Members have been discriminated against solely because of their status as Indigenous children ~~who do not reside on-reserve, or alternatively their residence on-reserve but lack of Indian status~~. During the Class Period, the defendants breached the s. 15(1) rights of the plaintiff and the other Class Members under the *Charter* as set out in the whole of this claim by, *inter alia*:

   a. ~~a. failing to fund or failing to sufficiently fund~~ prioritizing the apprehension of Indigenous children over culturally-appropriate prevention services for those children and their families;

   b. understanding Indigenous child and family services, including the operational and other costs of child and family service agencies, ~~to ensure that~~ rendering unavailable reasonable and appropriate preventative and other child and family services ~~were made available and provided~~ to the plaintiff and other Class Members; ~~and b.~~

   c. failing to adequately promote and implement permanency planning, including kinship care, for Indigenous children in care; and

   d. failing to provide essential services to Indigenous children free of delays, denials, and service gaps, and breaching Jordan's Principle.

74. The defendants' breaches of the plaintiff's and other Class Members' s. 15(1) *Charter* rights, as set out above and in the whole of this claim, were not "prescribed by law" and cannot be justified in a free and democratic society.

75. This ongoing discrimination is now taking place against the backdrop of Canada's adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* into legislation, Canada and the Province's public commitments to the

TFAX1135737-54 - JC

Truth and Reconciliation Commission's *Calls to Action*, and Canada's *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples*.

76. The defendants' misconduct and their breaches of the s. 15(1) rights of the plaintiff and other Class Members warrant an award of damages under s. 24(1) of the *Charter*. Such damages would, in these circumstances, serve to compensate the plaintiff and other Class Members for their losses, vindicate their rights, and deter future misconduct by the defendants.

D. Breach of Section 7 of the *Charter of Rights and Freedoms*

76.1. The defendants have infringed the Class Members' s. 7 *Charter* right to life, liberty and security of the person, and such infringement was not in accordance with the principles of fundamental justice.

76.2. In the provision of provincial child welfare services, the Province systemically underfunded and arbitrarily incentivized the use of prevention services over protection services for off-reserve Indigenous children resulting in the arbitrary apprehension of off-reserve Indigenous children, in violation of s. 7.

76.3. Removed Child Class Members have suffered additional infringements on their life, liberty and security of person by this conduct, including:

a. abuse, racism, and neglect while in care;

b. psychological harm, resulting from their removal from their families, disconnection from their culture and communities, and continued intergenerational trauma; and

c. spiritual harm, resulting from the loss of their Indigenous traditions, culture, and community connections.

76.4. Canada simply chose to ignore the Province's conduct with respect to the Class, which was constitutionally under Canada's jurisdiction.

76.5 In addition, the defendants failed to provide services or products that were essential to the life and wellbeing of the Essential Services Class, instead subjecting Class Members to undue delays, denials and service gaps, in breach

TFAX1135737-54 - JC

of their s. 7 rights. The defendants did not provide the Class with access to essential services to heal physical health issues, mental health issues, addiction issues, and the psychological burden of intergenerational trauma.

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

76.7. The defendants' impugned conduct has had an arbitrary and overbroad impact on the life, liberty, and security of the person of the Class Members who have been subjected to a broken and systemically discriminatory delivery system of child welfare and other essential services.

76.8. The defendants' misconduct and their breaches of the s. 7 rights of the plaintiff and other Class Members warrant an award of damages under s. 24(1) of the *Charter*. Such damages would, in these circumstances, serve to compensate the plaintiff and other Class Members for their losses, vindicate their rights, and deter future misconduct by the defendants.

E. Breach of Section 2(a) of the *Charter of Rights and Freedoms*

76.9. Section 2(a) of the *Charter* guarantees the Class Members' fundamental freedom of conscience and religion.

76.10. Through the Province's apprehension of the Removed Child Class in a manner that was culturally unsafe, and through the defendants' failure to fund and provide culturally-appropriate prevention services and placement options for Indigenous children in care, the defendants violated the Removed Child Class's right to freedom of religion, grounded in the spiritual teachings and practices of their Indigenous culture, identity and ceremonial and belief systems.

76.11. This violation was more than trivial or insubstantial and reflects a harmful perpetuation of the defendants' prior practices of cultural genocide and assimilation against Indigenous peoples, including the operation of Indian residential schools, day schools, and the Sixties Scoop.

TFAX1135737-54 - JC

76.12. As a result of the defendants' negligent and wrongful conduct, as particularized herein, the defendants caused the loss of meaning and fulfillment gained from Removed Class Members' connections to Indigenous spiritual practices and beliefs, and the related linkages between those spiritual practices and beliefs and the strength of their family and community connections.

76.13. The defendants' breaches of the plaintiff's and other Class Members' s. 2(a) *Charter* rights, as set out above and in the whole of this claim, were not be justified in a free and democratic society.

F. Restitution and Unjust Enrichment

77. At all material times during the Class Period, Canada failed to fund child and family services in Saskatchewan for ~~status Indians residing~~ First Nations ordinarily resident off-reserve ~~and for all non-status Indians~~, Inuit, and Métis persons, irrespective of residency on- or off-reserve. And, at all material times during the Class Period, the Province failed to sufficiently fund child and family services in Saskatchewan, including preventative services, for Indigenous children, youth, and families.

78. At all material times during the Class Period, the defendants also failed to comply with Jordan's Principle in Saskatchewan, on grounds including but not limited to lack of funding or lack of jurisdiction, or a jurisdictional dispute with another level ~~or~~ of government or governmental department. The Province and Canada failed to provide non-discriminatory access to essential health and social services to the Class and instead caused them to face delays, denials and service gaps.

79. As a consequence of the defendants' discriminatory conduct and the discriminatory conduct of their respective servants as set out in the whole of this claim, the defendants were enriched and received financial benefit and gain by spending less on the provision of child and family services, including preventative services, and by spending less on the provision of essential products and services than they would have spent had they not engaged in the discriminatory conduct. The plaintiff and other Class Members suffered a corresponding deprivation by not receiving sufficiently funded preventative and other child

TFAX1135737-54 - JC

welfare services and by not receiving the products and services to which they were entitled.

80. ~~Further, the Province has diverted special allowance payments into its general revenue when those benefits were intended to be special allowances for off-reserve Indigenous children in care. Those payments, known as special allowances, are provided by Canada to the Province pursuant to the Children's Special Allowances Act, SC 1992, c 48, Sch.~~

81. ~~The purpose of the special allowance is to provide children in care with the same benefit that all other children receive through the Canada Child Benefit and the Child Disability Benefit. The Province's actions are contrary to s. 3(2) of the Children's Special Allowances Act, which directs that special allowances "shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid." The plaintiff and other Class Members suffered a corresponding deprivation by not receiving this special allowance.~~

82. There was no juristic reason for the defendants' enrichment or the corresponding deprivation to plaintiff and other Class Members. The defendants have been unjustly enriched at the expense of the plaintiff and other Class Members, and are required to make restitution to them for their wrongful gains.

G. Damages

83. As a result of the defendants' breaches, acts, and omissions — including breaches of the honour of the Crown, constitutional duties, common law duties, and the *Canadian Charter of Rights and Freedoms* — the plaintiff and other Class Members suffered injuries and damages, including:

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

   b. the ~~Underfunding~~ Removed Child Class Members were removed from their homes and communities to be placed in care, with resulting, foreseeable harms and losses;

TFAX1135737-54 - JC

c. the ~~Underfunding~~ Removed Child Class Members and the Essential Services Class Members suffered physical, emotional, spiritual, and mental pain and disabilities;

d. the ~~Underfunding~~ Removed Child Class Members and the Essential Services Class Members suffered sexual, physical, and emotional abuse while in out-of-home care;

e. the ~~Underfunding~~ Removed Child Class Members and the Essential Services Class Members lost the opportunity to access essential public services and products in a timely manner;

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

f1. the Essential Services Class Members had to suffer harm as a result of being deprived of timely access to health and social services that were essential to their life and wellbeing;

f2. Family Class Members lost their children to a systemically discriminatory child welfare system;

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

g1. Family Class Members suffered loss and failed to receive the most basic essential services to assist them in caring for their children at home or to meet the needs of their children for essential services.

84. The plaintiff and the Class claim punitive damages. The high-handed way that the defendants have conducted their affairs warrants the condemnation of this Court. The defendants, including their agents, had complete knowledge of the fact and effects of their negligent and discriminatory conduct with respect to the provision of child and family services to the Class Members. They proceeded

TFAX1135737-54 - JC

with callous indifference to the foreseeable injuries that the Class Members would, and did, suffer. The defendants knew, or ought to have known, that their conduct would perpetuate and exacerbate the harm and suffering caused by Indian Residential Schools, Day Schools, and the Sixties Scoop.

H. Legislation

85. The plaintiff pleads and relies on various statutes, regulations and international instruments, including:

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

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

c. *The Child and Family Services Act*, SS 1989-90, c C-7.2;

d. *The Class Actions Act*, SS 2001, c C-12.01;

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

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

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

h. *Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2;

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

j. *The Proceedings Against the Crown Act*, 2019, SS 2019, c P-27.01;

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

l. *The Health Administration Act,* RSS 1978, c H-0.0001;

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

TFAX1135737-54 - JC

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

o. *The Limitations Act,* SS 2004, c L-16.1;

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

q. all other comparable and relevant acts and regulations and their predecessors and successors.

REMEDY SOUGHT

86. The plaintiff claims as follows on their own behalf, and on behalf of other Class Members:

a. an order certifying this action as a class proceeding and appointing Samarah Gene Genaille as representative plaintiff for the Class;

b. general and aggregate damages for breach of the honour of the Crown, negligence, and under s. 24(1) of the *Charter*;

c. a declaration that the defendants breached their common law and constitutional duties to the plaintiff and other Class Members;

d. a declaration that the defendants breached the rights of the plaintiff and other Class Members under s. 15(1) of the *Charter*, without justification;

d1. a declaration that the defendants breached the rights of the plaintiff and other Class Members under s. 7 of the *Charter*, without justification;

d2. a declaration that the defendants breached the rights of the plaintiff and other Class Members under s. 2(a) of the *Charter*, without justification;

d3. measures pursuant to s. 24(1) of the *Charter* to reform the Indigenous child welfare system in Saskatchewan;

e. a declaration that the defendants breached Jordan's Principle;

TFAX1135737-54 - JC

f. a declaration that the defendants were unjustly enriched;

g. special damages;

h. punitive damages;

i. restitution by the defendants of their wrongful gains;

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

k. pre-judgment and post-judgment interest;

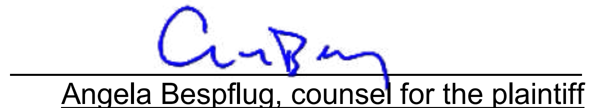
l. costs; and

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

DATED at Saskatoon, Saskatchewan, this 3rd day of August, 2022.

"Maxime Faille"
Maxime Faille, counsel for the plaintiff

This Amended Claim, dated at Vancouver, British Columbia, this 10th day of May, 2024.



Angela Bespflug, counsel for the plaintiff

CONTACT INFORMATION AND ADDRESS FOR SERVICE

If prepared by a lawyer for the party:

~~Name of firm:~~	~~**GOWLING WLG (CANADA) LLP**~~
~~Name of lawyer in charge of file:~~	~~Maxime Faille and Aaron Christoff~~
~~Address of legal firm:~~	~~Suite 2300 – 550 Burrard Street Vancouver, B.C. V6C 2B5~~
~~Telephone number:~~	~~604-683-6498~~

TFAX1135737-54 - JC

~~Fax number:~~	~~604-683-3558~~
~~E-mail address:~~	~~maxime.faille@gowlingwlg.com~~ ~~aaron.christoff@gowlingwlg.com~~
Name of firm:	**MURPHY BATTISTA LLP**
Name of lawyer in charge of file:	Angela Bespflug and Janelle O'Connor
Address of legal firm:	Suite 2020 – 650 West Georgia Street Vancouver, BC V6B 4N7
Telephone number:	604-683-9621
E-mail address:	bespflug@murphybattista.com oconnor@murphybattista.com
Name of firm:	**SOTOS LLP**
Name of lawyer in charge of file:	David Sterns, Mohsen Seddigh and Adil Abdulla
Address of legal firm:	#1200 - 180 Dundas Street West Toronto, ON M5G 1Z8
Telephone number:	(204) 925-5353
E-mail address:	dsterns@sotos.ca mseddigh@sotos.ca aabdulla@sotos.ca
Name of firm:	**COCHRANE SAXBERG**
Name of lawyer in charge of file:	Harold Cochrane, K.C., Shawn Scarcello, Maxime Faille, Alyssa Cloutier and Aaron Christoff
Address of legal firm:	Suite 201 – 211 Bannatyne Avenue Winnipeg, MB R3B 2P2
Telephone number:	(204) 594-6688
E-mail address:	hcochrane@cochranesaxber.com sscarcello@cochranesaxberg.com mfaille@cochranesaxberg.com acloutier@cochranesaxberg.com achristoff@cochranesaxberg.com

TFAX1135737-54 - JC