C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T

(Class Action)

NO.: 500-06-001177-225

A.B.

-and-

TANYA JONES, domiciled and residing at 435 Rue Bédard, LaSalle, in the district of Montreal, Province of Québec, H8R 3A8

Plaintiffs

v.

ATTORNEY GENERAL OF QUÉBEC, *ès qualité* representative of Minister of Justice and the Minister of Health and Social Services, having an office at 1 Notre-Dame Street East, suite 8.00, in the City and District of Montreal, Province of Québec, H2Y 1B6

-and-

ATTORNEY GENERAL OF CANADA, *ès qualité* representative of Her Majesty the Queen, having an office at 200 René-Lévesque Boulevard West, East Tower, 9th floor, in the City and District of Montreal, Province of Québec, H2Z 1X4

Defendants

<u>MODIFIED</u> ORIGINATING APPLICATION OF A CLASS ACTION

(Art 583 C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFFS RESPECTFULLY SUBMIT THE FOLLOWING:

I. OVERVIEW

1. For decades, Indigenous youth living off-reserve and Inuit children living in Nunavik have suffered gravely from a woefully inadequate child welfare system.

2. In Nunavik, children have either been removed from their homes and placed in care unnecessarily or their urgent needs have been ignored by the child welfare system where there were signs of abuse at home.

3. Moreover, these children have not received the help, counselling or support they required for the disastrous consequences that followed from their interactions with the child welfare system.

4. In Québec, First Nations living off-reserve, Métis and Inuit living outside of Nunavik have similarly suffered. Statistics throughout the years have demonstrated alarming rates of removal and an overrepresentation of Indigenous youth in foster care.

5. These failures of the child welfare system have ripped apart families and perpetuated the shameful legacies of Residential Schools.

6. The infringement of Indigenous children and families' rights have persisted for decades throughout Québec, causing harm to several generations.

7. The present class action seeks to obtain remedies for the harms that the Defendants' conduct has inflicted on these children and families.

II. THE PARTIES

8. On April 30, 2024, the Honourable Marie-Christine Hivon j.s.c. authorized the class action instituted by Plaintiffs A.B. and Tanya Jones on behalf of the following classes and subclasses:

   A. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under the James Bay and Northern Québec Agreement (the "**JBNQA**") or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

      (a) Were under the age of 18; and

      (b) Were reported to, or otherwise brought to the attention of the Directors of Youth Protection in Nunavik ("recevoir le signalement"), including, but not limited to, all persons taken in charge, apprehended and placed in care whether through a voluntary agreement, by court order or otherwise (the "**Nunavik Child Class**").

      (c) The Nunavik Child Class includes a subclass of all Inuit persons who were removed from their homes in Canada between November 11, 1975 and December 31, 1991 and placed, during that period, in the care of non-Indigenous foster or adoptive parents (the "**Nunavik Child Subclass**"). The Nunavik Child Subclass makes no claim against the Attorney General of Canada in regard to those placements made during that period.

   B. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under the JBNQA or registered with an Inuit land claim organization who between November 11, 1975 and the date of the authorization of this action:

(a) Were under the age of 18; and

(b) Needed an essential service but did not receive such service or whose receipt of the service was delayed by either Defendant or their departments or agents, on grounds including, but not limited to, lack of jurisdiction or a gap in services (the "**Essential Services Class**").

(c) The Essential Services Class includes a subclass of all Inuit persons who were removed from their homes in Canada between November 11, 1975 and December 31, 1991 and placed, during that period, in the care of non-Indigenous foster or adoptive parents (the "**Essential Services Subclass**"). The Essential Services Subclass makes no claim against the Attorney General of Canada in regard to Essential Services during that period.

C. All parents and grandparents who were providing care to a member of the Nunavik Child Class (including the Nunavik Child Subclass) and the Essential Services Class (including the Essential Services Subclass) (the "**Nunavik Family Class")**.

D. All Indigenous persons (First Nations, Indians (as defined in the *Indian Act*), Métis and Inuit) ordinarily resident in Québec who:

(a) Were taken into out-of-home care between January 1, 1992 and the date of authorization of this action;

(b) While they were under the age of 18;

(c) While they were not ordinarily resident on a Reserve;

(d) By the Federal Crown or the Provincial Crown, or any of their agents; and

(e) Are not members of the Nunavik Child Class (the "**Québec Child Class**").

E. All parents and grandparents who were providing care to a member of the Québec Child Class when that child was taken into out-of-home care (the "**Québec Family Class**")

(hereinafter collectively referred to as the "**Class**").

9. With regard to the **Nunavik Child Class**, the **Nunavik Child Subclass** and the **Nunavik Family Class**, this class action alleges that the fundamental rights of Inuit youth and families and the obligations owed to them by law and under the JBQNA have been trampled as a result of grossly inadequate funding policies, prejudice against Inuit parents and families, and culturally inadequate policies in child welfare services.

10. For the **Nunavik Child Class** and the **Nunavik Family Class**, this class action further alleges that the systemic and discriminatory underfunding of prevention services and prejudicial practices resulted in the apprehension and removal of Inuit children from their homes, thus tearing apart families.

11. This class action also alleges that the rights of Inuit children were violated as a result of the denial, unavailability (gap), or delay in the provision of essential services. The claims of these children and their caretakers are captured by the **Essential Services Class**, the **Essential Services Subclass** and the **Nunavik Family Class**. Essential Services are defined as psychological support, therapy and counseling related to a situation being reported to youth and family services (referred herein as "**Signalement**"), and their consequences.

12. With regard to the **Québec Child Class** and the **Québec Family Class**, this class action alleges that the fundamental rights of Indigenous youth and families residing off-reserve, and the obligations owed to them by law have been infringed as a result of grossly inadequate funding policies, prejudice against Indigenous parents and families, and culturally inadequate practices in child welfare services, all of which resulted in the mass apprehension of Indigenous children and their removal from their homes, thus tearing these families apart.

13. The Attorney General of Canada (the "**AGC**") is the legal representative of the Federal Crown (herein also referred to as "**Canada**").

14. Federal legislative authority over Indigenous peoples is established by section 91(24) of the *Constitution Act, 1867*.

15. The Attorney General of Québec (the "**AGQ**") is the legal representative of several provincial actors who, collectively, are responsible for enforcing the *Youth Protection Act*, c. P-34.1 (the "**YPA**"), the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (the "**YCJA**"), the *Act Respecting Health Services and Social Services*, S-4.2, (the "**ARHSSS**"), the *Health Insurance Act*, c. A-29, and the *Hospital Insurance Act*, c. A-28.

16. Namely, the AGQ represents the Provincial Crown, the Ministry of Justice of Québec ("**MJQ**"), the Ministry of Health and Social Services ("**MSSS**") and the Directors of Youth Protection (the "**DYP**") (herein also referred to collectively as "**Québec**").

17. The MSSS is notably responsible for setting health and social services policies, as well as funding, monitoring and evaluating the services managed by regional authorities, such as the Nunavik Regional Board of Health and Social Services (the "**NRBHSS**"), the whole as appears from the Reference Manual on Youth Protection (the "**YP Reference Manual**") communicated as **Exhibit P-1**.

18. Both Canada and Québec are responsible for the delivery and financing of non-insured services to Indigenous peoples, which includes such services as mental health counseling.

19. In 1975, the Federal Crown, the Provincial Crown, the Northern Québec Inuit Association, the Grand Council of the Crees of Québec and three Québec Crown Corporations entered into the James Bay Northern Québec Agreement (the "**JBNQA**"), the whole as appears from the JBNQA, communicated herewith as **Exhibit P-2**.

20. Pursuant to the JBNQA and the Agreement respecting the Implementation of

the JBNQA entered into by Canada and Makivvik in 1990 (the "**Implementation Agreement**"), communicated as **Exhibit P-3**, the Governments of Québec and Canada have shared the responsibility of providing health and social services to the Inuit in Nunavik. They also share that responsibility vis-à-vis all Indigenous peoples in Québec by virtue of the *Constitution Act, 1867*. They are liable and vicariously liable for the conduct further described herein.

III. THE FACTS

a. Nunavik

i. *The Inadequacies of the Child Welfare System*

21. Since the signing of the JBNQA, the Defendants have never provided the child welfare system in Nunavik with the resources necessary to fulfil their legal obligations toward Inuit children and families.

22. Chronic understaffing (insufficient recruitment and high staff turnover), lack of cultural awareness, insufficient funding to overcome geographic remoteness, and a lack of protection and prevention services, including front-line social services, youth assistance programs, specialized programs to support children with mental health disorders and rehabilitation resources, have all conspired to create a world in which rates of Signalement to the DYP and removal remain at shocking levels, among other indicators of a failing system.

23. The alarming rates of Signalement and removal of Inuit children in Nunavik have been reported for decades. Thirty percent of all children in Nunavik are the subject of a report to the DYP, and one in five children in Nunavik is taken into "care" by child welfare services. Both rates are more than six times higher than that observed in Québec as a whole, according to the Commission des droits de la personne et des droits de la jeunesse (the "**CDPDJ**").

24. In 2019, Mr. Philippe-André Tessier, President of the CDPDJ, sent a letter to the MSSS and the Minister Delegate for Health and Social Services regarding the persisting issues involving child welfare services in Nunavik, a copy of which is communicated herewith as **Exhibit P-4.** It noted:

> "[…] For the safety and development of Nunavik's children and youth, a reminder is crucial. **The various problems identified regarding the application of the Youth Protection Act to Nunavik children and youth and their families persist.** Considering the willingness of members of Nunavik communities to take care of the well-being of the children in their communities, and **considering the distress of their children** and the need to intervene in order to prevent the deterioration of their situation, **the Commission reiterates the urgency to act in order to create favourable conditions for these communities so they can finally ensure real protection for their rights** through the implementation of concrete support measure, **in particular by allocating sufficient resources to solve urgent problems related to**

> **housing, education, drug addiction and access to health and social services in the field of youth protection.** […]"

25. Yet, the MSSS has not corrected the situation. Nor has Canada intervened and fixed these problems, despite being aware of the gravity of the situation in Nunavik.

26. Despite being the "guarantor of the rights […] [and] well-being of the native peoples of its northern territory" pursuant to the JBNQA (Exhibit P-2), Québec did not deploy the required resources and investments to recruit and retain staff, to increase front-line prevention services, to ensure quality and timely access to protection services and put a stop to the violation of rights.

27. By virtue of section 91(24) of the *Constitution Act, 1867*, Canada has jurisdiction over all Indigenous peoples in Canada. Throughout the class period, Canada […] has not offered supplemental support to Inuit children and families in compliance with the *Charter* […] and the Implementation Agreement, nor did it call on Québec to do so under the JBNQA.

28. The obligations owed to Inuit youth and families in Nunavik under the law and the JBNQA, and their rights to substantive equality continue to be flouted.

29. The child welfare system continues to be plagued by gross underfunding, high vacancy rates, employee turnover, short-term contracts filled by caseworkers from the "South", and the underrepresentation of Inuit personnel, resulting in the under-provision of prevention and protection services.

30. The lack of human and financial resources has put the wellbeing of Inuit youth and families at risk and has impacted nearly every aspect of child welfare services:

    a. The quality of prevention […] services adapted to the experiences of Indigenous youth and families;

    b. The availability of resources and adequately trained staff to support children and youth struggling with addiction, serious mental health challenges and behavioral issues;

    c. The availability of resources to adequately support children and parents in ending situations that put a child's security or development in danger, preventing escalation and averting tragic consequences, including suicide;

    d. The rate and quality of evaluations following a Signalement, despite the DYP's legal obligation to conduct an evaluation in every case following a Signalement;

    e. The rate of review of a child's situation after they have been taken in charge by child welfare services, despite the DYP's legal obligation to conduct a review of a child's situation following a placement;

    f. The rate and quality of evaluation, follow-up and training of foster families to ensure placed children's welfare and safety.

31. The child welfare system has consequently been in a state of permanent crisis that routinely fails to protect the wellbeing of children and families.

32. As further detailed below, this state of crisis has caused significant and irreparable harm to class members.

ii. *The Nunavik Child Class, the Essential Services Class and the Essential Services Subclass*

33. For members of the Nunavik Child Class, the systemic underfunding and discriminatory conduct alleged above violated their rights in three ways.

34. **First**, Inuit children have been removed from their homes as a first resort rather than a last. These removals were in part due to systemic underfunding of prevention services that are designed to keep the child in the home. Such services […] are:

    a. Services provided to parents to enable them to better care for their children, such as parenting skills courses, daycare services, or help finding employment, food, housing, or cultural or spiritual guidance;

    b. Services provided to both parents and children to respond to crises that have already occurred, such as post-trauma counselling, mental health care, and addiction services;

    c. Services provided to children to address uniquely difficult challenges, such as special needs education;

    d. Services provided to parents to identify problematic circumstances, such as when a child may be malnourished; and

    e. Services provided to children to proactively build joy and opportunity, thereby reducing the risk of depression and suicide, such as mentorship, language training, cultural connections, […] after-school programming, and access to sporting facilities, community centers and youth centers.

35. The MSSS has long recognized the importance of such prevention services. As noted in the YP Reference Manual, Exhibit P-1:

> "Le principe du maintien de l'enfant dans son milieu familial est reconnu dans la Loi sur la protection de la jeunesse (LPJ) depuis son origine, en 1977. Au fil des ans, l'importance de ce principe a été réitérée avec force, tant par la Commission parlementaire spéciale sur la protection de la jeunesse, en 1982, par le Groupe de travail sur l'évaluation de la Loi sur la protection de la jeunesse, en 1992, que par le Comité d'experts sur la révision de la Loi sur la protection de la jeunesse, en 2004. Il en est de même en ce qui concerne la priorité à accorder au retour de l'enfant dans son milieu familial à la suite d'un placement.
>
> > **Il faut d'abord mettre tout en œuvre pour permettre que l'enfant demeure dans sa famille, d'où l'importance de la prévention du placement.** Si l'État doit intervenir, il doit le faire dans l'optique de maximiser l'exercice de la responsabilité des

> parents face à leurs enfants. Dans l'éventualité d'un retrait, il faut permettre que l'enfant retourne dans sa famille d'origine, d'où l'importance de prendre à tout instant en considération la réinsertion familiale de l'enfant durant le placement. **Ces principes doivent animer le Directeur de la protection de la jeunesse au moment où il évalue ou révise systématiquement la situation des jeunes.** (Assemblée nationale, 1982 : 243-244)
>
> Tous reconnaissent également la nécessité de soutenir les parents et de les associer étroitement à l'intervention afin qu'ils soient en mesure d'exercer adéquatement leurs responsabilités parentales et de répondre aux besoins de leur enfant. […]"

36. Yet it failed to apply that guiding principle in Nunavik and discriminated against Inuit families and children by relying excessively on removal.

37. Such reliance is informed by the racist premise that Indigenous parents are unfit, and will always be unfit, to care for their child.

38. The consequences of removal have been devastating for these children.

39. More often than not, removal has led to the child leaving not only their family home but also their community and way of life. Placements out of Nunavik into families in the "South" has meant that these children were raised having lost ties to their family, culture and language.

40. In many cases, the apprehension and placement of Inuit children outside their home has also put them directly in harm's way, with many children suffering physical and sexual abuse at the hands of their new "caretakers" or in group homes.

41. As a result, the removal of Inuit children has exacerbated the historical and ongoing collective and intergenerational trauma in Nunavik.

42. As further described below, the extent of this trauma is reflected in widespread alcohol abuse, substance misuse and addiction, acute psychological distress and a strikingly high rate of suicide in Nunavik.

43. **Second**, children in Nunavik who were in danger of physical or sexual abuse were brought to the attention of the DYP and yet no or inadequate action was taken.

44. Several types of failure relate to this lack of action. In some cases, a Signalement was not retained for evaluation when evidence strongly indicated that one was necessary; in other cases, a Signalement was retained for evaluation but none conducted; and in others still, where an evaluation occurred, the result was to send the child into a home or back to their home where abuse persisted.

45. Many children have been "lost" or not attended to by the DYP and have been placed in multiple homes without DYP oversight or legal authority.

46. **Third**, children in Nunavik have not received the support, counselling or therapy which they were owed in connection with their removals or Signalements.

47. The barriers preventing Nunavik Inuit from accessing life-affirming and life-saving essential services, including mental health services, are well reported and include:

    a. Lack of locally available counseling or support for children and/or their parents, requiring that Inuit youth travel by plane to see a psychologist;

    b. Lack of resources to handle acute crisis situations that exceed the training and capacity of local services;

    c. Lack of social support infrastructures for victims of domestic violence;

    d. Instability of the labour force and high turnover rate of mental health professionals from the "South" causing service disruptions, or rendering services entirely unavailable in communities for extended periods of time;

    e. Absence of any addiction treatment center for youth in Nunavik (the only center in the region is exclusively for adults), resulting in Nunavik Inuit travelling to treatment centers in the "South", which are unable to meet youth's rehabilitation needs in a culturally safe way;

    f. Lack of post-addiction-treatment support, increasing the risk of relapse.

48. Such services are required to help Inuit youth overcome the traumatic circumstances that led to their removal, and the distress experienced as a result of their apprehension by the DYP and placement in out-of-home care.

49. The absence of "after-care" has led to many families being destroyed by addiction and suicides, and has contributed to the perpetuation of violence, as victims transfer their pain and suffering onto the next generation.

iii. *The Nunavik Family Class*

50. The removal of children has devastating consequences not only for the child who is forced to live in a different home but also the parents, who are robbed of the opportunity to raise, care for, and be in the lives of their children.

51. This fact of separation has caused feelings of loss, despair, inadequacy, failure, indignity, and shame.

52. The children of the Nunavik Family Class were frequently sent to distant communities in Nunavik or to homes in the "South", alienating their parental ties and undermining their family's capacity to restore a loving meaningful relationship.

53. The removal of these class members' children has left an indelible mark on their relationships and caused immense suffering and distress.

b. First Nations living off-reserve, Métis and Inuit living outside of Nunavik

i. *The Inadequacies of the Child Welfare System*

54. Similar to the plight of Inuit children and families, First Nations living off-reserve, Métis and Inuit living outside of Nunavik have been vastly overrepresented in the child welfare system.

55. For example:

a. Child services staff are 4.4 times more likely to retain (i.e. investigate) a complaint about an Indigenous child than a non-Indigenous child, as appears from the Report of the First Nations of Québec and Labrador Health and Social Services Commission titled "Trajectories of First Nations youth subject to the Youth Protection Act," dated 2016 (the "**FNQLHSSC Report**"), communicated as **Exhibit P-5**;

b. Child services staff are 6.0 times more likely to substantiate a complaint (i.e. find that the allegations are warranted) about an Indigenous child than a non-Indigenous child. That number rises to 9.4 times if a previous complaint about the child was closed, the whole as also appears from the FNQLHSSC Report, Exhibit P-5.

c. Child services are 8 times more likely to apprehend and place an Indigenous child in an alternative, non-familial environment (i.e. non-Indigenous foster family, rehabilitation center, etc.) than a non-Indigenous child, the whole as appears from the Report of the Special Commission on Children's Rights and Youth Protection titled "Instaurer une société bienveillante pour nos enfants et jeunes", dated April 2021 (the "**Laurent Report**"), the whole as appears from **Exhibit P-6.**

56. Several factors have contributed to these disparities:

a. Prevention services were absent or insufficient to meet the demand, particularly in remote communities, thus increasing the likelihood of removal;

b. In assessing the best interest of a child, staff weighed poverty of a parent as a factor in favour of removal. Given that Indigenous people face higher levels of poverty – in large part due to the intergenerational trauma caused by the Federal Crown and the Provincial Crown through Residential Schools and the Sixties Scoop – this seemingly neutral policy consideration is discriminatory;

c. Despite the clear requirement to do so, the DYP failed to facilitate the involvement of children and parents in the decision-making process regarding the application of preventive and protective measures under the *YPA*;

d. Child welfare staff had and continue to have a long list of biases against Indigenous peoples, including that they are unfit parents. As a result, staff disregarded parents' versions of events, even in the face of

credible evidence;

e. The tools that child services staff used to assess whether removal was warranted were not crafted to account for cultural differences or validated by Indigenous people;

f. Despite the obligation to make every effort possible to place an Indigenous child within their extended family or community, non-Indigenous foster families were preferred at the outset and Indigenous children's extended families were either never consulted or not considered when they stated their intentions of caring for a child;

g. Staff were subject to deadlines for deciding whether to remove a child that gave them little time or opportunity to appreciate the complexity of a situation or the historical, cultural and systemic factors that relate to a child's situation;

h. Once a child was taken into care, child welfare staff often prevented parents from visiting their children, or sometimes even knowing where their children were located. When visitation was allowed, the allotted time was limited and inadequate, and the burden fell entirely on the parents to pursue visitation, which was especially problematic if parents lacked access to transportation, or to the financial means to visit. This further severed Indigenous children's ties to their families, communities, cultures, languages, and the value systems and spiritual beliefs derived therefrom;

i. When children were placed with kinship foster families, those families were not compensated, or not sufficiently compensated to account for the higher cost of living in many Indigenous communities, including in Northern Québec. This increased the burden on those families relative to other foster families, making it more likely that the child would be subsequently removed by the DYP;

j. Services staff did not adequately consider the possibility of customary care, an Indigenous concept allowing a child to be raised collectively by their community, rather than assigning them to a single foster parent. Using customary care not only recognizes the validity of Indigenous adoption customs, but also reinforces community and cultural ties for the child. Despite these advantages, customary care was not officially recognized until 2017. It remains underused, in part because child services staff are ideologically committed to "attachment theory" – the idea that attachments to multiple caregivers are inherently insecure attachments, and should be replaced by a single attachment – and the primacy of parental responsibility;

k. Confidentiality rules prevented extended families from discovering the proceeding, denying them the opportunity to offer to become foster parents. Even if there were no confidentiality concerns, child services staff did not always reach out to extended family to inform them that they

were looking for a caregiver. Sometimes, they provided misinformation, causing family members to miss court dates;

l. Policies prohibited placements with individuals above a certain age or with certain health issues. At times, child services staff assumed that a grandparent had health issues without giving them an opportunity to provide medical evidence to the contrary;

m. Policies also prohibited placements with individuals who did not have home insurance, yet such insurance was often unavailable in the area, or unaffordable for family members;

n. All of these problems were further compounded by the lack of Indigenous child welfare staff, the scant training for staff on Indigenous history, cultures, or languages, and limited child welfare services available in Indigenous languages. Some Indigenous families were unable to access any protection services because they do not speak French – even if they spoke English as a second language.

ii. *The Québec Child Class*

57. The gross overrepresentation of Indigenous children under the so-called "care" of child welfare services is also the result of discriminatory conduct described above.

58. Biases among child welfare staff feed determinations that Indigenous parents are unfit, inattentive or incapable to care for their children. These biases create barriers to understanding cultural differences or Indigenous parents' perspectives. As a result, Indigenous children and parents are left out of the decision-making process regarding application of preventive and protective measures under the *YPA*.

59. Consequently, the children of these families have been removed from their homes pursuant to a discriminatory system. This has often resulted in feelings of distress, despair and negative self-perception, and has led to their physical, spiritual, psychological and emotional deterioration.

60. This deterioration may manifest in self-destructive behavior, such as addiction, suicidal ideation and vulnerability in the child's rapport with the outside world.

61. Such placements also often expose the child to instability and sexual and physical abuse.

iii. *The Québec Family Class*

62. Similar to the Nunavik Family Class, the Québec Family Class members have suffered greatly due to the loss of companionship and connection with their kin.

63. These class members too are robbed of the opportunity to raise, care for, and be in the lives of their children.

64. They too endure feelings of loss, despair, inadequacy, failure, indignity, and shame.

65. The removal of their children alienates their parental ties and undermines their capacity to restore a loving meaningful relationship.

66. The removal of these class members' children has left an indelible mark on their relationships and has caused immense suffering and distress.

c. The Class Representatives' Individual Cases

i. *A.B.*

67. A.B. was born in Nunavik in 1975. She is Inuk, registered as a member of the Inuit land claim organization in Nunavik, the Makivvik Corporation ("**Makivvik**"), and still resides in Nunavik.

68. At birth, A.B. was removed from the care of her mother for unknown reasons and was sent to live with an adoptive family in Kuujjuarapik. While she was still a newborn, A.B. caught meningitis and was sent to a hospital in Montreal, alone, with no escort. There, she was hospitalized for seven months.

69. Upon her release from hospital, A.B. was returned to her adoptive family where she remained for twelve years. As a child, her adoptive mother physically abused her and her adoptive brother sexually abused her until she was eight years old.

70. A.B. was also physically abused by her teacher while attending kindergarten, and witnessed two of her friends, also removed Inuit children, being abused while attending the school. Both of her friends have now taken their lives by suicide.

71. A.B. remained in the "care" of child welfare services until the age of seventeen. Starting in 1987, A.B. was placed with extended family. The following year, she was placed in a group home in Kuujjuaq. In 1989, she was moved to a different group home in Val-D'Or, where she remained for three years. Then, in 1992, she was placed in an adoptive home in Kuujjuarapik.

72. At eighteen, A.B. was released from care and left to fend for herself, with no support to transition into adulthood or heal her childhood scars.

73. A.B. has struggled to cope with her trauma her entire life. As a child, she turned to alcohol in an attempt to numb the pain of her abuse. At no point during her childhood and teenage years did she receive mental health support, therapy or other essential services to help deal with and overcome her trauma. In fact, she believes no such services were ever offered to her.

74. A.B. is now the single mother of five Inuit children, two of whom are still minors. Because of her broken childhood, A.B. cannot work and lives on welfare. Given her circumstances of poverty and trauma, Québec has apprehended one of her children, placing him initially in a group home, and currently in kinship care. A.B.'s youngest child, who is nine years old, is also in the process of being removed from her.

75. Whether as an infant, a child or a mother, A.B. has never received the prevention and other essential services required to enable her and her family to

enjoy a normal life.

76. A.B.'s mother also never received the support she required; the lack of services compounded by prejudice against Indigenous parents led to A.B.'s removal at birth and had profound and irreparable consequences on her life.

77. As a mother, the cycle has continued to repeat itself, as Québec and Canada continue to fail to provide A.B. with the required support to cope with her own trauma and to care for her children at home. She has already lost one child to the child welfare system and is currently facing the possibility of losing another.

78. Until the institution of this class action, A.B. was unaware of the connection between the Defendants' systemic underfunding of child and family services in Nunavik and the multiple placements she and her children have experienced and the harms they have suffered as a result thereof.

ii. *Tanya Jones*

79. Tanya Jones was born in Nunavik in 1984. She is Inuk, registered as a member of the Inuit land claim organization in Nunavik, Makivvik, and currently resides in Lasalle, Québec.

80. Until she was three years old, Ms. Jones lived with her mother in Kuujjuaq, Nunavik.

81. In or around 1987, Ms. Jones and her brother were removed from the care of their mother and placed in foster care in Kangiqsualujjuaq (George River), over 450 km away. The removal took place despite her grandfather's many efforts to keep the children in the family. At the time, Ms. Jones' mother received no services or support to help cope with her own trauma or to help keep her children in her care.

82. And so began Ms. Jones' experience with youth protective services. Over the next thirteen years or so, she was moved through ten different placements, both inside and outside Nunavik, and within Indigenous and non-Indigenous out-of-home care. Over time, she was reunited with her mother, younger sister and brother several times, only to be separated again. She also experienced homelessness for approximately one year as a teenager while in Montreal.

83. Shortly after her first removal, Ms. Jones was placed in a foster home where she was repeatedly subjected to sexual and other abuse. Her foster father and foster brother were both later convicted of molestation against other children.

84. During her youth, Ms. Jones did not receive therapy or other mental health services to help her cope with her childhood trauma. There was no place to ask for help. She resorted to drugs and alcohol in the hopes of alleviating her pain.

85. As an adult, Ms. Jones has been diagnosed with post-traumatic stress disorder, and still suffers from paralyzing and debilitating panic attacks. Despite these challenges, Ms. Jones has rebuilt her life by dedicating herself to her Inuit art.

86. Ms. Jones only learned about the systemic underfunding of child and family services and its connection to her placement in foster care in or around 2022.

87. Until that time, Ms. Jones was unaware of the causal link between the Defendants' discriminatory and inadequate delivery of child and family services and her own experience in the child welfare system, including her multiple placements, and the resulting abuses, lifelong trauma and associated harms from which she has suffered.

d. Defendants' Knowledge of the Harmful Conduct and Factual Basis for Punitive Damages

88. For decades, the Defendants have knowingly disregarded the wellbeing and safety of class members through their conduct.

89. Multiple reports have been authored by government officials or been brought to the Defendants' attention:

    a. Report of the Working Group on Québec's Adoption Regime titled "Pour une adoption Québécoise à la mesure de chaque enfant", dated March 2007 (the "**Lavallée Report**"), communicated as **Exhibit P-7**;

    b. Report of the CDPDJ titled "Investigation into Child and Youth Protection Services in Ungava Bay and Hudson Bay", dated April 2007 (the "**Gagnon Report**"), communicated as **Exhibit P-8**;

    c. Report of the CDPDJ titled "Follow-up Report on the recommendations of the investigation into youth protection services in Ungava Bay and Hudson Bay", dated June 2010 (the "**Sirois Report**"), communicated as **Exhibit P-9**;

    d. Parnasimautik Report on the Consultation with Nunavik Inuit in 2013, dated November 2014 (the "**Parnasimautik Report**"), communicated as **Exhibit P-10**;

    e. The Final Report of the Truth and Reconciliation Commission of Canada, dated 2015 (the "**Truth and Reconciliation Commission Report**"), communicated as **Exhibit P-11**;

    f. The FNQLHSSC Report, dated 2016, Exhibit P-5;

    g. Report of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, dated 2019 (the "**Viens Report**"), communicated as **Exhibit P-12**;

    h. The Laurent Report, dated April 2021, Exhibit P-6;

    i. Report of the CDPDJ titled "Report on the Implementation of the Recommendations of the Report on Youth Protection Services in Nunavik", dated March 2024 (the "**Trudel Report**"), communicated as **Exhibit P-13**.

90. These reports have all highlighted the failures of the child welfare system as it applies to Indigenous children and families living off-reserve and in Nunavik.

91. Due to the gravity of these failures and the urgent measures required to redress

them, most reports also included clear calls to action, targeting the delivery of youth prevention and protection services.

92. The warnings and calls to action that accompanied them were recently highlighted by the Québec Court of Appeal's reference decision[1] on the *Act Respecting First Nations, Inuit and Métis, Children, Youth and Families*, 2022 QCCA 185:

> [126] The overrepresentation of Aboriginal children in youth protection services is part of a sad historical continuity. Despite the many warning signs given over the decades and the initiatives aimed at stemming the problem, it is still very much present throughout Canada. This is an indisputable reality that everyone, including the parties in this case, agree on.

93. The Defendants have no plausible deniability: they knew of the magnitude and long-standing nature of the problems afflicting the child welfare system and the grave consequences they have had for class members.

IV. THE DEFENDANTS' LIABILITY

a. Obligations owed to all Indigenous children across Québec

i. *Charter obligations*

a) Right to equality

94. Section 15 of the *Canadian Charter of Rights and Freedoms* (the "***Canadian Charter***") and section 10 of the Québec *Charter of Human Rights and Freedoms* (the "***Québec Charter***") set out the right of every individual to the equal protection and equal benefit of the law:

> s. 15(1) *Canadian Charter*: 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.
>
> s. 10 *Québec Charter*: Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

---

[1] Decision maintained on appeal by the Supreme Court of Canada, *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.

> Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

95. The *Charter* rights of all Indigenous peoples, including the Inuit in Nunavik, demand that Canada and Québec ensure that they are given access to substantially equal health and social services that respond to the actual needs of Indigenous children.

96. The right to equality, including substantive equality, means that if exceptional circumstances or challenges stand in the way of delivering the same services in Québec's North – for example, due to the "unique difficulties of operating facilities and services in the North" as recognized in the JBNQA – then more funding and efforts must be deployed in order to overcome those challenges.

97. The Defendants' discriminatory implementation of child protection services in regard to Indigenous children in Québec, through its chronic underfunding and failure to take into account Indigenous culture and realities, directly resulted in the needless placements of children and/or in the failure to provide them with adequate protection.

98. Furthermore, as confirmed by the Canadian Human Rights Tribunal, the equality rights of all Indigenous children protected by the *Charter*, including Inuit children in Nunavik, also demand that they do not suffer from gaps, delays, disruptions and denials in the delivery and provision of health and social services, the whole as appears from the Explanatory document from Indigenous Services Canada titled "Jordan's Principle and the Inuit Child First Initiative" dated November 20, 2019 (the "**ISC Report**"), communicated as **Exhibit P-14**.

99. For First Nations and Inuit children, the right to substantive equality was not *created* but rather *affirmed* by the adoption of Jordan's Principle and the Inuit Child First Initiative, respectively as of November 2, 2017 and September 10, 2018.

100. Both principles seek to ensure that no Indigenous child is made to suffer a gap, denial or delay in the delivery of an essential service due to a disagreement between the Federal and Provincial government, or between governmental departments, the whole as appears from the ISC Report, Exhibit P-14.

b) Right to life, personal security, inviolability and the safeguard of dignity

101. Section 7 of the *Canadian Charter* and sections 1 and 4 of the *Québec Charter* enshrine the right of every individual to life, security and to the safeguard of their dignity:

> s. 7 *Canadian Charter*: Everyone has the right to life, liberty and security of the person in accordance with the principles of fundamental justice.
>
> s. 1 *Québec Charter*: Every human being has a right to life, and to personal security, inviolability and freedom.
>
> s. 4 *Québec Charter*: Every person has a right to the safeguard of his

dignity, honour and reputation.

102. The *Charter*-protected rights of all Indigenous children, including Inuit children in Nunavik, demand that they are not deprived of life-affirming and life-saving youth prevention and protection services.

103. Such rights also demand that they not be subjected to situations which the Defendants know or ought to have known place their personal security or inviolability at serious risk of violation.

ii. *Obligations under the Youth Protection Act*

104. In Québec, the *YPA* applies to all children under the age of eighteen whose security and development is or may be considered at risk.

105. Pursuant to the *YPA* and the *ARHSSS*, the DYP operates under the MSSS and is responsible for the application of the law and intervention guidelines when cases are brought to its attention (i.e. cases for which it has received a Signalement).

106. Following a Signalement, the role and obligations of the DYP are summarized as follows in the YP Reference Manual, Exhibit P-1:

> "À l'étape de la réception et du traitement des signalements, le DPJ a la responsabilité :
>
> - de recevoir le signalement (art. 32 a) et 45 LPJ);
> - de procéder à une analyse sommaire du signalement et faire, s'il y a lieu des vérifications complémentaires (art. 32 a) et 45 LPJ);
> - de communiquer avec un établissement afin d'obtenir des renseignements contenus au dossier de l'enfant, de l'un de ses parents ou d'un tiers mis en cause par un signalement, lorsque ces renseignements pourraient permettre de retenir le signalement (art. 35.4 LPJ);
> - d'appliquer l'Entente multisectorielle relative aux enfants victimes d'abus sexuels, de mauvais traitements physiques ou d'une absence de soins menaçant leur santé physique (Gouvernement du Québec, 2001) (art. 72.7 LPJ);
> - de décider si le signalement doit être retenu ou non pour évaluation (art. 45 LPJ);
> - d'inscrire les renseignements requis dans le Registre des enfants ayant fait l'objet d'un signalement (art. 72.9 et 132 j) LPJ et art. 3 *Règlement instituant le registre sur les enfants ayant fait l'objet d'un signalement*).
>
> S'il décide de retenir le signalement, le DPJ est également responsable de déterminer le degré de priorité de la situation.

S'il décide de ne pas retenir le signalement, le DPJ est également responsable :

- d'informer le signalant de sa décision (art. 45.1 LPJ);
- lorsque la situation le requiert :
  - d'informer l'enfant et ses parents des services et des ressources disponibles dans leur milieu ainsi que des modalités d'accès à ces ressources;
  - **de les diriger, s'ils y consentent, vers les ressources les plus aptes à leur venir en aide** et transmettre, à celui qui dispense le service, l'information pertinente sur la situation;
  - de les conseiller sur le choix des personnes ou des organismes pouvant les accompagner et les assister dans leur démarche (art. 45.1 LPJ);
- de consigner l'information contenue au dossier de l'enfant et de la conserver pour une période de deux ans ou jusqu'à ce que l'enfant ait atteint l'âge de 18 ans, selon la période la plus courte (art. 37.1 LPJ). "

[Emphasis added]

107. Sections 2.3, 4 and 5 of the *YPA*[2] set out the guiding principles of any intervention by the DYP in respect of a child and their parents in Québec. At the core, any intervention must be designed to end and/or prevent situations which jeopardize the security or development of a child, with a view of keeping the care of the child with their family or extended family:

> s. 2.3. Any intervention in respect of a child and the child's parents under this Act
>
> (a) must be designed to **put an end to and prevent the recurrence** of a situation in which the security or the development of the child is in danger; and
>
> (b) **must**, if the circumstances are appropriate, **favour the means that allow the child and the child's parents to take an active part in making decisions and choosing measures that concern them.**
>
> **Every person, body or institution having responsibilities under this Act towards a** child and child's parents **must encourage the participation of the child and the parents, and the involvement of the community.**

[2] For consistency, all sections of the *Youth Protection Act* reproduced herein were in effect prior to the amendment of the *Act* further to the adoption of the *Loi modifiant la* Loi sur la protection de la jeunesse *et d'autres dispositions législatives*, on April 14, 2022.

> **The parents must, whenever possible, take an active part in the application of the measures designed to put an end to an prevent the recurrence of the situation** in which the security or development of their child in is danger.
>
> s. 4. **Every decision made under this Act must aim at keeping the child in the family environment.**
>
> **If, in the interest of the child, it is not possible to keep the child in the family environment, the decision must aim at ensuring that the child benefits,** insofar as possible with the **persons most important to the child, in particular the grandparents or other members of the extended family, from continuity of care, stable relationships and stable living conditions corresponding to the child's needs and age and** as nearly similar to those of a normal family environment as possible. Moreover, the parents' involvement must always be fostered, with a view to encouraging and helping them to exercise their parental responsibilities.
>
> **If, in the interest of the child, returning the child to the family is impossible, the decision must aim at ensuring continuity of care, stable relationships and stable living conditions corresponding to the child's needs and age on a permanent basis.**
>
> […]
>
> s. 5. Persons having responsibilities regarding a child under this Act **must inform him and his parents as fully as possible of their rights under this Act** and in particular, of the right to consult and advocate and of the rights of appeal provided for in this Act.
>
> In the case of an intervention under this Act, a child as well as his parents must obtain a description of the mean and stages of protection and rehabilitation envisaged towards ending the intervention.
>
> [Emphasis added]

108. Sections 3 and 4 of the *YPA* provide that when the removal of an Indigenous child from their immediate family environment is required, their placement must aim at preserving the child's cultural identity, including by entrusting the child in the care of their extended family, community or nation as a priority:

> s. 3. **Decisions made under this Act must be in the interests of the child and respect his rights.**
>
> In addition to the moral, intellectual, emotional and material needs of the child, his age, health, personality and family environment and the other aspects of his situation must be taken into account. **In the case of a Native child, the preservation of the child's cultural identity must also be taken into account.**
>
> s. 4. […] A decision made under the second or third paragraph

> regarding a Native child **must aim at entrusting the child to an alternative living environment capable of preserving his cultural identity, by giving preference to a member of his extended family or his community or nation.**
>
> [Emphasis added]

109. The law is clear: if the removal of an Indigenous child is required, the DYP must make a decision that ensures, as much as possible, the continuity of stable relationships with the persons most important to the child, in particular the grandparents or other members of their extended family and community.

110. In *Protection de la jeunesse*, 2016 QCCQ 10171, the Court of Québec stated that "the DYP must make every effort to find a foster family in the child's community when the child is Indigenous. Without being an obligation of result, **the DYP's responsibility in this regard is very high, and all reasonable means must be used**."

111. In 2001, the legislator enacted section 37.5 (now section 131.20) of the *YPA*, thereby allowing Québec and Indigenous communities to enter into an agreement regarding the establishment of a more culturally appropriate child welfare regime, including through the development of better adapted prevention and intervention tools.

112. Although no such agreement has yet been entered into by Québec and the Inuit of Nunavik, even where a community opts to avail itself of this right, the MSSS acknowledges the ongoing obligations owing to Indigenous peoples in the delivery of child welfare services:

> "Par ailleurs, le Ministre de la Santé et des Services sociaux **demeure responsable de l'application de la LPJ pour l'ensemble du territoire québécois, y compris celui habité par les communautés autochtones. Il a le devoir et l'obligation de s'assurer que tous les enfants du Québec reçoivent les services nécessaires si leur sécurité ou leur développement est compromis."**
>
> [Emphasis added]

the whole as appears from the YP Reference Manual, Exhibit P-1.

113. Québec's obligations under the *YPA* are owed to all Indigenous children and families in Québec, including the Inuit of Nunavik. Its chronic and decades-long infringement of their rights with regard to the Nunavik Child Subclass, the Québec Child Subclass, the Nunavik Family Class and the Québec Family Class clearly engages its responsibility for all the harms that resulted therefrom.

iii. *Duty to act reasonably and prudently*

114. The Defendants' conduct also constituted a fault within the meaning of section 1457 of the *Civil Code of Québec*, CQLR c. CCQ-1991.

115. The Defendants knew or ought to have known that their failure to provide services to class members on a substantively equal level to what non-

Indigenous children receive would cause them tremendous harm.

116. Class members sustained bodily and moral injuries as a direct and immediate consequence of the Defendants' conduct including, but not limited to loss of language, culture, community ties and resultant pain and suffering, psychological trauma and substance abuse.

b. Additional obligations owed to Inuit children and families in Nunavik

i. *The JBNQA*

117. Since the signing of the JBNQA in 1975, still further legal obligations are owed to the Inuit in Nunavik by Québec and Canada, the whole as appears from the JBNQA, Exhibit P-2.

118. The JBNQA is a treaty that was concluded in the unusual and highly pressured context of litigation instituted by the Inuit and the Cree against Québec to halt a major hydroelectric project from destroying their homeland.

119. The parties to that litigation reached an out-of-court settlement whereby the Nunavik Inuit were assured the provision and delivery of the same essential services ordinarily available to all Canadians and Québecois, the whole as appears from the James Bay and Northern Québec Native Claims Settlement Act, (the "**Settlement Act**"), communicated as **Exhibit P-15**.

120. As a modern treaty, the JBNQA is given the force of law, and the obligations created therein are recognized and affirmed by section 35 of the *Constitution Act, 1982*.

121. Specifically with regard to the provision of health and social services, section 15 of the JBNQA sets out certain obligations, responsibilities and principles incumbent upon Québec in the delivery of such services:

> **Preamble**
>
> "These [Inuit and the Cree of Eeyou Istchee] people are inhabitants of the territory of Québec. It is normal and natural for Québec to assume its responsibilities for them, as it does for the rest of the population. And that is what the Québec Government will be in a position to do as a result of the Agreement (…). **It will be the guarantor of the rights,** the legal status and the **well-being of the native peoples of its northern territory.**"
>
> […]
>
> "The inhabitants of Québec's North, like everybody else, have to have schools. **They have to be able to depend on health services**. They have to have the security of justice and a system of law enforcement. **This Agreement responds to these needs, and provides the structures through which they can be met. There will be** local school boards, **health and social services boards,** police units, fire brigades, municipal courts, public utilities, roads and sanitation services. **And all of these agencies will answer to the appropriate ministry of the**

> **Québec Government**. The proper jurisdiction of all ministries, such as, for example, the Ministry of Education, will remain intact. **The services will all be provided through structures put in place by the Government of Québec."**
>
> "This means that where facilities such as schools and hospitals already exist under federal jurisdiction in native communities, they will be transferred to the jurisdiction of Québec. In the case of certain federal programs, already operating, the Québec Government will assume the responsibility for them."
>
> **15 Health and Social Services (Inuit)**
>
> **s.15.0.21** In implementing the Agreement, **Québec should recognize and allow to the maximum extent possible for the unique difficulties of operating facilities and services in the North:**
>
> a) **In recruiting and retaining staff;** working conditions and benefits should be sufficiently attractive to encourage competent personnel from outside Region 1 OA to accept posts for periods of time ranging from three (3) to five (5) years;
>
> b) In providing **employment and advancement opportunities for Native people in the fields of health and social services,** and in providing special educational programs to overcome barriers to such employment and advancement
>
> c) **In budgeting for the development and operating of health and social services and facilities** so as to compensate for the disproportionate impact of northern costs, including transportation, construction and fuel costs.
>
> **s.15.0.24 Québec shall take all measures necessary in order to implement this Section**. The legislation to be enacted to give effect to the foregoing shall apply notwithstanding the provisions of section 2 of the *Act respecting Health Services and Social Services.*
>
> [Emphasis added]

122. In 1981, pursuant to section 29.0.40 of the JBNQA, […] Canada delegated still further responsibilities to Québec, including the transfer of municipal service responsibilities, such as housing, electricity supply, water supply and sanitation, under the *Northern Québec Transfer Agreement* (the "**Transfer Agreement**"). Neither Makivvik nor their communities consented to the Transfer Agreement, as they were not consulted, such that the Transfer Agreement cannot negate any of Canada's pre-existing obligations toward them.

123. Notwithstanding the Transfer Agreement, the Federal Crown remains obligated towards Indigenous youth and families in Nunavik. Notably, Canada expressly confirmed its continued role and responsibilities vis-à-vis the Nunavik Inuit in the provision of adequate health and social services in the Implementation

Agreement. Namely, the Implementation Agreement, Exhibit P-3, provides:

> **11. Health and Social Programs**
>
> The Inuit of Quebec **shall have access to applicable federal health and social programs where there are no equivalent programs offered by Quebec**, without prejudice to any rights Canada may have to claim a contribution from Quebec for such federal programs."
>
> **Annex B Inuit Eligibility for and Access to Federal Programs and Funding**
>
> 4.1.1. **Federal programs and services shall be deemed to apply to the Inuit of Quebec unless the subject matter of such programs and services has been the object of special provisions and benefits** under the JBNQA (Jame Bay and Northern Quebec Agreement) **under which the Inuit of Quebec have access to equivalent benefit in the place and stead of such programs and services**;
>
> 4.1.2. **Federal programs and services shall be deemed to apply to the Inuit of Quebec unless responsibility for the delivery of such programs and services has been wholly assumed by Quebec** pursuant to the provisions of the JBNQA (James Bay and Northern Quebec Agreement), **without reduction to such programs and services**;
>
> [Emphasis added]

124. The purpose of section 15 of the JBNQA was to ensure the delivery of essential services to the residents of Nunavik, access to their land and resources having only been agreed upon on condition of, amongst other things, a concomitant, concurrent and reciprocal improvement of the living conditions of Nunavik Inuit.

125. Québec undertook to provide essential services to Indigenous communities, which calls into application the honour of the Provincial Crown, a core constitutional principle governing the relationship between the Crown and Indigenous peoples with legal effects. As a result, the obligation to act honourably in the funding and delivery of such services applies above and beyond the express or implied intention of the parties.

126. Canada also recognizes that modern treaties must be implemented in a manner that upholds the honour of the Crown.

127. As acknowledged in the Statement of Principles on the Federal Approach to Modern Treaty Implementation ("**Canada's Statement of Principles**"), Canada has noted:

> **"The honour of the Crown is at stake in Canada's approach to implementing its modern treaty obligations. It speaks to how obligations of the Crown must be fulfilled.** The honour of the Crown requires the Crown and its departments, agencies and officials to act

> with honour, integrity and fairness in all its dealing with Aboriginal peoples. **The Crown must act diligently to fulfill its obligations in accordance with the terms of the modern treaties. Modern treaty provisions are to be interpreted in a reasonable and purposive manner which requires giving effect to the common intention of the parties** at the time the treaties were made."

the whole as appears from Canada's Statement of Principles, communicated as **Exhibit P-16**.

128. When confronted with Québec's gross neglect of Inuit children and families in Nunavik, […] Canada's constitutional, fiduciary, and civil obligations, interpreted in light of the constitutional principle of the honour of the Crown, demanded that Canada step in to uphold their right to substantive equality and to safeguard their safety and dignity.

129. […]

ii. *Fiduciary obligations*

130. The Defendants owe special fiduciary obligations to the […] Nunavik Child Class and the Quebec Child Class.

131. In the case of the Inuit of Nunavik, such obligations derive both from the honour of the Federal and Provincial Crowns and the historical relationship between Canada, Québec and the Inuit of Nunavik, wherein the former undertook to fund, deliver and maintain substantive equality in the provision of essential services, including health and social services, and assumed a large discretionary control over their interests, their care, welfare, and, to an extent, their lives.

132. The *Act respecting First Nations, Inuit and Métis Children, Youth and Families* passed in 2019 by the Parliament of Canada – the constitutionality of which was recently confirmed by the SCC – confirms that Canada has always had the responsibility to intervene to ensure the protection of Indigenous children's *Charter* rights and provide substantively equal preventive and protective youth services across Canada.

133. What it lacked was the will to do so.

V. DAMAGES

134. All Class members are owed compensatory and punitive damages for the irreparable harms they have suffered as a result of the faults described herein.

a. Compensatory damages

135. The devastating impact of Québec and Canada's widespread violation of the rights and obligations owed to Indigenous children and families, is well reported.

136. In its submissions to the Viens Commission, the Provincial Crown itself acknowledged that Indigenous peoples' right to services does not necessarily

entail actual access to services. It noted:

> "Les Autochtones ont accès aux mêmes services publics que les autres citoyens du Québec; **peut-être pas toujours *de facto*,** mais certainement *de jure*."

the whole as appears from the Provincial Crown's Submission to the Viens Commission, **Exhibit P-17**.

137. By law and under the terms of the JBNQA it was and is incumbent upon Canada and Québec to deploy the financial and human resources to bridge that gap, and to ensure access to substantively equal services in practice.

138. The Defendants' neglect has created a vicious cycle, wherein insufficient or inaccessible health and social services in Indigenous communities, such as mental health and addiction support, directly contribute to the overwhelming overrepresentation of Indigenous children in the child welfare system.

139. The overrepresentation of Inuit children in the child welfare system has perpetuated intergenerational trauma and exacerbated Nunavik Inuit's identity crisis prompted by the colonial history of Residential Schools and the Sixties Scoop.

140. This trauma is reflected in widespread alcohol abuse, substance misuse and addiction, acute psychological distress and strikingly high rates of suicide that far outpace that of the rest of the Québec population.

141. The actions and inactions of Canada and Québec over the last several decades have overwhelmingly placed Indigenous youth in "caretaking" situations that have caused them physical harm and psychological distress, while denying them the very services and support required to cope with those harms in adulthood.

142. The devastating human, social and cultural consequences of the Defendants' systemic underfunding of services simply cannot be overstated.

143. As compensatory damages, the Plaintiffs are entitled to claim and hereby claim personally and on behalf of all Class members the payment of an amount between $40,000 and $300,000 per member, depending on the gravity and extent of the harms caused by Québec and Canada's failure to answer to their legal obligations.

b. Punitive and *Charter* damages

144. At all relevant times, Québec and Canada were aware of their legal obligations and the devastating situation faced by Indigenous youth in Québec, including Inuit youth, could not be ignored.

145. With each new report published, notably over the last 15 years, these violations were made glaringly obvious.

146. In 2007, the CDPDJ's review of 139 youth protection files revealed gross underfunding and under-provision of prevention and protection services in

Nunavik, putting the wellbeing of Inuit youth and families at serious risk. It concluded:

> "As a result of its investigation, **the Commission declares that the rights of the Inuit children and young people of Nunavik**, as recognized in the *Youth Protection Act* and the *Youth Criminal Justice Act,* **have been infringed.**
>
> In addition, **the Commission declares that the fundamental rights of the children and young people as recognized in section 1, 4, and 39 of Québec's *Charter of human rights and freedoms,* have been infringed,** in particular the right to personal inviolability, to the safeguard of their dignity, and to the protection, security and attention that their parents or the persons acting in their stead are capable of providing."

the whole as appears from the Gagnon Report, Exhibit P-8.

147. In light of the "gravity and extent of the problems" faced by Inuit youth and families and the "urgent need to prevent any further deterioration of those problems", it urged the premier of Québec, as the minister responsible for youth services, to "take personal control of this issue and to coordinate the required actions by the Government", the whole as appears from the Gagnon Report Exhibit P-8.

148. Between 2010 and 2024, these staggering findings were echoed in the Sirois Report (Exhibit P-9), the Parnasimautik Report (Exhibit P-10), the Viens Report (Exhibit P-12) and the Trudel Report (Exhibit P-13).

149. The Viens Report (Exhibit P-12) succinctly summarized the situation afflicting all Indigenous children and families involved in the child welfare system in Québec, finding that "**it seems impossible to deny that members of First Nations and Inuit are victims of systemic discrimination in their relations with public services** that are the subject of this inquiry", including health and social services, and child welfare services.

150. Specifically, regarding the funding of child and family services, it reported that "[t]he high rate for reporting, taking in charge and placement involving Indigenous children especially highlight the fact that **preventive social services are insufficient or even unavailable in a number of communities. Funding is the core of the problem**" the whole as appears from the Viens Report (Exhibit P-12).

151. As the reports cited above show, the Defendants have utterly failed in providing substantively equal child and families services to Indigenous children and families over the last several decades, despite having been alerted to the devastating consequences wreaked upon Class members and having been made aware of the various solutions. The state of the child welfare system demonstrates shocking disregard for their *Charter* rights, their best interests, and their legal rights under the JBNQA.

152. Given the unlawful and intentional interference with Class members' rights and freedoms by Canada and Québec, and the fundamental importance of dissuading them from disregarding the rights of Indigenous children and families, a group historically disadvantaged and utterly overrepresented in the child welfare system, the Plaintiffs request that the Defendants be ordered to pay punitive and *Charter* damages to each member of the Classes in an amount to be determined by this Court.

153. Such damages are necessary to prevent the further erosion of the rights protected by the *Canadian Charter* and the *Québec Charter*, and to discourage further grave violations by the Defendants.

154. The sum determined by this Court will constitute a just and appropriate remedy within the meaning of s. 24(1) of the *Canadian Charter* and s. 49(1) of the *Québec Charter,* in order to defend the rights in question, deter further violations and compensate the victims.

VI. PRESCRIPTION

155. Until the time of the filing of this class action, members of the Class were unaware of the connection between the Defendants' systemic underfunding of child and family services, their apprehension by youth protective services and the abuse, violence, loss of culture and trauma they suffered as children, and continue to suffer until this day.

156. As they were not fully conscious of the heavy consequences of the Defendants' faults on their lives, members of the Class were unable to act, and their claims are not prescribed.

157. Furthermore, all claims involving abuse and violent behaviour suffered during childhood, as well as sexual violence are imprescriptible, pursuant to section 2926.1 of the *Civil Code of Québec*. The lack of prescription period applies as much to the Child Classes as to the Family Classes.

158. The TRC Report, Exhibit P-11, called on the Federal Crown to cease relying on limitation periods and prescription to defend actions of historical abuse by Indigenous peoples related to failures of child services.

159. In response to this call to action, the Attorney General of Canada issued a directive through the Department of Justice's Litigation Guidelines, which eschews reliance on limitations/prescription and equitable defences, particularly where reconciliation is at issue, a copy of which taken from its website is communicated herewith as **Exhibit P-18**.

160. This application is well founded in fact and law.

WHEREFORE THE PLAINTIFFS PRAY THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT this Class Action against the Defendants;

CONDEMN the Defendants to pay the Plaintiffs and members of the Classes an amount to be determined by the Court, together with the interest and additional indemnity as of the date of the application for authorization of this class action, for the following damages:

The payment of an amount between $40,000 and $300,000 per member of the Class, depending on the gravity and extent of the physical and psychological injuries and harms caused, as compensatory damages;

The payment of punitive damages and damages pursuant to s. 24(1) of the *Canadian Charter,* in an amount to be determined by the Court.

ORDER the collective recovery of these damages;

ORDER that the claims of the members of the Classes be the object of individual liquidation in accordance with sections 596 to 598 *Code of Civil Procedure,* or, if impractical or inefficient, order the Defendants to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Classes;

FIX modalities for the distribution of all sums recovered collectively;

RENDER any order as determined by the Court to be in the best interests of members of the Classes;

THE WHOLE with legal costs, including the costs of all expertise, administration fees and publication notices.

Montreal, […] December 18, 2025

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SUPERIOR COURT

(Class Action)

A.B.
-and-
TANYA JONES

Plaintiffs

v.

THE ATTORNEY GENERAL OF QUEBEC
-and-
THE ATTORNEY GENERAL OF CANADA

Defendants

<u>MOFIFIED</u> ORIGINATING APPLICATION OF A CLASS ACTION
(Art. 583 C.C.P.)

ORIGINAL

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