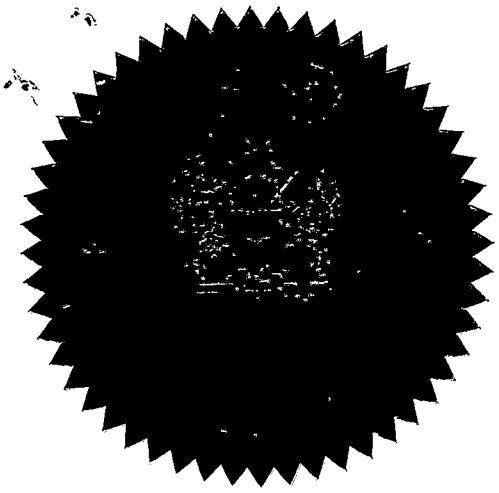

Court File No: T-620-20

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

CHEYENNE WALTERS AND LORI-LYNN DAVID

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

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

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date) JUN 10 2020

Issued by: ALASTAIR HULL
REGISTRY OFFICER
(Registry Office) AGENT DU GREFFE

Address of local office
Pacific Centre
PO Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B67

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

Relief Sought

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

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

b. a declaration that the Defendant breached fiduciary and common law duties and breached the Plaintiffs' and other Class Members' section 7 and 15 rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 and the *Charter of Human Rights and Freedoms*, CQLR c C-12;

c. general damages;

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

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

f. symbolic damages on an aggregate basis;

g. exemplary, aggravated and punitive damages;

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

i. disgorgement by the Defendant of its profits;

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

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

m. pre-judgment and post-judgment interest;

n. costs; and

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

Nature of the Action

2. This action concerns the removal of disproportionately high numbers of Indigenous children and youth from their homes and their placement into the care of individuals who were not members of their Indigenous community, group or people. This practice furthered the Defendant's policy of culturally assimilating Indigenous persons into mainstream Canadian society.

3. At all material times, the Defendant had a duty to protect and preserve the cultural identity of Indigenous children and youth, and had a duty to safeguard them from physical, sexual, spiritual and psychological harm.

4. Contrary to these duties, the Defendant failed to ensure that Indigenous children who were apprehended had an ongoing relationship with their families and with the Indigenous groups, communities or peoples to whom they belonged; the Defendant failed to preserve their Indigenous identity and connections to their culture.

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

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

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

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

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

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

10. As a consequence of the Defendant's discriminatory policies, practices and conduct, First Nations, Inuit and Métis children and youth lost their cultural identity and suffered physical, sexual, spiritual and psychological harm. They were also deprived of their aboriginal and treaty rights and denied membership in their Indigenous communities. The parents and grandparents of these children also suffered harm.

11. Through this action, the Plaintiffs seek redress for Indigenous children and youth who were removed from their homes between January 1, 1992 to December 31, 2019 (the "Class Period"). The Plaintiffs also seek redress for the parents and grandparents of these children and youth.

The Parties

12. The Plaintiff, Cheyenne Walters, is an aboriginal within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1992* (UK), 1982 c 11. Cheyenne is a member of the Muscowpetung Saulteaux Band, which is part of the Cree First Nation. When Cheyenne was 8 years old, she was forcibly apprehended, off reserve, from her mother's care. She remained in foster care until she was 18. During this time, Cheyenne was denied an ongoing

relationship with her Muscowpetung Saulteaux Band and her Cree family. No reasonable efforts were made to preserve Cheyenne's Cree identity.

13. The Plaintiff, Lori-Lynn David, is an aboriginal within the meaning of section 35 of the *Constitution Act, 1982*. She is Ojibwa and Cree. She was living off reserve when her son, who was 7, was forcibly removed from her care. He was apprehended against her will and without reasonable cause. Lori-Lynn was denied any reasonable opportunity to maintain a relationship with her son, and was denied any reasonable opportunity to ensure that his cultural identity was preserved and fostered.

14. The Defendant, Her Majesty the Queen ("Canada"), is responsible for the promotion of the safety, health and well-being of Indigenous Canadians. At all material times, Canada had a duty to comply with its constitutional obligations under section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and section 35 of the *Constitution Act, 1982*, and was required to act in accordance with the honour of the Crown. Canada is liable for the acts, omissions and negligence of individuals who at all material times were Canada's employees, agents and servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

The Class

15. The Plaintiffs bring this action on behalf of a proposed class of all First Nations, Inuit and Métis persons who were removed from their homes in Canada between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not part of the Indigenous group, community or people to which they belonged, excluding on-reserve putative class members in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada* with court file number T-402-19 (the "Primary Class", to be further defined in the Plaintiffs' application for certification).

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

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

Indigenous Child Welfare Services

Aboriginal and Treaty Rights

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

Canada's Constitutional Obligations

19. Pursuant to section 91(24) of the *Constitution Act, 1867* and the common law, Canada has exclusive legislative authority over First Nations (status and non-status), Métis and Inuit persons.

20. Further to its obligations under section 91(24) of the *Constitution Act, 1867*, section 35 of the *Constitution Act, 1982* and the common law, Canada had a positive obligation to act in the best interests of Indigenous children, youth and families, and to ensure substantive equality between Indigenous peoples and non-Indigenous Canadians with respect to the provision of child and family services. Canada was required to protect the cultural identity of Indigenous children and youth, and their connections to their families and to the Indigenous groups, communities or peoples to which they belonged.

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

22. Canada's constitutional obligations were non-delegable.

Departmental Responsibility

23. Despite Canada's constitutional obligations, it failed to recognize, protect and affirm Indigenous peoples' inherent rights in relation to child and family services, which included jurisdiction in relation to, *inter alia*, customary adoption and child rearing. Instead, Canada undertook responsibility for the provision of child and family services to First Nations children and families on and off reserve (status and non-status), Inuit children and families, and Métis children and families.

24. Pursuant to the *Department of Indigenous Services Act*, SC 2019, c 29, s 336, which came into force on July 15, 2019, the Minister of Indigenous Services is responsible for the provision of child and family services to First Nations, Inuit and Métis persons,[1] and is responsible for the administration, operation, management and funding of Canada's Indigenous child welfare program.

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

26. Historically, Canada's Indigenous child welfare program was administered by Indigenous and Northern Affairs Canada (2015 through 2017), Aboriginal Affairs and Northern Development Canada (2011 through 2015), Indian and Northern Affairs Canada (until 2011), and their predecessor departments.

27. While Canada undertook responsibility and control for Indigenous child and family services - and despite the exclusive legislative authority Canada has over Indigenous persons -

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

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

Canada chose not to pass legislation setting out national requirements and principles for the provision of those services to First Nations, Métis and Inuit children and families. It was not until *An Act Respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 came into force on January 1, 2020, that Canada set out national legislative requirements for the provision of Indigenous child and family services, including requirements relating to cultural continuity and the best interests of the child.

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

Apprehension of First Nations, Inuit and Métis Children and Youth

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

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

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

32. Pursuant to Canada's Indigenous child welfare program, First Nations, Inuit and Métis children and youth were forcibly removed from their homes and communities, and placed in the care of foster or adoptive parents who were not part of the Indigenous group, community or people to which the child belonged.

33. While in care, First Nations, Inuit and Métis children and youth were denied any reasonable opportunity to visit their birth parents and their Indigenous group, community or people. They were denied any reasonable opportunity to practice and preserve their Indigenous culture, language, customs and heritage, and were denied any reasonable opportunity to exercise their aboriginal and treaty rights. As a result, they lost their cultural identity, including their Indigenous language, heritage, spirituality and traditions.

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

35. Canada's conduct was contrary to the United Nations Convention on the Rights of the Child, which Canada ratified on December 13, 1991, and the International Convention on the Elimination of All Forms of Racial Discrimination, which Canada ratified on October 14, 1970.

36. Canada should have taken steps to safeguard the well-being of First Nations, Inuit and Métis children, youth and their families. Canada should have protected and preserved the cultural identity of these children and their aboriginal and treaty rights. Canada failed to do so.

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

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

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

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

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

42. Canada's conduct was systemic and lasted for decades. Canada's acts and omissions - and those of its servants - eradicated the language, culture and heritage of First Nations, Inuit and Métis children and youth in care, and caused them ongoing harm. Canada's Indigenous child welfare program promoted the cultural assimilation of First Nations, Inuit and Métis children and youth.

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

Number of Indigenous Children in Care

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

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

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

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

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

47. The federal Legislation sets out requirements for the provision of child and family services to First Nations, Inuit and Métis[7] children, youth and families, and affirms that

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[3] SI/2019-96.

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

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

[6] *Ibid.*

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

Indigenous peoples' "inherent right of self-government recognized and affirmed by section 35 of the *Constitution Act, 1982* includes jurisdiction in relation to child and family services, including legislative authority in relation to those services and authority to administer and enforce laws made under that legislative authority."[8]

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

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

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

1982 as including "the Indian, Inuit and Métis peoples of Canada": *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11, s. 35(2).

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

[9] *Ibid.*, s. 8.

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

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

52. Section 11 of the Legislation provides:

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

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[10] *Ibid.*, s. 10(1).
[11] *Ibid.*, s. 10(3).
[12] *Ibid.*, s. 10(2).
[13] *Ibid.*, s. 11.

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

> The placement of an Indigenous child in the context of providing child and family services in relation to the child, to the extent that it is consistent with the best interests of the child, is to occur in the following order of priority:
>
> a. with one of the child's parents;
>
> b. with another adult member of the child's family;
>
> c. with an adult who belongs to the same Indigenous group, community or people as the child;
>
> d. with an adult who belongs to an Indigenous group, community or people other than the one to which the child belongs; or
>
> e. with any other adult.[14]

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

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

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

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

> In the context of providing child and family services in relation to an Indigenous child, unless immediate apprehension is consistent with the best interests of the child, before apprehending a child who resides with one of the child's parents or another adult member of the child's family, the service provider must demonstrate that he or she made reasonable efforts to have the child continue to reside with that person.[19]

The Representative Plaintiffs

Cheyenne Walters

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

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

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

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

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

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

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

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

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

65. Throughout her childhood and youth, no reasonable attempts were made to preserve Cheyenne's relationship with her mother. No reasonable attempts were made to preserve her Indigenous identity or Cree culture, or to connect her with her Muscowpetung Saulteaux First Nation or members of her Indigenous family and community. Cheyenne was rarely asked her opinion. When she was asked her opinion, she was ignored or promises were broken. Her life was dictated to her.

66. Beginning in her teens, generic attempts - such as making dream catchers - were occasionally made to try to connect Cheyenne to her Indigenous culture. She found these activities insulting and void of actual effort to have her learn about - and maintain connections to

- her Cree culture. The MCFD and the Vancouver Aboriginal Child and Family Services Society reinforced this experience, despite her pleas to learn more about the Muscowpetung First Nation and her Cree family and community.

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

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

69. When Cheyenne was 18, she was accurately diagnosed with post-traumatic stress disorder ("PTSD") and depression from her time in the care of the MCFD.

70. Cheyenne left the foster system at 18.

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

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

73. Because of her PTSD and depression, Cheyenne was unable to reasonably commence an action in respect of the injuries she suffered as a consequence of being apprehended from her mother and placed in the care of non-Indigenous foster parents and group homes. It was not until the spring of 2020 that Cheyenne's psychological state had improved to the point that she could contemplate commencing this claim.

Lori-Lynn David

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

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

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

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

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

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

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

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

82. Lori-Lynn has not seen him since.

83. Lori-Lynn was denied any reasonable opportunity to maintain her relationship with Victor, and was denied any reasonable opportunity to ensure that his cultural identity was preserved and protected.

84. After Victor's apprehension, Lori-Lynn became extremely depressed and was unable to sleep. She was put on Prozac and then Paxil. These medications made her feel awful.

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

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

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

History of Indigenous Child Welfare Proceedings

Sixties Scoop Litigation

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

89. In November of 2017, Canada entered into a settlement agreement with the plaintiffs in the Federal Court action styled as *Riddle v Her Majesty the Queen* with court file number T-2212-16 and the Ontario Superior Court of Justice Action styled as *Brown v the Attorney General of Canada* with court file number CV-09-00372025CP. The settlement provides compensation to status-Indian and Inuit persons who were removed from their homes in Canada

between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents.[20] The settlement was approved by the Federal Court in May of 2018.

90. Actions were later commenced on behalf of non-status Indians and Métis persons who were victims of the Sixties Scoop. A carriage motion between the various parties took place in March of 2019, and the Federal Court granted carriage of the litigation to the plaintiff in the Federal Court action styled as *Day v The Attorney General of Canada* with court file number T-2166-18.[21] The action seeks redress for non-status Indians and Métis persons who were "scooped up", beginning in the 1960s and continuing until the early 1990s, and placed in the care of non-Aboriginal foster or adoptive parents who did not raise the children in accordance with the Aboriginal person's customs, traditions and practices.

91. Given the *Riddle* and *Day* actions, the within action does not seek redress for survivors of the Sixties Scoop. The Class Period in the within action is limited to the time period following the Sixties Scoop (ie: from January 1, 1992 onwards), and seeks redress for Indigenous survivors of Canada's modern Indigenous child welfare system and its failures, discrimination and breaches of duties associated with that system.

Canadian Human Rights Tribunal Findings

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

93. In January of 2016, the Panel found that the Complaint was substantiated and held that Canada had engaged in systemic discrimination, contrary to section 5 of the *Canadian Human*

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

[21] That decision is currently under appeal.

Rights Act, in denying First Nations children and families living on reserve and in the Yukon equal child and family services or in differentiating adversely in the provision of those child and family services.

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

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

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

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

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

Moushoom Action

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

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

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

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

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

Duties of the Defendant

Generally

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

104. Pursuant to its constitutional obligations, the honour of the Crown, the doctrine of *parens patriae*, and the common law, Canada owed a special duty of care, honesty, loyalty and good faith to First Nations, Inuit and Métis children and youth, and had a duty to act in their best interests. Canada also had a duty to act in the best interests of the parents and grandparents of these children.

105. Having denied, in substance, Indigenous peoples' constitutional right to freely determine their laws, policies and practices in relation to Indigenous child and family services during the Class Period, Canada undertook control of the provision of those services. Canada was required - in the operation, administration, management and funding of those services - to uphold its constitutional duties and the honour of the Crown. Canada had a duty to protect Indigenous children's cultural identities and to take steps to protect them from sexual, physical, psychological and spiritual abuse once they were placed into care. Canada's duties were non-delegable.

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

Honour of the Crown and Fiduciary Duty

107. Canada has a special fiduciary relationship with First Nation, Inuit and Métis peoples in Canada.

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

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

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

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

112. Prior to the implementation of the Legislation, and at all material times during the Class Period, Canada assumed discretionary control over Indigenous child welfare services, and the protection and preservation of Indigenous children's cultural identities in relation to those services. Canada stood *in loco parentis* to Primary Class Members. Canada recognized that it was responsible for the health and welfare of these children and undertook to act in their best interests. Canada also undertook to act in the best interests of the Family Class.

113. The safety and well-being of First Nation, Inuit and Métis children, youth and families - including the protection and preservation of their cultural identities - was a legal or substantial practical interest of these children and families. This interest stood to be adversely affected by

Canada's exercise of discretion or control and further to Canada's administration, operation, management and funding of Indigenous child welfare services. At all material times, Canada assumed a degree of discretionary control over the well-being of Indigenous children and youth in care and their families - including the protection and preservation of their cultural identities - that it was equivalent or analogous to a direct administration of that interest.

114. Canada had an ongoing obligation to consult in good faith with First Nation, Inuit and Métis persons, groups and communities with respect to the provision of Indigenous child welfare services and with respect to ensuring the safety, well-being and cultural identity of the Plaintiffs and other Class Members. And Canada had an ongoing obligation to monitor, preserve and protect the safety, well-being and cultural identity of First Nation, Inuit and Métis children and youth in care, and an ongoing obligation to protect their parents and grandparents.

Common Law Duty and Systemic Negligence

115. At all material times during the Class Period, Canada owed a common law duty of care to First Nation, Inuit and Métis children to take steps to protect their safety while in care, and to prevent them from losing their cultural identities. The duty owed by Canada to Primary Class Members is established in law, or is analogous to a duty established in law. This duty was also owed by Canada to the Family Class.

116. In the alternative, a novel duty of care has been established. A relationship of proximity existed between Canada and First Nation, Inuit and Métis children who were apprehended and placed into care, such that failure on the part of Canada to take reasonable care in the administration, operation, management and funding of its Indigenous child welfare program might foreseeably cause loss or harm to the children in care. This relationship of proximity also existed between Canada and the Family Class.

117. Given Canada's constitutional obligations, the interests involved, and the closeness of the relationship between Class Members and Canada, imposing a duty of care on Canada is just and fair. This duty was heightened because of the constitutional right of Indigenous peoples to self-

determination over child and family services,[23] which included jurisdiction in relation to, *inter alia*, customary adoption and child rearing. This constitutional right was, in substance, denied by Canada during the Class Period, and Canada undertook the provision of those services. How Canada carried out those services - including the administration, management and funding of those services - was operational and was subject to a duty of care.

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

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

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

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

Breaches of the Defendant's Duties

121. The Indigenous child welfare system created and maintained by Canada was inadequate to protect the Plaintiffs and other Class Members from harm. Canada's conduct was systemic and had the effect of assimilating Indigenous children and youth into mainstream Canadian society.

122. Canada's breaches of its fiduciary and common law duties, and the breaches of its servants, agents and employees included:

a. failing to have in place management and operations procedures that would reasonably have prevented Primary Class Members from losing their cultural identity, including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

p. supporting or acquiescing in denying Primary Class Members a reasonable opportunity to exercise their aboriginal and treaty rights;

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

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

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

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

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

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

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

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

y. failing to take reasonable steps to protect the Family Class, including failing to take reasonable steps to prioritize preventative care and, when it was not reasonable for a child to remain with their parents or grandparents, ensuring that emotional and cultural ties between apprehended children and their parents and grandparents were reasonably maintained.

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

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

Breach of the Canadian Charter of Rights and Freedoms

Section 15

125. Canada's acts and omissions with respect to the provision of Indigenous child and family services during the Class Period, as particularized in paragraph 141 and in the whole of this claim, was discriminatory and was in breach of the Plaintiffs' and other Class Members' rights under section 15 of the *Canadian Charter of Rights and Freedoms*.

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

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

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

128. Canada's conduct in the provision, administration, management, operation and funding of Indigenous child welfare services differentiated and adversely impacted First Nations, Inuit and Métis children, youth and families in the provision of those services because of their race.

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

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

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

Section 7

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

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

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

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

135. Canada's Indigenous child welfare policies and practices were intended to - and did - perpetuate the assimilation of Indigenous children and youth into mainstream Canadian society.

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

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

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

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

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

Specific Breaches of Sections 15 and 7

141. Canada breached the section 7 and 15 rights of the Plaintiffs and other Class Members under the *Canadian Charter of Rights and Freedoms* by:

a. failing to have in place management and operations procedures that would reasonably have prevented Primary Class Members from losing their cultural identity, including their connections to the language, territory, heritage, religion and customs of the Indigenous group, community or people to which they belonged;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

p. supporting or acquiescing in denying Primary Class Members a reasonable opportunity to exercise their aboriginal and treaty rights;

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

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

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

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

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

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

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

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

y. failing to take reasonable steps to protect the Family Class, including failing to take reasonable steps to prioritize preventative care and, when it was not reasonable for a child to remain with their parents or grandparents, ensuring that emotional and cultural ties between apprehended children and their parents and grandparents were reasonably maintained.

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

Charter Damages

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

Disgorgement

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

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

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

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

Quebec Class Members

148. Canada's conduct and the conduct of its servants, employees and agents during the Class Period - as set out in detail in this claim - constituted an unlawful and intentional interference of

Québec Class Members' rights under the *Charter of Human Rights and Freedoms*, CQLR c C-12.

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

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

Injury and Damage

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

a. loss of their cultural identity;

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

c. forced cultural assimilation;

d. loss of the opportunity to exercise their aboriginal and treaty rights;

e. physical, sexual, psychological, emotional and spiritual abuse;

f. pain and suffering;

g. post-traumatic stress disorder;

h. substance addiction and abuse;

i. diminished self-worth;

j. suicidal ideation;

k. attempted suicide;

l. constant nightmares;

m. alienation and social dysfunctionality;

n. loss of ability to parent;

o. loss of consortium;

p. insomnia;

q. depression;

r. anxiety;

s. physical injury;

t. loss of the enjoyment of life;

u. loss of ability to pass their culture and cultural identity on to their children;

v. sexual dysfunctionality;

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

x. loss of past and future income; and

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

Punitive Damages

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

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

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

Provincial Health Insurers

155. As a consequence of Canada's conduct, as set out in this claim, provincial and territorial health insurers have incurred expenses in relation to the provision of health care services to the Plaintiffs and other Class Members. Pursuant to provincial and territorial health care costs recovery legislation, health insurers have statutory rights of action in respect of these costs, and are entitled to be compensated for their losses.

Legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

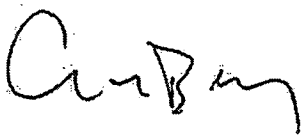
q. *United Nations Declaration on the Rights of Indigenous People*, 13 September 2007, A/RES/61/295; and

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

Place of Trial

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

Date: June 10, 2020



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