NO. S-224088
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

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

PLAINTIFFS

AND:

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

DEFENDANTS

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

REPLY

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

In reply to: The response to civil claim filed by the Attorney General of Canada ("**Canada**") on October 16, 2023 (the "**Response**").

No Crown Immunity Applies

1. In reply to paragraphs 61-62 of the Response, the plaintiffs' claim of systemic negligence against Canada does not impugn core policy decisions, and in further reply, the plaintiffs plead and rely on s. 3(b)(i) of the *Crown Liability and Proceedings Act,* RSC 1985 c C-50 (the "***CLPA***"), which provides for Crown liability in negligence where a federal Crown servant was negligent.

2. As pleaded in the Consolidated Notice of Civil Claim filed on June 5, 2023 (the "**Consolidated Claim**") — including at paragraphs 7, 79-81 and 132-133 of the Consolidated Claim — the plaintiffs assert that Canada is vicariously liable for Crown servants' systemically negligent operation and administration of Indigenous child and family welfare policies and funding.

3. Furthermore, compelled by the Canadian Human Rights Tribunal, Canada has in recent years sought to provide non-discriminatory child welfare services to First Nations children ordinarily resident on reserve. At the same time, Canada's arbitrarily imposed operational distinctions between those Indigenous children and every other Indigenous child and family in British Columbia, *i.e.* the class members in this case, has accentuated the dire situation of class members for whom Canada denies services expressly because they are First Nations not ordinarily resident on reserve, Inuit, or Metis.

The Plaintiffs' Claims Are Not Statute-Barred

4. In reply to paragraph 82 of the Response, the plaintiffs plead and rely on the rules for discoverability under the *Limitation Act*, SBC 2012, c. 13 (the "***Limitation Act***") and the *Limitation Act*, RSBC 1996, c. 266 (the "***1996 Act***").

5. Section 6 of the *1996 Act* and s. 8 of the *Limitation Act* contain special rules for discoverability that centre on reasonableness.

6. Further, both versions of the *Limitation Act* contain special discoverability rules for "persons under a disability", including minors, which state that a limitation period for commencing a claim will not start running until the person is no longer under a disability.

No Equitable Defences Apply

7. In further reply to paragraph 82 of the Response, the plaintiffs have not acquiesced or unduly delayed in bringing their claims. The equitable defences pleaded by Canada do not apply in the circumstances of this case.

8. Canada appears to argue that current and former Indigenous infant victims of, *inter alia*, *Charter* violations and negligence, as well as their family members, somehow acquiesced to such treatment by the federal government. That notion must be rejected.

Dated: November 16, 2023

Signature of Angela Bespflug,
Lawyer for the Plaintiffs