Court File No : T-620-20

FEDERAL COURT

CLASS PROCEEDING

BETWEEN

CHEYENNE PAMA MUKOS STONECHILD,

LORI-LYNN DAVID, AND STEVEN HICKS

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

STATEMENT OF DEFENCE

OVERVIEW

1. Canada is committed to reconciliation with Indigenous peoples and acknowledges that historical wrongs have been committed against Indigenous peoples in the provision and administration of child and family services. The overrepresentation of Indigenous children in care is a national tragedy. Canada has taken a range of measures to address its responsibility in this regard. This claim relates to provincial responsibilities.

2. Canada provides direct funding for child and family services to First Nations children and families who are ordinarily resident on-reserve and in the Yukon. Conversely, for all children ordinarily resident off-reserve, Canada provides provinces and territories with general funding through transfer payments, which is for their discretionary allocation toward their delivery of social programs, including child and family services. Canada has no statutory or other

duty with respect to the actual delivery of child and family services.

3. The circumstances set out in this Claim do not give rise to any duties in law on the part of Canada to the Plaintiffs or to the class. The action should be dismissed.

SPECIFIC RESPONSES TO THE CLAIM

4. Canada responds to each of the paragraphs of the Amended Statement of Claim ("**Claim**") as follows:
   a) Canada admits the assertions in paragraphs 16 (first and second sentences), 20 (first and second sentences), 35, 36 (first and third sentences), 38, 40 (last sentence), 62-74, 117-119, 121-129, 135, 139-140, 169-170;
   b) Canada has no knowledge of the assertions in paragraphs 2, 14-15, 16 (third and fourth sentences), 18, 20 (third sentence), 25, 27, 47, 75-82, 87-98, 100-111, 114-115, 130-131;
   c) Canada denies the assertions in paragraphs 1, 3-13, 17, 19, 21-24, 33, 36 (second and fourth sentences), 37, 39, 41-43, 48, 50 (first and second sentence), 51-61, 83-84, 86, 99, 112-113, 116, 132-133, 136-138, 146-168, 174-197; and
   d) Unless expressly admitted, Canada denies the facts contained in the Claim.

5. In response to paragraph 28, Canada admits that the Plaintiffs and the Primary Class is composed of individuals belonging to various collectives of Aboriginal peoples of Canada within the meaning of subsection 35(2) of *the Constitution Act, 1982*. Canada also acknowledges that the inherent right of self-government as affirmed under s. 18 of *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c. 24, includes jurisdiction in relation to child and family services, is recognized and affirmed by s. 35 of the *Constitution Act, 1982*. The Plaintiffs have not sought a declaration of Aboriginal rights in this proceeding and have not identified the specific collectives that are said to hold these rights.

6. In response to paragraphs 29 to 32 of the Claim, Canada admits that Canada has legislative authority in regard to all Indigenous peoples pursuant to section 91(24) of the *Constitution Act, 1867* and that Indigenous peoples have an inherent right to self-government that includes jurisdiction over child and family services. In further response to paragraph 30 of the Claim, Canada admits that it stands in a fiduciary relationship with Indigenous peoples of Canada, but not every aspect of the relationship gives rise to positive obligations and duties.

7. In response to paragraph 34, Canada admits that the Minister of Indigenous Services is responsible for ensuring that child and family services are provided to Indigenous individuals who are eligible to receive those services under an Act of Parliament or a program for which the Minister of Indigenous Services is responsible.

8. In response to paragraph 40, Canada admits that section 88 of the *Indian Act* provides that "all laws of general application from time to time in force in any province are applicable and in respect of Indians in the province".

TERMINOLOGY

9. This Statement of Defence adopts the following terms to describe the groups of people making up the classes, as set out by the Plaintiffs, and referred to in the Claim and throughout this Statement of Defence:
    a) The term "First Nations" means Indigenous peoples in Canada who:
        i. have status pursuant to the *Indian Act*;
        ii. are entitled to be registered under section 6 of the *Indian Act*; or
        iii. meet band membership requirements under sections 10-12 of the *Indian Act*, such as where their respective First Nation community assumed control of its own membership by establishing membership rules, and the individuals were or are found to meet

the requirements under those membership rules and were or are entitled to be included on the Band List.

b) the term Inuit refers to Indigenous peoples in Canada who are registered with an Inuit land claim organization or meet the membership requirements to be so registered; and

c) the term "Métis" means Indigenous peoples in Canada who

   i. have membership in, or meet the membership requirements of, one of the following Métis organizations:

      a. Manitoba Métis Federation;

      b. Métis Nation Saskatchewan;

      c. Métis Nation British Columbia;

      d. Métis Nation of Ontario; or

      e. Métis Nation of Alberta;

   ii. is a Métis participant or eligible to be a Métis participant of the Sahtu Dene and Métis Comprehensive Land Claim Agreement; or

   iii. is a settlement member or eligible to be a settlement member within the meaning of the *Métis Settlements Act*, RSA 2000, c-M-14.

10. For clarity, the federal government department currently responsible for Indigenous child and family services is Indigenous Services Canada. This department has at various times during the class period been called:

    a) the Department of Indian and Northern Development ("**DIAND**"); and

    b) Aboriginal and Northern Development Canada ("**AANDC**").

THE PARTIES

Cheyenne Pama Mukos Stonechild

11. In response to paragraph 16 of the Claim, Canada admits that:

    a) Cheyenne Pama Mukos Stonechild is an "Indian" within the meaning of section 91(24) of the *Constitution Act, 1867* and a member of an Aboriginal people within the meaning of section 35 of the *Constitution Act, 1982*. Ms.

Stonechild was registered as a "Status Indian" in April 2016; and

b) The Muscowpetung Saulteaux Band is part of the Cree Nation.

Steven Hicks

12. In response to paragraph 18 of the Claim, Canada has no knowledge of whether Mr. Hick appears on the Métis Nation British Columbia registry, or any other Métis Nation registry. The Métis Nation British Columbia maintains a central registry and is responsible for issuing Métis identification in the province of British Columbia.

Lori-Lynn David

13. In response to paragraph 20 of the Claim, Canada admits that:
    a) Lori-Lynn David is an Indian within the meaning of section 91(24) of the *Constitution Act, 1867*, and a member of an "Aboriginal people" within the meaning of subsection 35(2) of the *Constitution Act, 1982*. Ms. David was registered in August 2007.
    b) Ms. David is a member of the Sagkeeng First Nation, previously known as Fort Alexander First Nation.

Canada

14. In response to paragraph 24, Canada acknowledges that His Majesty the King in Right of Canada is the proper defendant for proceedings against the Crown pursuant to subsection 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the Schedule to section 48 of the *Federal Courts Act*, RSC 1985, c F-7.

CONSTITUTIONAL STRUCTURE

15. In response to paragraphs 22-24, 29-32, 38, 136-138 of the Claim, Canada acknowledges that the Parliament of Canada has legislative jurisdiction under section 91(24) of the *Constitution Act, 1867* with respect to "Indians, and Lands reserved for the Indians". Canada acknowledges that this legislative

jurisdiction includes the jurisdiction to legislate with respect to class members, and in particular First Nations, Métis and Inuit persons. Constitutional jurisdiction, however, creates no obligation to legislate, nor does s. 91 (24) mandate particular policy decisions.

16. In response to paragraph 5, provinces have legislative jurisdiction under section 92 of the *Constitution Act, 1867* with respect to the welfare, protection and care of all children in the province, including Indigenous children residing off-reserve. Provincial and territorial child and family services statutes are laws of general application. At all material times, the provinces, and not Canada, exercised this jurisdiction through provincial entities acting pursuant to their respective child and family services legislation. As acknowledged by the Plaintiffs at paragraph 40 of the Claim, pursuant to s. 88 of the *Indian Act*, at all material times laws of general application in force in the province were applicable to the Plaintiffs and class members.

17. While provinces exercise constitutional powers in their own right, the territories exercise delegated powers under the authority of the Parliament of Canada. Federal statutes have established a legislative assembly and executive council for each territory and province-like powers are increasingly being transferred or "devolved" to territorial governments by Canada. This process, known as "devolution", provides greater local decision-making and accountability. Each territory in Canada has passed legislation with respect to child and family services.

18. In response to the Plaintiffs' assertions throughout the Claim, and in particular, at paragraphs 29-30, 51-55, Canada does not have a positive duty to legislate at all, or for any particular purpose. Similarly, where there is concurrent legislative jurisdiction, regardless of whether the provinces and territories exercise their own legislative authority, Canada has no obligation to intervene.

19. In response to paragraph 146, 156(m), 178 and the particulars provided in the Plaintiffs' Response to Demand for Particulars dated October 27, 2023, Canada does not have or maintain a supervisory or oversight role in the administration, management and delivery of child and family services to Indigenous children in Canada.

THE DEVELOPMENT OF CHILD AND FAMILY SERVICES LEGISLATION AND POLICY IN CANADA

20. In Canada, each province and territory is responsible for, and has its own legislation that governs the delivery of child and family services to those requiring them within that province or territory.

21. This Claim is brought with respect to children ordinarily resident off-reserve. Canada was not – during the class period or otherwise – in control of, or responsible for, the delivery of child and family services programs for children residing off-reserve.

22. Canada denies any knowledge of, or involvement in, apprehensions by provincial or territorial authorities when they occur.

23. Canada does not provide any direct funding for the provision of off-reserve child and family services, except in the Yukon.

24. Canada does provide general funding to provinces and other territories for use in the delivery of social programs, including, among other programs, child and family services. The allocation of such funding is at the discretion of the provinces and territories. More specifically:
    a) commencing in 1966, pursuant to Part I of the Canada Assistance Plan, Canada began cost sharing by paying 50% of funding to provinces and territories for eligible social programs. These eligible social programs included child welfare services;

b) subsequently in 1977, the Established Programs Financing was introduced and replaced cost-sharing programs for health and post-secondary education; and,

c) in 1995, the Canada Assistance Plan and the Established Programs Financing were combined into a block transfer arrangement called the Canada Health and Social Transfer, which was split into the Canada Health Transfer and the Canada Social Transfer in 2004. The allocation of these funds between programs is entirely in the discretion of the provinces and territories. Canada does not have knowledge of the provinces' and territories' contribution, or of the methods used by the provinces and territories to determine how the funding received through the transfer payments is allocated.

Canada's Approach to On-Reserve Child and Family Services

25. In 1989, the DIAND developed its program to provide funding for welfare costs for First Nations people on-reserve, and in 1991 introduced the First Nations Child and Family Services ("**FNCFS**") program.

26. Under this program, provincially delegated FNCFS agencies operate and manage child and family services on-reserve and in the Yukon. Provinces and the Yukon mandate and regulate FNCFS agencies according to provincial or territorial legislation and standards. Canada provides funding to FNCFS agencies, which are established, managed, and controlled by First Nations and delegated by provincial or Yukon authorities to provide prevention and protection services. These delegated agencies provide child and family services in accordance with the legislation and standards of the province or territory of residence. Canada also provides funding to the provinces to deliver on-reserve prevention and protection services to First Nations that are not served by any FNCFS agency.

Provincial and Territorial Approaches to Child and Family Services

27. Throughout the class period, every province and territory had their own legislative scheme specifically setting out the obligations of provincial and territorial authorities and agencies with respect to Indigenous children in care and generally requiring the protection of the child's cultural identity.

28. The particular requirements vary in each jurisdiction, and over the term of the class period, but include legislation that applied in the circumstances of all three representative plaintiffs, who were located in British Columbia during the relevant period:

    a) Between 1992 and 1996, the British Columbia *Family Child Service Act* required that a band be given notice of a proceeding where a child was believed by the Superintendent of Family and Child Service, as designated by the provincial statute, to be registered or eligible to be registered as an Indian (as that term is used in the *Indian Act*).
    b) In 1996, the British Columbia *Child, Family and Community Service Act* expanded the obligation to give notice to bands and "aboriginal communities", but also introduced an express obligation for child welfare authorities to consider the preservation of an "aboriginal child['s]" cultural identity. Furthermore, priority had to be given to placement with the "aboriginal child's" extended family, within the child's aboriginal cultural community, or with another aboriginal family.
    c) From 1996 to 2019, the *Child, Family and Community Service Act* was amended a number of times. Amendments made in 2019 specified that as a guiding principle, Indigenous children are entitled to learn about and practice their Indigenous traditions, customs and languages, and belong to their Indigenous communities.

Canada's 2019 Legislation Setting Minimum Standards

29. With respect to paragraphs 63-74 of the Claim, Canada agrees that on June 21,

2019, *An Act respecting First Nations, Inuit and Métis children, youth and families*, received Royal assent, and came into force on January 1, 2020, the day after the end of the class period. It sets out principles applicable, on a national level, to the provision of child and family services in relation to Indigenous children, whether they primarily reside on- or off-reserve.

30. *An Act respecting First Nations, Inuit and Métis children, youth and families* also recognizes the inherent right of First Nations peoples to exercise self-government, which includes jurisdiction in relation to child and family services.

31. As set out in section 4 of *An Act respecting First Nations, Inuit and Métis children, youth and families*, the statute was designed to leave space for the operation of provincial and territorial laws of general application, provided they do not conflict with or are not inconsistent with the provisions of the Act.

INDIGENOUS CHILD AND FAMILY PROCEEDINGS

Sixties Scoop

32. With respect to paragraphs 117-120 of the Claim, between 1951 and 1991 (prior to the class period), a significant number of First Nation and Inuit children (many of whom resided off-reserve) were taken into care and placed with non-Indigenous parents where they were not raised in accordance with their cultural traditions nor taught their traditional languages (the "Sixties Scoop"). Various class proceedings were commenced against Canada in provincial superior courts and the Federal Court in connection with the Sixties Scoop, including *Riddle v. HMQ* (T-2212-16), *White v. AGC* (T-294-17), and *Charlie v. HMQ* (T-421-17). Those claims alleged that First Nation and Inuit children who were victims of the Sixties Scoop lost their cultural identity and were deprived of federal monetary benefits, among other harms.

33. On May 11, 2018, a settlement was approved by the Federal Court for various Sixties Scoop class proceedings, including *Riddle, White* and *Charlie* ("**Sixties Scoop Settlement Agreement**"). Eligible class members included people who were registered "Indians" (as defined in the *Indian Act*) and Inuit as well as people eligible to be registered under the *Indian Act*, and 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.

34. With respect to paragraph 119 of the Claim, Canada admits that actions were subsequently commenced on behalf of Non-Status Indians and Métis persons who were also victims of the Sixties Scoop. A certified class action is proceeding as *Varley v. AGC* (T-2166-18) (referred to as *Day* in the Claim).

35. With respect to paragraph 120 of the Claim, eligible class members of the Sixties Scoop Settlement Agreement have been compensated for loss of Aboriginal identity.

The CHRT Inquiry and Moushoom Action

36. With respect to paragraphs 121-131 of the Claim, Canada acknowledges the complaint brought by the First Nations Child and Family Caring Society of Canada to the Canadian Human Rights Tribunal (the "**CHRT**"), but denies the implications of the decision as set out by the Plaintiffs.

37. The CHRT held an inquiry into a complaint referred to it by the Canadian Human Rights Commission. As set out by the Plaintiffs at paragraph 121, that Complaint was with respect to child and family services to First Nations on-reserve and in the Yukon.

38. In *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada* (representing the Minister of Indigenous and Northern Affairs Canada), 2016 CHRT 2 (the "**CHRT Merits Decision**"), the CHRT

made the following findings with respect to the funding of and administration of FNCFS Programs:

a) that the FNCFS Program and the Directive 20-1 funding formula (the "**Directive**") only applied to First Nations people living on-reserve and in the Yukon, and it only applied to First Nations people as a result of their race/ethnic origin;
b) the Directive resulted in an inadequate funding of the operation costs and prevention costs of FNCFS Programs; and
c) that the Directive and the Enhanced Prevention Funding Approach (the "**EPFA**") perpetuated incentives to remove children from their on-reserve communities.

39. In *First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada* (representing the Minister of Indigenous and Northern Affairs Canada), 2019 CHRT 39 (the "**CHRT Compensation Decision**"), ordered compensation for those individuals it found Canada had discriminated against in the CHRT Merits Decision, including as set out above and with respect to complaints associated with the application of Jordan's Principle.

40. Three certified class actions related directly to the decisions described above were brought against Canada (*Xavier Moushoom et al. v. the Attorney General of Canada*, T-402-19; *Assembly Of First Nations et al. v. His Majesty the King*, T-141-20; and *Assembly of First Nations et al. v. Attorney General of Canada*, T-1120-21 (collectively, the "**Moushoom Class Actions**"). The Moushoom Class Actions sought compensation for First Nations individuals on the basis that Canada:

a) knowingly underfunded child and family living on-reserve and in the Yukon;
b) failed to comply with Jordan's Principle; and
c) failed to provide First Nations children with essential services available to non-First Nation children, or which would have been required to ensure

substantive equality under the *Canadian Charter of Rights and Freedoms* (**"*Charter*"**).

41. The Moushoom Class Actions alleged discrimination, negligence and breach of fiduciary duty, and included certified classes dating back to 1991. In July 2023, the CHRT issued a decision which indicated that a proposed settlement in the Moushoom Class Actions satisfied the orders in the CHRT's Compensation Decision and related orders. On October 24, 2023, the Federal Court approved the settlement in the Moushoom Class Actions.

DUTIES OF CANADA

Response to General Duties Alleged

42. With respect to paragraphs 16-21,83-84, 94-99, 108-112 and 115 of the Claim, Canada denies that where provincial or territorial child and family services apprehend a child Canada has control over the placement of that child.

43. With respect to paragraph 146 of the Claim, Canada denies the existence of any mechanism during the class period – legislative or otherwise – that would allow it to maintain a supervisory or oversight role in the administration, management and delivery of child and family services to children in Canada, on- or off-reserve.

44. In response to paragraphs 3, 6, 17, 19, 21, 48, 84, 99, 112, 156(d-e), and 178 (d-e) and specifically the Plaintiffs' assertions with respect to Canada's duty to provide information and documentation to Primary Class Members and to the individuals in whose care they were placed, throughout the class period Canada maintained publicly accessible resources, including websites, manuals and pamphlets, that provided information on federal benefits and programs to which class members may have been entitled. The disclosure of any personal information by Canada is constrained by the *Privacy Act*.

Canada's Constitutional Obligations and the Honour of the Crown

45. Canada denies the existence of any statutory duties owed to the Plaintiffs or class members in the circumstances described in the Claim. Canada did not have responsibility over the child and family services at issue, nor could it exercise any control over the decisions and actions of the provincial or territorial governments. To the extent that the Plaintiffs may assert that any funding agreements between the provinces and territories and Canada resulted in such control or liability, Canada denies that there is any basis for this in fact or law in the circumstances of this case.

46. In response to paragraphs 132-146, Canada recognizes that the honour of the Crown is always at stake in all its interactions with Indigenous peoples. However, as recognized by the Plaintiffs in paragraph 140, the honour of the Crown finds its application in concrete practices. The honour of the Crown is not a stand-alone cause of action. Rather, it speaks to how obligations that attract it must be fulfilled. What specifically constitutes honourable conduct will vary with the circumstances of each case. In the circumstances of this case, there were no underlying specific federal executive or legislative actions to which the honour of the Crown could attach. Canada therefore denies that it breached the honour of the Crown or failed to comply with any legal or constitutional obligations, as stated in the Claim.

47. While Canada admits Parliament's legislative jurisdiction under s. 91(24) of the *Constitution Act, 1867*, this jurisdiction does not create a positive duty to legislate. To the extent the Plaintiffs base their claim on discretionary authority to legislate, rather than specific duties, no legal liability can arise from the exercise or non-exercise of such authority in the circumstances of this case.

48. Canada also denies the breach of any legal rule or obligation, and asserts that even if there were, no such breach would be sufficient to ground a claim in the circumstances of this case.

NO LIABILITY ON THE PART OF CANADA

No Liability Under the *Charter*

49. Canada recognizes that individual rights are guaranteed by sections 7 and 15 of the *Charter*. Canada denies, however, that it breached the Plaintiffs' or any class members' *Charter* rights as asserted, or at all.

50. In response to paragraphs 159 to 179 of the Claim, Canada denies that the Plaintiffs have established Canada's conduct and actions violates section 15 or section 7 of the *Charter*. At all material times, the provinces and territories, and not Canada, exercised jurisdiction through entities acting under its child and family services legislation, and with respect to the provision of health and essential services. The provinces have legislative jurisdiction under section 92 of the *Constitution Act, 1867* with respect to the welfare, protection, and care of all children in the province, including Indigenous children. Provincial child and family services statutes are laws of general application.

51. With respect to paragraphs 159 to 167 and 178 of the Claim, Canada denies that any of its policies drew distinctions or produced a discriminatory effect, infringing in any way on the Plaintiffs or class members' section 15 (1) *Charter* rights.

52. In response to paragraphs 168 to 178, Canada denies that it deprived the Plaintiffs or any member of the classes of their right to life, liberty or security of the person. Section 7 does not create a positive right to benefits.

53. In the alternative, if any action or non-action of Canada deprived Plaintiffs and class members the right to life, liberty or security of the person, then the deprivation accorded with the principles of fundamental justice.

54. In the alternative, if Canada has infringed any of the *Charter* rights of the Plaintiffs or of any other member of the classes, which Canada denies, any infringement was justifiable under s. 1 of the *Charter* as reasonably proportionate in a free and democratic society.

No Negligence

55. Canada pleads and relies on s. 3(b)(i) of the *Crown Liability and Proceedings Act*, RSC 1985 c C-50, as amended. Under this provision, the Crown in right of Canada is only vicariously liable in negligence. The Crown will only be liable in negligence where a federal Crown servant was negligent.

56. To the extent that harm is alleged to have arisen from the formulation and implementation of policy, these are core policy decisions for which Canada is immune from tort liability. As the claim against Canada is predicated directly on policy decisions with respect to funding, and in particular the decision to not directly fund or direct the provision of specific services for the class, a claim in negligence is not available to the Plaintiffs.

57. In the alternative and in any event, Canada denies that it owed a duty of care in the specific circumstances of this case with respect to the Plaintiffs and the classes. In response to paragraph 136, while Canada acknowledges the legislative jurisdiction grounded in s. 91(24) of the *Constitution Act, 1867*, and the specific duties established in the *Indian Act* with respect to Indigenous people as defined at paragraph 9 of the Statement of Defence, this does not in itself create a duty of care. The Plaintiffs have not provided facts or particulars which would support such a duty, and none exist.

58. Further, considering the provinces' and territories' exercise of jurisdiction and control relating to the provision of child and family services for children living off reserve, Canada denies sufficient proximity with the classes to create a duty of care.

59. In the alternative, if Canada did owe the Plaintiffs and class members any duty of care, which is denied, Canada did not breach any such duty, nor did Canada's actions cause any of the damage alleged.

United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and Other International Instruments

60. In response to paragraph 50 of the Claim, Canada supports the UN Declaration and has committed to its implementation in Canada as part of its commitments to reconciliation, and to the renewal of nation-to-nation and government-to-government and Inuit-Crown relationships.

61. Canada recognizes that international instruments for which Canada has expressed support, like the UN Declaration, may be used as a contextual aid to interpret domestic law, including the Constitution of Canada. However, the UN Declaration does not create a stand-alone cause of action in Canadian courts.

62. On June 21, 2021, Parliament adopted the *United Nations Declaration on the Rights of Indigenous Peoples Act (*the "***UN Declaration Act***"). That Act provides a framework for implementation of the UN Declaration at the federal level by requiring Canada to take all measures necessary to ensure that its laws are consistent with the UN Declaration, and that an action plan be prepared and implemented to achieve the objectives of the UN Declaration.

63. Canada's obligations must be carried out in consultation and cooperation with Indigenous peoples in Canada. In essence, it provides a framework for furthering the implementation of the UN Declaration in Canada and a process

for discussions between the Crown and Indigenous peoples on measures to contribute to the implementation of the Declaration over time. As part of implementation of the UN Declaration Act, Canada has committed through its Action Plan, released in June 2023, to continuing the implementation of *An Act respecting First Nations, Inuit and Métis children, youth and families* with the aim of reducing the number of Indigenous children in care, and ensure that they remain connected to their families, communities and culture.

64. Canada acknowledges that it has ratified the other international instruments referred to in paragraph 50 of the Claim. As with the UN Declaration, none of these instruments creates a stand-alone cause of action in Canadian law but can inform the interpretation of domestic law.

Damages and Restitution

65. Canada acknowledges that the overrepresentation of Indigenous children in provincial care is a national tragedy. Canada has taken several measures to address this tragedy, including providing compensation for claims where Canada's acts or omissions contributed significantly to the harms experienced. However, to the extent the Plaintiffs or class suffered damages, losses or injuries as set out in this Claim, these were not caused by any acts or omissions of Canada, and Canada is not liable for the damages, losses, or injuries.

66. In the alternative, to the extent Canada is liable for any portion of the Plaintiffs or class member's damages, losses or injuries, damages should be apportioned according to its several liability, reflecting its obligations with respect to the funding and administration of child and family services.

67. In the circumstances, an assessment of aggregate damages is not appropriate given the highly individual experiences of the Plaintiffs and class members. The circumstances of each individual apprehension and placement into care are highly individualized and depend on a variety of factors and considerations,

including the reason for apprehension, family status of the child, geographic location, and applicable legislative schemes.

68. Canada denies the claim for section 24(1) *Charter* damages, and states that the circumstances, if proven, would not give rise to liability for special, punitive, or exemplary damages.

69. In response to paragraphs 181 to 185, Canada denies that it has been enriched as is stated in the Claim. Canada denies that there is a basis for equitable relief for unjust enrichment in this regard. Canada does not owe the Plaintiffs for damages or loss as a result of any alleged unjust enrichment.

70. In the alternative, if Canada was enriched, which is denied, there was a juristic reason for withholding the funds.

Limitations and Laches

71. The Plaintiffs' and class members' claims are out of time and statue-barred pursuant to the *Limitation Act*, R.S.B.C. 1996. C. 266, as amended, and all other provincial limitations statutes as applicable. Canada also relies upon the equitable doctrines of laches and acquiescence and upon the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Crown Liability Act*, S.C. 1952-53, c.30.

Conclusion

72. For these reasons, the Claim should be dismissed.

Authorities

73. The authorities Canada relies on include:
    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, s 91(24);

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

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

e) *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

f) *Federal Courts Act*, RSC 1985, c F-7;

g) *Federal Courts Rules*, SOR/98-106;

h) *Indian Act*, RSC 1985, c. I-5 and its predecessor statutes;

i) *Limitation Act*, SBC 2012, c 13, and all other provincial limitations statutes, as applicable.

j) *Privacy Act*, RSC 1985, c. P-21;

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

l) All provincial and territorial legislation related to child and family services throughout the class period, the totality of which is in excess of 500 statutory instruments.

DATED at Ottawa, Ontario, this 12th day of February, 2024.

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