



In the Supreme Court of British Columbia

Between

Skogamhallait also known as Sharon Russell

Plaintiff

and

The Attorney General of Canada,

Defendant

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

Skogamhallait also known as Sharon Russell
27 Seymour Avenue
South Hazelton, British Columbia

The Attorney General of Canada
Deputy Minister of Justice and Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (a) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (a) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (a) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (c) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Parties and Overview

1. This action concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-Aboriginal foster or adoptive homes. The Plaintiff alleges that the Defendant, Her Majesty in right of Canada (“Canada”), delegated Indian child welfare services to Her Majesty the Queen in right of British Columbia (“B.C. Child Welfare”) and, in so doing, caused ongoing harm to Indian children in care by not taking steps to prevent them from losing their Aboriginal identity and the opportunity to exercise their Aboriginal and treaty rights.

2. The Plaintiff Skogamhallait, also known as Sharon Russell, resides in South Hazelton, British Columbia. Ms. Russell is an Indian as defined by the *Indian Act*, R.S.C. 1985, c. I-5.

3. Ms. Russell was born to her parents, Sta Hloxs, also known as Cora Rodgers, and Pat Rodgers on May 18, 1957 in Vancouver, British Columbia. She is a member of the Gitksan Nation and of the Sta Hloxs Wilp (House) of the Skogamlaxha (Fireweed) Clan.

4. Ms. Russell is a descendant of the Gitksan people. She is a member of the Gitsegukla Indian Band and the Gitksan First Nation.

5. The Plaintiff and class members are Aboriginals within the meaning of the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982* (U.K.), 1982. c. 11.

6. The Gitksan people from whom Ms. Russell has descended have exercised laws, customs and traditions integral to the distinctive society of the Gitksan people prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Gitksan people have sustained their people, communities and distinctive culture by exercising Gitksan laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

7. The Plaintiff brings this action on her own behalf, and on behalf of a proposed class of similarly situated residents of British Columbia, and elsewhere in Canada, to be further defined in the Plaintiff's application for class certification. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

8. Canada is represented by the Attorney General of Canada.

Delegation of Aboriginal Child Welfare

9. Beginning in or about 1962, Canada entered into an arrangement with B.C. Child Welfare whereby Canada delegated a variety of Indian child welfare services to B.C. Child Welfare (the "Delegation Agreement"). The arrangement was that B.C. Child Welfare would provide a variety of child welfare services to Indian communities and Canada would reimburse B.C. Child Welfare on the basis of a daily charge for family services and maintenance and supervision of each Indian child in care. The Delegation Agreement meant that authorities other than Canada became directly responsible for the delivery of child welfare services to Indian children and communities by B.C. Child Welfare in British Columbia. As a result, Indian children were apprehended and removed from their Aboriginal family and community and were placed in the care of non-Indian and non-Aboriginal foster or adoptive homes where they were systematically denied the opportunity to preserve their Aboriginal identity and exercise their Aboriginal rights and their treaty rights.

10. One purpose of the residential school system for Aboriginal children was the complete integration and assimilation of Aboriginal Children into mainstream Canadian society and the

obliteration of their traditional language, culture and religion. As Canada began the transition away from residential schools, the delegation of Indian child welfare services to B.C. Child Welfare, including through the Delegation Agreement, continued the pursuit of Canada's goal of complete integration and assimilation of Aboriginal Children into mainstream Canadian society and the obliteration of their traditional language, culture and religion.

11. At all relevant times Canada was responsible for:

- (a) the administration of the *Indian Act* and its predecessor statutes as well as any other statutes relating to Indians and all Regulations promulgated under these Acts and their predecessors;
- (b) the promotion of the health, safety and well being of Indians in British Columbia;
- (c) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;
- (e) the financing of Indian child welfare services in British Columbia including the incentivised payment to B.C. Child Welfare for family services and maintenance and supervision of each Indian child in care;
- (f) preserving and not interfering with the Aboriginal rights of Indian children in care, including the right to:
 - i. benefit from Aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;
 - ii. retain and practice their culture, religion, language and traditions; and,
 - iii. fully learn their culture, religion, language and traditions from their families and communities;

- (g) complying with the treaties outlined at paragraphs 34 and 35 and for preserving and not interfering with treaty rights of Indian children in care; and,
- (h) preserving the estates of reserve resident Indians, including carrying out the terms of wills of deceased reserve resident Indians and administering the property of reserve resident Indians who die intestate.

12. Canada knew, or ought to have known, that by delegating Indian child welfare services to B.C. Child Welfare, including through the Delegation Agreement, B.C. Child Welfare would and did apprehend and remove Indian children from their Aboriginal family and community and place them in the care of non-Indian and non-Aboriginal foster or adoptive homes where they were systematically denied the opportunity to preserve their Aboriginal identity and exercise their Aboriginal rights and their treaty rights.

13. Canada has constitutional obligations and owes fiduciary and common law duties to act in the best interests of Indian children who were particularly vulnerable. Indian children and their families were and are entitled to a special duty of care, good faith, honesty and loyalty from Canada. Canada breached these duties by, among other things:

- (a) failing to take reasonable steps to prevent the Plaintiff and class members from being apprehended and removed from their Aboriginal family and community and placed in the care of non-Aboriginal foster and adoptive parents;
- (b) supporting or acquiescing in the apprehension and removal of the Plaintiff and class members from their Aboriginal family and community and their placement in the care of non-Aboriginal foster and adoptive parents;
- (c) supporting or acquiescing in the theft from the Plaintiff and class members of their communities, religion, culture, support and Aboriginal identity;
- (d) failing to advise the Plaintiff and class members of their status as Indians;
- (e) supporting or acquiescing in denying the Plaintiff and class members a reasonable opportunity to exercise their rights as Indians, including Aboriginal rights and treaty rights;

(f) failing to take reasonable steps to prevent the Plaintiff and class members from losing their Aboriginal identity as a result of the Delegation Agreement and the delegation of Indian child welfare services to B.C. Child Welfare;

(g) failing to:

- i. adequately, properly and effectively supervise or coordinate with B.C. Child Welfare;
- ii. implement adequate, proper and effective guidelines for B.C. Child Welfare;
- iii. implement adequate, proper and effective reporting mechanisms for B.C. Child Welfare;

to ensure that no harm would befall the Plaintiff and class members while in the care of B.C. Child Welfare and non-Aboriginal foster and adoptive parents;

(h) failing to ameliorate the harmful effects of the Delegation Agreement and the delegation of Indian child welfare services to B.C. Child Welfare; and,

(i) failing to carry out the terms of wills of deceased reserve resident Indians and to administer the property of reserve resident Indians who died intestate by, among other things:

- i. failing to take reasonable steps to notify class members of their entitlement to unclaimed estates; and
- ii. taking in and using the proceeds of those unclaimed estates as if they belonged to Canada.

14. The harm caused to Indian children by the Delegation Agreement and Canada's continued delegation of Indian child welfare services to B.C. Child Welfare came to an effective end on January 29, 1996 with the coming into force of the *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46.

The Representative Plaintiff

15. When Ms. Russell was 7 years old she was taken from her Gitksan family and community by B.C. Child Welfare and was sent to live with a foster family in Richmond, British Columbia. The Richmond foster family was not Aboriginal.

16. While in foster care in Richmond, Ms. Russell was denied any reasonable opportunity to maintain contact with her Gitksan family and community. Ms. Russell was also denied any reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage and culture of her Gitksan family and community.

17. Ms. Russell was returned to the care of her parents, Ksi Maawx, also known as Cora Rodgers, and Pat Rodgers, after approximately 6 months. .

18. When Ms. Russell was 9 years old she was again taken from her Gitksan family and community by B.C. Child Welfare and sent to live with a foster family in New Westminister, British Columbia. The New Westminister foster family was not Aboriginal.

19. Initially while in foster care in Richmond, Ms. Russell was denied any reasonable opportunity to maintain contact with her Gitksan family and community. When Ms. Russell was 13 years old, her foster mother suggested that Ms. Russell re-connect with her Gitksan family. Ms. Russell then began to periodically travel to Gitsegukla to visit with her family. Up until that point, Ms. Russell was denied any reasonable opportunity to maintain any connection with the traditions, language, customs, religion, heritage, and culture of her Gitksan family and community.

20. While in foster care, Ms. Russell was denied any reasonable opportunity to exercise her Aboriginal rights as a Gitksan.

21. When Ms. Russell was 15 years old, she visited her Gitksan family and community in Gitsegukla. She then refused to return to her non-Aboriginal foster family in New Westminister and, instead, remained with her Gitksan family and community.

22. During the time she was in care of B.C. Child Welfare, Ms. Russell was unable to use the Gitksan language or to practice her Gitksan religion and culture and consequently lost facility

and familiarity with her Gitksan language, religion and culture. In addition, she was denied the ability fulfill Gitksan cultural duties including, but not limited to, learning and practicing:

- (a) Gitksan cultural values that were taught in the Liliget (feast hall);
- (b) the Gitksan language;
- (c) traditional Gitksan parenting skills;
- (d) Gitksan skills for preparing traditional foods; and,
- (e) Gitksan spiritual beliefs.

23. Ms. Russell entered adulthood with a significantly impaired knowledge and experience of what it meant to be Gitksan. After her return home to Gitsegukla, Ms. Russell was not immediately or readily accepted in her Gitksan community.

24. After her return home to Gitsegukla, Ms. Russell suffered from an impaired ability to trust other people or to form or sustain intimate relationships. She suffered an impaired ability to participate in normal family life and was alienated from, and denied the love and guidance of, her family and community.

25. In her teens, Ms. Russell struggled with alcohol and drug addictions and made a number of suicide attempts.

26. The Plaintiff and class members are Aboriginal persons who, as children, enjoyed:

- (a) Aboriginal rights, including the right to:
 - i. benefit from Aboriginal laws, customs and traditions in relation to citizenship, adoption, family care, marriage, property and use of resources;
 - ii. retain and practice their culture, religion, language and traditions; and,
 - iii. fully learn their culture, religion, language and traditions from their families and communities; and,
- (b) treaty rights as outlined in paragraphs 37 and 38 below.

27. The Plaintiff was unable to bring an action in respect of her injury, damage or loss as a consequence of her profound concern for the harmful impact that litigation would have on the wellbeing of her family and former foster parents. The Plaintiff's interests and circumstances were so pressing that she could not reasonably bring an action until March 2010.

28. Further, and in the alternative, Canada has constitutional obligations and owes fiduciary and common law duties to act in the best interests of Indian children who were particularly vulnerable as described above in paragraph 13. In breach of those duties, Canada wilfully concealed the material facts relating to the nexus between the Plaintiff's injury, damage or loss and the wrongful conduct of Canada. By failing to inform the Plaintiff of these material facts the Plaintiff was prevented from bringing an action in respect of her injury, damage or loss. Only after March 2010 did the Plaintiff learn of the existence of the duties owed to her by Canada and that the breach of those duties caused her to suffer injury, damage or loss.

The Plaintiffs' Ongoing Loss and Damage

29. Through the fault and negligence of Canada, as set out above, the Plaintiff and class members were and are subjected to ongoing loss or damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiff and class members include:

- (a) loss of opportunity to exercise Aboriginal rights;
- (b) loss of opportunity to exercise treaty rights;
- (c) psychological injury, including depression, anxiety, emotional dysfunction and suicidal ideation;
- (d) addiction, including addiction to alcohol, prescription and non-prescription drugs; and
- (e) loss of opportunity to benefit from unclaimed estates to which they were entitled.

Part 2: RELIEF SOUGHT

30. The Plaintiff claims, on her own behalf, and on behalf of a class of similarly situated persons resident in British Columbia, and elsewhere in Canada, as follows:

- (a) an order certifying this action as a class proceeding and appointing her as representative plaintiff under the *Class Proceedings Act*;

- (b) general damages and special damages;
- (c) exemplary and punitive damages;
- (d) pre-judgment interest;
- (e) costs; and
- (f) such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

31. The Plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, the *Indian Act*, R.S.C. 1952, c. 149, as amended, and the *Indian Estates Regulations*, S.O.R./55-285, as amended.
32. The Plaintiff and class members are Indians as defined by the *Indian Act*, R.S.C. 1985, c. I-5.
33. The Plaintiff and class members' Aboriginal and treaty rights existed and were exercised at all relevant times pursuant to the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982. c. 11.
34. At all material times, Canada owed the Plaintiff and class members a special duty of care, good faith, honesty and loyalty pursuant to Canada's constitutional obligations and Canada's duty to act in the best interests of Indian children who were particularly vulnerable.
35. The Delegation Agreement and the delegation of Indian child welfare services to B.C. Child Welfare constituted an improper and unlawful delegation of Canada's constitutional obligations arising under the *Constitution Act, 1867 (U.K.)*, 30 & 31 Vict., c. 3, s. 91(24) and the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act 1982 (UK)*, 1982. c. 11.
36. The Plaintiff and class members descend from Aboriginal peoples who have exercised their respective laws, customs and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from a time prior to contact with Europeans to the present, the Aboriginal peoples from whom the Plaintiff and class members descend have sustained their people, communities and distinctive culture by exercising their respective laws, customs and

traditions in relation to citizenship, adoption, family care, marriage, property and use of resources.

37. Pursuant to the treaty made between Canada and the ancestors of the Doig River, Halfway River, Prophet River, Sauteau, West Moberly, Fort Nelson, Blueberry River and McLeod Lake First Nations on and after June 21, 1899 (also known as “Treaty 8”) Canada, among other things:

- (a) acknowledged the rights of Indian members of bands made party to the treaty to pursue their usual vocations of hunting, trapping and fishing throughout the tracts surrendered by the treaty; and,
- (b) established treaty annuity payments paid annually to registered Indians who are entitled to treaty annuities through membership to bands made party to the treaty.

38. Pursuant to treaties made between the Hudson’s Bay Company and the ancestors of the Esquimalt, Songhees, Beecher Bay, Sooke, Tsawout, Tsartlip, Pauqhachin, Tseycum, Nanaimo, Kwakiutl (Kwawkelth), Malahat, Nanoose, Nimkish (Nungis), Comox and Gwa’sala-Nakwaxda’xw Bands between 1850 and 1854 (also known as the “Vancouver Island Treaties” or the “Douglas Treaties”) Canada acknowledged, among other things, band members’ rights to hunt over the bands’ unoccupied lands, and to carry on fisheries as formerly.

39. Some class members are members of the bands described in paragraphs 37 and 38 and, as such, were and are entitled to exercise the treaty rights described.

Punitive Damages

40. Canada had specific and complete knowledge of the breach of Aboriginal and treaty rights and the widespread psychological, emotional and cultural abuses of the Plaintiff and class members which were occurring as a result of the Delegation Agreement and the delegation of Indian child welfare services to B.C. Child Welfare. Despite this knowledge, Canada continued to delegate Indian child welfare services to B.C. Child Welfare and permit the perpetration of grievous harm to the Plaintiff and class members.

41. In addition, Canada deliberately planned the eradication of the language, religion and culture of the Plaintiff and class members. Canada's actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

Plaintiff's address for service:
Klein Lyons
Suite 1100, 1333 West Broadway
Vancouver, BC V6H 4C1
CANADA

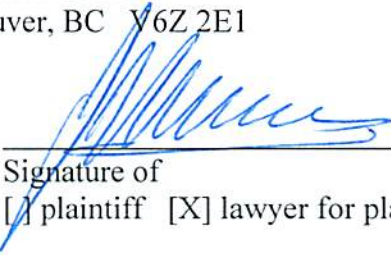
Fax number address for service (if any): 604-874-7180

E-mail address for service (if any):

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: May 30, 2011



Signature of
 plaintiff lawyer for plaintiffs
for
David A. Klein

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This claim concerns the practice of removing large numbers of Indian children from their families and communities and placing them in the care of non-Aboriginal foster or adoptive homes. The Plaintiff alleges that the Defendant, Her Majesty in right of Canada, delegated Indian child welfare services to Her Majesty in right of British Columbia and, in so doing, caused ongoing harm to Indian children in care by not taking steps to prevent them from losing their Aboriginal identity and the opportunity to exercise their Aboriginal and treaty rights..

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Class Proceedings Act, R.S.B.C. 1996, c. 50.

Constitution Act, 1982, s. 35, being Schedule B to the *Canada Act 1982* (UK), 1982. c. 11.

Indian Act, R.S.C. 1952, c. 149.

Indian Act, R.S.C. 1985, c. I-5.

Indian Estates Regulations, S.O.R./55-285.

Limitation Act, R.S.B.C. 1996, c. 266.