Court File No. VLC-S-S-186736

Vancouver Registry

In the Supreme Court of British Columbia

Between

Deborah Azak and Wayne Louie

Plaintiffs

and

The Attorney General of Canada

Defendant

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

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs 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

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

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

JUDGEMENT 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,

(b) 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,
(c) 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
(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview

1. This action concerns the creation, funding, operation and maintenance by the Defendant, the Attorney General of Canada ("Canada"), of Indian Hospitals and other sanatoria for Indigenous peoples, and Canada's placement of Indigenous peoples, often children, in these hospitals and sanatoria where they suffered egregious abuse and other harm.

2. Indian Hospitals and sanatoria were operational throughout Canada between approximately 1936 and 1981, and were operational in British Columbia between approximately 1936 and 1971. They were purportedly established to treat and care for Indigenous peoples with certain diseases such as tuberculosis.

3. In reality, the existence of Indian hospitals and other sanatoria advanced Canada's policy of culturally assimilating Indigenous persons into mainstream Canadian society. Indigenous persons were removed from their families and communities by Canada and placed in Indian Hospitals and other sanatoria where they were isolated and forcibly confined.

4. Indigenous patients were separated by large geographical distances from their families and communities and were unreasonably denied access to their language, culture, traditions and aboriginal and treaty rights and benefits.

5. Indian Hospitals and sanatoria were unsanitary and substandard facilities staffed with inadequately trained personnel, including "doctors" who, in many cases, were not actually licensed or certified to practice medicine in Canada.

6. Staff members at Indian Hospitals and sanatoria were often predators who inflicted physical, sexual, verbal and psychological abuse on patients.

7. Canada's actions in creating, operating, funding and maintaining Indian Hospitals and sanatoria created an environment where abuse and other harms were tolerated and, in some cases, encouraged. Canada's conduct and the conduct of its servants was negligent and in breach of the fiduciary duty Canada owed to Indigenous persons. Canada's conduct and the conduct of its servants caused egregious and lasting harm to the Plaintiffs and other Class Members.

The Parties

8. The Plaintiff, Deborah Azak, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and a member of the Nisga'a First Nation. Ms. Azak was taken from her family and community and put in Miller Bay Indian Hospital when she was four years old. She remained in the hospital for 11 months. She returned to Miller Bay Hospital again when she was nine years old. Ms. Azak currently resides in Gitwinksihlkw, British Columbia.

9. The Plaintiff, Wayne Louie, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5. Mr. Louie is a descendant of the Ktunaxa Nation and a member of the Lower Kootney Indian Band. Mr. Louie was put into the Coqualeetza Indian Hospital in 1959 when he was three years old. He remained in the hospital for more than three years. Mr. Louie currently resides in Creston, British Columbia.

10. The Plaintiffs, Deborah Azak and Wayne Louie, bring this action on their own behalf and on behalf of a class of similarly situated Indigenous persons who were admitted into one or more Indian Hospital or sanatoria operated or funded by Canada ("Class Members", to be further defined in the Plaintiffs' application for class certification). The Class is composed of Indians, as defined by the *Indian Act*, RSC 1985, c I-5, Inuit and Metis persons.

11. The Plaintiffs also bring this action on behalf of each person who, by reason of his or her relationship to a Class Member, is entitled by legislation to make a claim as a result of injury to the Class Member (collectively "Secondary Class Members"). This legislation includes but is not limited to the *Family Law Act*, RSO 1990, c F-3; the *Tort-Feasors Act*, RSA 2000, c T-5; *The*

Tortfeasors and Contributory Negligence Act, CCSM, c T-90; the *Tortfeasors Act,* RS 1989, c 471; the *Tortfeasors Act,* RSNB 2011, c 231; the *Civil Code of Quebec*; comparable legislation in other provinces and territories; and the common law.

12. The Defendant Canada is represented in this action by the Attorney General of Canada pursuant to section 23 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50. At all material times, Canada was responsible for the promotion of the health, safety and wellbeing of Indians in Canada and for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. Canada has exclusive jurisdiction in respect of Indigenous persons pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3(UK) and the common law.

13. Canada's liability arises from its negligence and breach of fiduciary duty, and from the conduct, negligence and malfeasance of individuals who were at all material times Canada's employees, agents and servants. Canada had authority and control over these employees, agents and servants and is vicariously liable, pursuant to section 3 of the *Crown Liability and Proceedings Act*, for their torts and for the damage caused by their faults.

Indian Hospitals

14. Indian Hospitals and federally funded sanatoria were initially established to treat Indigenous persons who had contracted tuberculosis.

15. Between 1936 and 1945, Indian Hospitals fell under the jurisdiction of the Indian Affairs Branch of Canada's Ministry of Mines and Resources.

16. In the mid-1930s, Canada transformed the Coqualeetza Industrial Institute in Sardis, British Columbia into a tuberculosis sanatorium. It was the primary sanatorium in western Canada for over a decade.

17. Canada later transformed Coqualeetza into a general hospital for the treatment of Indigenous peoples. Coqualeetza Indian Hospital officially opened in 1941.

18. In 1945, jurisdiction over Indian Hospitals was transferred to Indian Health Services under Canada's Department of National Health and Welfare. Indian Health Services' policy was to create uniform treatment facilities for Indigenous peoples across the country. It was not their policy or objective to create a health services system for Indigenous persons that resembled the health services system for other Canadians. For example, while antibiotics to treat tuberculosis became available in the 1940s, thereby making home therapy available for most Canadians, Indigenous patients suspected of having tuberculosis were still confined to Indian Hospitals and other sanatoria to further Canada's policy of cultural assimilation and because Indigenous patients were not considered to be capable of managing home therapy.

19. In approximately 1946, Nanaimo Indian Hospital opened as did Miller Bay Indian Hospital in Prince Rupert.

20. Canada established, operated, funded and maintained a total of 29 Indian Hospitals in Canada between 1936 and 1981. And it established, operated, maintained and/or funded numerous other sanatoria.

21. After the creation of Indian Hospitals and federally funded sanatoria, Indigenous patients were often refused admission into provincially run and funded sanatoria where other Canadians were admitted. The 1962 Royal Commission on Government Organization found that the quality of care provided at Indian Hospitals was not comparable to the care provided at community hospitals in the same area.

22. In 1953, the *Indian Health Regulations* under the *Indian Act*, SC 1951, c 29, administered by the office of the Indian Superintendent, set out common policies to be adopted by Indian Hospitals across the country. The *Regulations* also required Indigenous individuals to report to and be admitted into Indian Hospitals if they – or the Indian Superintendent – had reason to believe that they had contracted an infectious disease. There was no comparable legislative provision placing any such onus on non-Indigenous persons.

23. If an Indigenous person or the person's family refused to consent to be admitted into an Indian Hospital, the person could be apprehended by police force or otherwise coerced into

admittance. The person faced possible imprisonment and fines under the *Regulations* if he or she did not comply.

24. Once admitted, Indigenous patients were forcibly detained and were required to remain in the hospital or sanatorium until they were discharged. If they tried to leave, they could be arrested and returned to the hospital or sanatorium.

25. The facilities used as Indian Hospitals and federally funded sanatoria were overcrowded and under-funded. They were often old, structurally unsound buildings that lacked the plumbing and other infrastructure required to function as sanitary medical facilities.

26. The 1962 Royal Commission on Government Organization described Indian hospitals as old, ill-equipped, and inadequately staffed. The Commission also found that much of the medical staff working at Indian Hospitals was under-qualified, under-trained and not licensed to practice medicine in Canada.

Patient Experiences

27. Indian Hospitals and federally funded sanatoria allowed Canada to further segregate the Indigenous population, separate Indigenous persons from their family, cultural community and language, and forcibly confine Indigenous patients in facilities where abuse and mistreatment flourished. Class Members at these facilities often lost their cultural identity and suffered psychologically, emotionally, spiritually and physically.

Loss of Culture

28. Class Members, particularly those with tuberculosis, often found themselves forcibly detained at Indian Hospitals and federally funded sanatoria for extended stays – sometimes for years. Much of this time was spent in isolation, removed not only from their families, communities and culture, but also from other patients.

29. Given the geographical distance of Indian Hospitals and sanatoria from many Indigenous communities, the families of Class Members were often unable to visit. And when families did

undertake the expense and lengthy travel to visit, they were often denied the ability to see and interact with their loved ones.

30. Class Members were often assigned a number when they arrived at Indian Hospitals and federally funded sanatoria and, when children, didn't know their Indigenous names.

31. Hospital workers did not speak Indigenous languages and did not teach Indigenous cultural traditions and practices to Class Members.

32. Canada's conduct in the creation, maintenance, funding and operation of Indian Hospitals and sanatoria furthered Canada's policy of forcibly assimilating Indigenous peoples, and it systematically eradicated the culture, society, language, customs, traditions, practices and spirituality of Class Members. As a consequence, many Class Members, particularly children, had their culture, language, rights and traditions stolen from them.

33. Class Members were often deprived of their aboriginal and treaty rights and monetary benefits to which they were entitled under the *Indian Act* and related legislation and policies.

34. Indian Hospitals and federally funded sanatoria forced Class Members to accept western medicine over traditional and culturally specific forms of healing and heath care.

35. The denial of familial and cultural connections caused significant emotional and financial harm for the Plaintiffs and other Class Members.

Physical, Sexual and Psychological Abuse

36. Class Members at Indian Hospitals and federally funded sanatoria were subjected to egregious physical, sexual, emotional and psychological abuse perpetrated by staff members. This abuse was systemic and existed within each Indian Hospital and sanatorium.

37. Through its policies, acts, omissions and inadequately trained and vetted staff, Canada created an environment where abuse of Class Members was commonplace, condoned and, arguably, encouraged.

38. Class Members were often physically tied or otherwise restrained to their beds, without medical justification and without their consent. Some Class Members were put in body casts to prevent movement, again without medical justification and without their consent. Class Members were often forced to lay in the beds for weeks, months and sometimes years, movement allowed only to bathe or to use a bedpan. Class Members were often not be allowed to sit up in bed, leave their rooms, go outside, interact with other patients, or even take care of their basic hygienic needs.

39. Class Members – often children – were repeated fondled, raped and sodomized by Indian Hospital and sanatoria staff, sometimes while forcibly restrained to their beds or otherwise incapacitated.

40. Class Members – often children – were frequently required to perform fellatio on staff members.

41. Class Members were frequently beaten and often had medical and dental procedures performed on them, without being anesthetized and without sedatives or painkillers.

42. Sterilization of Class Members was commonplace in Indian Hospitals and federally funded sanatoria, without the Class Members' consent and often without their knowledge.

43. Class Members were often subjected to medical experimentation, without the Class Members' consent and often without their knowledge.

44. Vaccines and other drugs designed to prevent tuberculosis and other diseases were often tested on Class Members at Indian Hospitals and federally funded sanatoria, without their consent and often without their knowledge, before they were approved by Canada for general use in Canadian society. The negative side effects of these vaccines and drugs, endured by Class Members, were often extreme.

45. Many Class Members were malnourished as they were not fed nutritional meals and, often, were denied food and even water. Sometimes Class Members were forced to eat their own vomit.

46. Many Class Members died while admitted to Indian Hospitals and federally funded sanatoria. Others left with ongoing health issues due to unnecessary operations, medical experiments and neglect.

47. Class Members, including children, often had no one to report the abuse and other harm to. When abuse and other injustices were reported, Canada and its servants took no meaningful action to safeguard Class Members against further abuse and harm. And the perpetrators were not sufficiently punished.

The Experiences of the Representative Plaintiffs at Indian Hospitals

Deborah Azak

48. Ms. Azak was born on December 31, 1956 in Prince Rupert, British Columbia.

49. When Ms. Azak was four years old, she was taken from her family and Nisga'a community by Canada and forcibly confined at Miller Bay Hospital. Ms. Azak was not visibly sick when she was taken and did not have symptoms of tuberculosis or any other disease. Her mother did not understand why she had been taken.

50. During her confinement at Miller Bay Hospital, Ms. Azak was often kept in isolation. She was unreasonably denied contact with her family and others. Ms. Azak recalls seeing her sister, who had come to visit, through the hospital window - but being forbidden to speak with her.

51. During her confinement at Miller Bay Hospital, Ms. Azak had no reasonable opportunity to maintain any connection with the language, traditions, religion and heritage of her Nisga'a culture. None of the staff at the hospital spoke her language.

52. Ms. Azak endured constant emotional and psychological abuse throughout her confinement at Miller Bay Hospital.

53. The isolation she experienced as a young child – when one is most dependent and reliant on the love and support of one's family and community – left Ms. Azak feeling terrified and alone. She wasn't allowed to go anywhere or do anything or be in contact with anyone. She did not understand why she was being confined at the hospital and did not, at that young age, have the ability to consent to the various treatments and tests that she was subjected to.

54. Being isolated from her family at such a young age permanently impacted Ms. Azak's ability to bond with her family and forever created a distance between her and her family.

55. This isolation also impacted Ms. Azak's relationship with her Nisga'a community. When Ms. Azak returned to her Nisga'a community, she did not readily fit in. She had forgotten much of her language and had forgotten much of the Nisga'a history and culture that she had been taught prior to being taken to Miller Bay Hospital.

56. When Ms. Azak was nine years old, she returned to Miller Bay Hospital for dental work, which Ms. Azak's mother had consented to because she assumed it was in Ms. Azak's best interests. It was not. Ms. Azak's dental work was performed without any freezing and without pain killers; it constituted torture and extreme physical abuse. When Ms. Azak protested and asked the dentist to stop, given the horrific pain she was enduring, she was physically assaulted.

57. Ms. Azak is still terrified of dental work. She avoided dental treatment for most of her life until, eventually, her dental health was so poor that it was impacting her overall health. Ms. Azak disclosed the abuse to her current dentist who now prescribes Ms. Azak anti-anxiety medication for even routine procedures and cleanings.

58. Ms. Azak is, to this day, emotionally traumatized by the physical abuse and psychological trauma that she endured while confined at Miller Bay Hospital. She suffers from extreme anxiety.

59. Her experiences have greatly impacted her ability to socialize and form bonds with others. Ms. Azak's sense of security and self-esteem has been deeply impacted by her

experiences at Miller Bay Hospital, and she continues to be haunted by memories of her time there.

Wayne Louie

60. Wayne Louie was born on September 30, 1955 in Creston, British Columbia.

61. When Mr. Louie was three years old, he contracted tuberculosis. Mr. Louie was apprehended by Canada and taken to Coqualeetza Indian Hospital where he was forcibly confined until he was almost seven years old, isolated from his family and his Ktunaxa community.

62. While forcibly confined at Coqualeetza Indian Hospital, Mr. Louie endured constant emotional and psychological abuse. He felt alone, scared and unloved. He felt like a child prisoner.

63. Despite Mr. Louie's young age, the staff at Coqualeetza did not provide him with any comfort, love, reassurance or security. The staff was, in fact, cruel.

64. While forcibly confined at Coqualeetza Indian Hospital, Mr. Louie endured questionable medical procedures and tests, always without consent. And he was kept in overcrowded, unsanitary conditions. He never had privacy, even when undressing and bathing.

65. For over three years, Mr. Louie was given no reasonable opportunity to maintain contact with his parents, siblings and extended family. During part of his confinement at Coqualeetza, Mr. Louie's parents were also patients. Even then, Mr. Louis saw his parents only briefly on a couple of occasions.

66. While confined at Coqualeetza Indian Hospital, Mr. Louie was segregated from his Ktunaxa community, the Lower Kootney Indian Band. During his formative years, Mr. Louis was unable to practice his Ktunaxa language and was unreasonably denied the ability to learn about and practice his Ktunaxa culture, customs, heritage, traditions, religion and teachings. In

fact the staff at Coqualeetza Indian Hospital discouraged any expression of his Indigenous culture.

67. By the time he left Coqualeetza Indian Hospital and returned home, Mr. Louie had lost much of his Ktunaxa language and no longer understood his Ktunaxa culture and traditions.

68. This has caused Mr. Louis lasting pain and loneliness.

69. When Mr. Louie eventually returned home to his family and the Lower Kootney Indian Band, he was disheartened to once again feel isolated. He felt displaced. The emotional and physical separation from his family and community at such a young age had permanently impacted his ability to fit in with his Ktunaxa family and community.

70. To this day, Mr. Louie feels displaced and isolated. He struggled for decades with alcoholism.

71. Mr. Louie continues to struggle psychologically, socially and romantically because of his experiences at Coqualeetza Indian Hospital. Since Mr. Louie's life was void of nurturing and love during his formative years, he never learned to give and receive love. It is difficult for Mr. Louie to form bonds with people and to maintain relationships. His experience at Coqualeetza Indian Hospital has left him with permanent emotional scars.

Discoverability

72. Ms. Azak's severe anxiety, which is triggered by memories of her time at Miller Bay Hospital, prevented her from bringing an action against Canada in respect of her injury, damage or loss caused by her confinement at Miller Bay Hospital. Ms. Azak has always felt silenced and has never felt safe or capable of sharing her Indian Hospital experiences. Ms. Azak's interests and circumstances were so pressing that she could not reasonably bring an action.

73. In May of 2018, Ms. Azak attended the Special Assembly of the Nisga'a Nation where she was, for the first time, supported and encouraged to discuss her experience at Miller Bay

Hospital. This support had the effect of sufficiently stabilizing her anxiety so she could consider commencing this litigation.

74. As a consequence of Mr. Louie's alcoholism, trauma and grief, his psychological and physical state were such that he could not reasonably contemplate commencing litigation related to his experience at Coqualeetza Indian Hospital.

75. Recently, Mr. Louie became sober. He began to connect with other Indigenous peoples who shared similar experiences; this has given him new found strength and confidence. It was not until the spring of 2018 that Mr. Louie was reasonably able of commencing this litigation.

Duties of the Defendant

<u>Generally</u>

76. At all material times, Canada owed a duty of care to Ms. Azak, Mr. Louie and other Class Members to ensure that Indian Hospitals and federally funded sanatoria were properly equipped, maintained, operated and staffed and to ensure that Indian Hospitals were free of physical, sexual, psychological and emotional abuse. Canada also had a duty to protect and preserve the culture, language, heritage, religion, rights, spirituality, traditions and identity of Indigenous patients in its care, many of whom were children.

77. Indigenous people are entitled to a special duty of care, good faith, honesty and loyalty from Canada.

78. At all material times, Canada was responsible for:

a. the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes as well as any other statutes relating to Indigenous peoples and all regulations promulgated under these Acts and their predecessors, including but not limited to the *Indian Health Regulations*;

b. the promotion of health, safety and well-being of Indigenous peoples in British Columbia and elsewhere in Canada;

c. the management, operation and administration of the Department of Mines and Resources and the Department of National Health and Welfare and their predecessor and subsequent Ministries and Departments;

d. the management, operation and administration of Indian Health Services, including all policy and operational decisions made by Indian Health Services;

e. the financing of Indian Hospitals and sanatoria in British Columbia and elsewhere in Canada;

f. the establishment, creation, operation, management, maintenance and administration of Indian Hospitals;

g. the hiring and supervision of staff at Indian Hospitals and federally funded sanatoria, all of whom were Canada's servants and agents all of whom were within Canada's direction and control;

h. the hiring and supervision of employees, officers and management at Indian Health Services, all of whom were Canada's servants and agents and all of whom were within Canada's direction and control;

i. preserving and not interfering with the aboriginal rights of Class Members in care, including the right to:

  i. benefit from Indigenous laws, customs and traditions in relation to health care;

  ii. retain and practice their culture, religion, language, customs and traditions;

  iii. fully learn their culture, religion, language, customs and traditions from their families and communities; and

  iv. obtain monetary benefits under the *Indian Act*, RSC 1985 c I-5 and its predecessor statutes and related legislation and policies;

j. preserving and not interfering with the treaty rights of Class Members.

Fiduciary Duty

79. Canada stands in a fiduciary relationship with Canada's Indigenous peoples. Canada's relationship with the Plaintiffs and other Class Members was, at all material times, one of dependence, trust and reliance; Canada had undertaken to act in the best interests of the Plaintiffs and other Class Members.

80. At all material times, Canada had an ongoing obligation to consult with Indigenous peoples on matters relevant to Indigenous peoples' interests and health.

81. At all material times, the Plaintiffs and other Class Members were particularly vulnerable and in need of Canada's care and protection, particularly since the Plaintiffs and many Class Members were children who had been taken away from their families, homes and communities. With respect to these Class Members, Canada assumed *loco parentis* responsibility for their care, supervision and treatment while they were confined in Indian Hospitals and federally funded sanatoria.

82. The health and welfare of the Plaintiffs and other Class Members and their Indigenous identity and culture were legal or substantial practical interests of the Plaintiffs and other Class Members. Canada was required to take steps to safeguard, monitor, preserve, secure and protect these interests.

83. At all materials times, Canada assumed such a degree of discretionary control over the protection and preservation of the health, welfare, identity and culture of the Plaintiffs and other Class Members that it amounted to a direct administration of those interests. The protection and preservation of the health, welfare, identity and culture of the Plaintiffs and other Class Members were within the power, discretion or control of Canada and were subject to the unilateral exercise of Canada's power, discretion or control.

84. Canada's fiduciary duty owed to the Plaintiffs and other Class Members was, at all material times, a non-delegable duty.

Common Law Duty

85. There is a long-standing historical and constitutional relationship between Canada and Indigenous peoples that has evolved into a unique and important relationship premised on trust.

86. At all material times, Canada owed a common law duty of care to the Plaintiffs and other Class Members, all of whom were patients at Indian Hospitals and federally funded sanatoria and

under Canada's reasonable care and control. The Plaintiffs and other Class Members were forcibly confined at these institutions and were therefore wards of Canada. A relationship of proximity existed as between Canada and Class Members.

87. Class Members reasonably expected to receive adequate care and treatment at Indian Hospitals and federally funded sanatoria. Class Members reasonably expected that they would not be harmed - physically, sexually, psychologically, culturally and emotionally – while in Canada's care.

88. Given the relationship of proximity that existed between Canada and Class Members, Canada knew or ought to have known that a failure on its part to take reasonable care in establishing, operating, maintaining, staffing and managing Indian Hospitals and federally funded sanatoria would cause significant harm to Class Members.

89. Canada was required to exercise a reasonable standard of care in establishing, operating, maintaining, staffing and managing Indian Hospitals and federally funded sanatoria and, specifically, was required to exercise a similar standard of care to that used by Canada in the establishment, operation, maintenance, staffing and management of non-Indian Hospitals and medical facilities.

90. The standard of care required by Canada in the establishment, operation, maintenance, staffing and management of Indian Hospitals and federally funded sanatoria included but was not limited to:

a. taking proper and reasonable steps to prevent injury to the Plaintiffs and other Class Members' health, safety and well-being;
b. ensuring that Indian Hospitals and federally funded sanatoria were environments free from racism and sexual, physical, emotional and psychological abuse;
c. ensuring that adequate and appropriate medical treatment and care was provided to the Plaintiffs and other Class Members;
d. ensuring that no unnecessary medical treatments, tests, surgeries or experimentation was performed on the Plaintiffs and other Class Members;

e. obtaining the requisite and necessary consents to perform medical treatments, tests and surgeries;

f. ensuring that the language, culture, identity, religion, heritage, customs and rights of the Plaintiffs and other Class Members were protected and preserved;

g. ensuring that adequate services and resources were provided to the Plaintiffs and other Class Members to enable them to exercise, practice and maintain their language, culture, identity, religion, spirituality, heritage, customs and rights;

h. preventing the cultural assimilation of the Plaintiffs and other Class Members;

i. consulting with Indian Bands and other Indigenous stake holders about the provision of medical services to and the medical treatment of Class Members;

j. preserving and protecting the Plaintiffs' and other Class Members' monetary benefits under the *Indian Act*, RSC 1985 c I-5 and its predecessor statutes and related legislation and policies;

k. ensuring that Indian Hospitals and federally funded sanatoria were sound, secure physical structures that had the facilities, electricity and plumbing required for a sanitary medical environment;

l. ensuring that Indian Hospitals and federally funded sanatoria were sanitary facilities that were properly cleaned and maintained, including the proper sterilization of medical and surgical equipment and surgical spaces;

m. ensuring that the doctors and dentists were licensed to practice in Canada and were sufficiently trained and educated;

n. ensuring that staff - all of whom were Canada's servants and agents and all of whom were within Canada's direction and control - was appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;

o. ensuring that staff was sufficiently supervised;

p. using reasonable care in the management, operation and administration of Indian Health Services;

q. establishing, implementing and enforcing appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from sexual, physical, emotional and psychological abuse;

r. establishing, implementing and enforcing appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from unnecessary isolation, restraint and confinement;
s. ensuring that sufficient systems were in place for reporting incidents of abuse, inappropriate restraint and isolation, medical experimentation and other harms;
t. investigating and addressing complaints and allegations of abuse, inappropriate restraint and isolation, medical experimentation and other harms in a timely manner; and
u. firing or otherwise disciplining staff members who abused or otherwise harmed Class Members.

Breach of Canada's Duties

91. With respect to the Plaintiffs and other Class Members who were confined at Indian Hospitals and federally funded sanatoria, Canada and its servants breached its duties by, among other things:

a. failing to take proper and reasonable steps to prevent injury to the Plaintiffs and other Class Members' health, safety and well-being;
b. failing to prevent the systemic sexual, physical, emotional and psychological abuse of the Plaintiffs and other Class Members;
c. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from sexual, physical, emotional and psychological abuse;
d. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would be free from unnecessary isolation, restraint and confinement;
e. having occupied a position analogous to that of a parent, failing to establish and maintain systems to protect the Plaintiffs and other Class Members as a good parent should;
f. failing to ensure that adequate, effective and appropriate medical treatment and care was provided to the Plaintiffs and other Class Members;

g. failing to ensure that no unnecessary medical treatments, tests, surgeries or experimentation was performed on the Plaintiffs and other Class Members;

h. failing to obtain the requisite and necessary consents to perform medical treatments, tests and surgeries;

i. failing to take reasonable steps to ensure that the language, culture, identity, religion, heritage, spirituality, customs and rights of the Plaintiffs and other Class Members were protected and preserved, given the separation of the Plaintiffs and other Class Members from their families and Indigenous communities;

j. failing to ensure that adequate services and resources were provided to the Plaintiffs and other Class Members to enable them to exercise, practice and maintain their language, culture, identity, religion, heritage, customs and rights;

k. actively promoting a policy of cultural assimilation of the Plaintiffs and other Class Members;

l. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would have access to visitors, particularly family and members of the Class Member's Indigenous community;

m. failing to consult with Indian Bands and other Indigenous stake holders about the provision of medical services to and treatment of Class Members;

n. failing to preserve and protect the Plaintiffs' and other Class Members' monetary benefits under the *Indian Act*, RSC 1985 c I-5 and its predecessor statutes and related legislation and policies;

o. failing to reassess and amend regulations, policies, guidelines and procedures to address systemic failures in the operation and maintenance of Indian Hospitals and federally funded sanatoria;

p. failing to ensure that Indian Hospitals and federally funded sanatoria were constructed in a sound and secure manner with the facilities, electricity and plumbing required for a sanitary medical environment;

q. failing to ensure that Indian Hospitals and federally funded sanatoria were sanitary institutions that were not overcrowded and that were properly cleaned and

maintained, including the proper sterilization of medical and surgical equipment and surgical spaces;

r. failing to ensure that the doctors and dentists were licensed to practice in Canada and were sufficiently trained and educated;

s. failing to ensure that staff was appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;

t. failing to ensure that staff was sufficiently supervised;

u. failing to use reasonable care in the management, operation and administration of Indian Health Services;

v. failing to ensure that sufficient systems were in place for reporting incidents of abuse, inappropriate restraint and isolation, medical experimentation and other harms;

w. failing to investigate and address complaints and allegations of abuse, inappropriate restraint and isolation, medical experimentation and other harms in a timely manner;

x. failing to fire or otherwise discipline staff members who abused or otherwise harmed Class Members; and

y. failing to ameliorate the harmful effects to the Plaintiffs and other Class Members of extended stays away from their families and Indigenous communities.

92. The acts and omissions of Canada were systemic and were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiffs and other Class Members.

93. The conduct of Canada and its servants directed toward the Plaintiffs and other Class Members was repetitive and extreme. Canada and its servants knew or ought to have known that their conduct was of a kind reasonably capable of terrifying a normal person.

94. At all materials times, Canada's servants and agents were within Canada's direction and control. Pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and its predecessor legislation, Canada is vicariously liable for the negligent acts and omissions of its employees, servants and agents.

Ongoing Loss and Damage

95. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its servants, as set out above, the Plaintiffs and Class Members sustained serious physical and psychological injuries, including:

a. physical, sexual, emotional, spiritual and psychological abuse and suffering;
b. post-traumatic stress disorder;
c. loss of self-esteem and diminished self-worth;
d. repeated and ongoing nightmares;
e. depression;
f. anxiety;
g. difficulty in coping with emotional stress;
h. suicidal ideation;
i. attempted suicide;
j. feelings of guilt, responsibility, and self-blame;
k. nervous shock;
l. mental anguish;
m. insomnia;
n. forced cultural assimilation;
o. loss of Indigenous culture and identity;
p. loss of Indigenous customs, language, religion, spirituality and traditions;
q. loss of opportunity to exercise their aboriginal rights;
r. loss of opportunity to exercise their treaty rights;
s. deprivation of one's ability to pass one's culture and identity on to one's children;
t. isolation from families, communities and reserve land;
u. loss of opportunity to benefit from the financial and other benefits to which they were entitled under the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes and related legislation and policies;
v. social dysfunctionality, failed relationships and alienation from family, spouses and children;
w. loss of ability to obtain proper education or employment;

x. loss of income, loss of competitive advantage in the employment field, loss of income earning potential and loss of income earning capacity;
y. loss of ability to parent;
z. irritable bowel syndrome;
aa. failed relationships;
bb. addiction, including addiction to alcohol, prescription and non-prescription drugs;
cc. pain and suffering;
dd. loss of consortium;
ee. loss of enjoyment of life;
ff. loss of access to Indigenous healing and health care; and
gg. the cost of required for psychological, psychiatric and medical treatment, including but not limited to the cost of counselling, rehabilitation, therapy, medication and hospitalization.

96. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its servants, as set out above, Secondary Class Members have also sustained and will continue to sustain injury, loss and damages, including but not limited to:

a. actual expenses reasonably incurred for the benefit of Class Members;
b. travel expenses incurred while visiting Class Members at Indian Hospitals and federally funded sanatoria and travel expenses otherwise incurred while supporting Class Members during medical procedures and/or counselling and/or recovery; and
c. loss of income and/or the value of services provided by Secondary Class Members to Class Members, where such services, including nursing and housekeeping, have been provided.

97. Secondary Class Members seek compensation for the costs set out in paragraph 96 as well as compensation for loss of support, guidance, consortium, care and companionship that they might reasonably have expected to receive from Class Members.

Punitive Damages

98. A punitive damage award in this case is necessary to express society's condemnation of Canada's conduct and to achieve the goals of both general and specific deterrence.

99. The conduct of Canada was systemic, deliberate, lasted for decades and represented a marked departure from ordinary standards of decent behaviour. Canada had knowledge of the systemic abuse and egregious treatment, conditions and lack of care at Indian Hospitals and federally funded sanatoria. Despite this knowledge, Canada did nothing to remedy the situation.

100. Canada consented, or acquiesced, to a standard of care that was less than the health services being provided to non-Indigenous patients, including improper, negligent and experimental medical treatment and experimentation.

101. Canada's acts and omissions showed a callous disregard for the rights and well-being of the Plaintiffs and other Class Members.

102. Compensatory damages are insufficient in this case. The conduct of Canada merits punishment and warrants a claim for punitive damages.

Part 2: RELIEF SOUGHT

103. The Plaintiffs claim, on their own behalf, and on behalf of other Class Members:

a. an order certifying this action as a class proceeding and appointing Ms. Azak and Mr. Louie as representative plaintiffs under the *Class Proceedings Act*, RSBC 1996, c 50;
b. general damages plus damages equal to the costs of administering the plan of distribution;
c. special damages in an amount to be determined, including but not limited to past and future medical expenses and out-of-pocket expenses;
d. exemplary and punitive damages;
e. punitive damages pursuant to the *Charter of Human Rights and Freedoms*, CQLR c C-12 and the *Civil Code of Quebec*, CQLR c C-1991;

f. disgorgement by Canada of its profits;
g. recovery of health care costs incurred by the Ministry of Health and its predecessor Ministries and Departments and other 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;
h. damages pursuant to the *Family Law Act*, RSO 1990 c F-3 and comparable legislation in other provinces and territories;
i. costs; and
j. such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Generally

104. The Plaintiffs plead and rely on the common law, equity and various statues, including but not limited to: the *Class Proceedings Act*, RSBC 1996, c 50; the *Indian Act*, RSC 1951, c 149, as amended; the *Indian Act*, RSC 1985, c I-5 and predecessor legislation; the *Indian Health Regulations*; the *Constitution Act, 1867*, 30 & 31 Vict, c 3(UK); the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11; the *Crown Liability Act*, SC 1952-53, c 30 and subsequent legislation; the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and predecessor legislation; the *Interpretation Act*, RSC 1985, c I-21; the *Civil Code of Quebec*, CQLR, c CCQ-1991; the *Charter of Human Rights and Freedoms*, CQLR c C-12; the *Limitation Act*, SBC 2012, c 13 and comparable legislation in other provinces and territories; the *Family Law Act*, RSO 1990 c F-3 and comparable legislation in other provinces and territories including but not limited to *The Tortfeasors and Contributory Negligence Act*, CCSM, c T-90, the *Tortfeasors Act*, RS 1989, c 471, the *Tort-Feasors Act*, RSA 2000, c T-5 and the *Tortfeasors Act*, RSNB 2011, c 231.

<u>*Class Members and Indigenous Rights*</u>

105. The Plaintiffs and other Class Members are Indians, as defined by the *Indian Act*, RSC 1985, c I-5, Inuit and Metis peoples.

106. At all material times, Canada was responsible for the promotion of the health, safety and wellbeing of Indigenous persons in Canada and for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. Canada has exclusive jurisdiction in respect of Indigenous persons pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3(UK) and the common law.

107. The Plaintiffs and other Class Members are members of Indigenous communities 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 Indigenous peoples from whom the Plaintiffs and other 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 use, the use of resources and medical care.

108. The Plaintiffs' and other Class Members' aboriginal and treaty rights existed and were exercised at all relevant times pursuant to section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

109. Pursuant to the treaty made between Canada and the ancestors of the Doig River, Halfway River, Prophet River, Saulteau, 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 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.

110. 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 bands' unoccupied lands and to carry on fisheries.

111. At all material times, the Plaintiffs and other Class Members were entitled to the protection and preservation of their aboriginal and treaty rights and their ability to exercise those rights.

Duties owed by Canada

112. As set out in detail in this claim, Canada owed fiduciary and common law duties to the Plaintiffs and other Class Members. Canada and its servants breached those duties. These breaches occurred on a systemic level. These breaches caused harm and injury to the Plaintiffs and other Class Members.

113. Canada is directly and vicariously liable for its faults and negligence and for the faults and negligence committed by its servants in the course of their duties, pursuant to section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and equivalent provisions in any predecessor legislation.

114. Canada is liable for the harm caused to the Plaintiffs and other Class Members. This harm was reasonably forseeable by Canada and its servants.

115. As set out in detail in this claim, Canada's conduct was egregious and an award of punitive damages is warranted in the circumstances.

Disgorgement

116. The Plaintiffs and other Class Members were deprived of financial benefits to which they were entitled pursuant to the *Indian Act*, RSC 1985, c I-5 and its predecessor legislation and policies. Canada wrongly retained these monies and the value of these benefits.

117. The Plaintiffs and other Class Members received differential treatment as compared to other Indigenous persons in Canada who were not apprehended and confined in Indian Hospitals and federally funded sanatoria.

118. Canada should be required to disgorge the profits and other financial benefits that it inequitably acquired by virtue of its wrongful acts and omissions.

Quebec Class Members

119. Where the acts and omissions of Canada and its servants took place in Quebec, they constituted fault giving rise to extra-contractual liability pursuant to the *Civil Code of Quebec,* CQLR, c CCQ-1991 and pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Interpretation Act*, RSC 1985, c I-21. The conduct of Canada and its servants also constituted unlawful and intentional interference with the rights of Quebec Class Members within the meaning of the *Charter of Human Rights and Freedoms*, CQLR c C-12.

120. Canada is liable to pay damages, including punitive damages, to the Quebec Class Members pursuant to the *Civil Code of Quebec,* CQLR, c CCQ-1991.

Family Class

121. As set out in detail in this claim, as a consequence of Canada's breach of its duties, Secondary Class Members have and will continue to suffer loss and damage. Such loss and damage was reasonably foreseeable by Canada.

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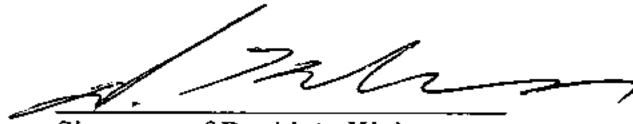
Place of trial: Vancouver, British Columbia

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



Date: June 13, 2018

Signature of David A. Klein
Lawyer for the Plaintiffs

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

(c) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This claim concerns the practice of forcibly confining Indigenous patients at federally operated Indian Hospitals and federally funded sanatoria in British Columbia and elsewhere in Canada. The Plaintiffs allege that the Defendant, the Attorney General of Canada, caused ongoing harm to Indigenous patients by failing to ensure that Indian Hospitals and federally funded sanatoria were properly equipped, maintained, operated and staffed and by failing to ensure these institutions were free of physical, sexual, psychological and emotional abuse. Canada also caused ongoing harm to Indigenous patients by failing to protect and preserve the culture, language, heritage, religion, rights, traditions and identity of Indigenous patients in its care, many of whom were children.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident
[ ] medical malpractice
[X] 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
[X] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

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

Part 4: LEGISLATION:

Charter of Human Rights and Freedoms, CQLR c C-12

Civil Code of Quebec, CQLR, c CCQ-1991

Class Proceedings Act, RSBC 1996, c 50

Constitution Act, 1867, 30 & 31 Vict, c 3(UK)

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

Crown Liability Act, SC 1952-53, c 30

Crown Liability and Proceedings Act, RSC 1985, c C-50

Family Law Act, RSO 1990, c F-3

Indian Act, RSC 1951, c 149

Indian Act, RSC 1985, c I-5

Indian Health Regulations

Interpretation Act, RSC 1985, c I-21

Limitation Act, SBC 2012, c 13

The Tortfeasors and Contributory Negligence Act, CCSM, c T-90

Tortfeasors Act, RS 1989, c 471

Tort-Feasors Act, RSA 2000, c T-5

Tortfeasors Act, RSNB 2011, c 231