

e-document	T-3032-24-ID 20
F I L E D	FEDERAL COURT COUR FÉDÉRALE
	February 28, 2025 28 février 2025
	Priscilla Lam
VAN	6

Court File No. T-3032-24

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

CAROL SMYTHE, REGINALD MUELLER,
DONNA KENNEDY, and TOBY FOREST

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

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

AMENDED STATEMENT OF CLAIM

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

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

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

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

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

Date: _____

Issued by: _____
(Registry Officer)

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street,
Vancouver, British Columbia
V7Y 1B6

TO: Her Majesty the Queen
Office of the Deputy Attorney General of Canada
British Columbia Regional Office
Department of Justice Canada
900 – 840 Howe Street,
Vancouver, British Columbia
V6Z 2S9

Relief Sought

1. The Plaintiffs claim on their behalf and on behalf of a class of similarly situated persons:
 - a. an order certifying this action as a class proceeding and appointing themselves as representative plaintiffs under the *Federal Courts Rules*, SOR/98-106;
 - 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 of financial benefits owed to class members which the Defendant failed to pay;
 - 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. pre-judgment and post-judgment interest;
 - j. costs; and
 - k. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. This action concerns the establishment, implementation, administration and management by the Defendant, His Majesty the King (“Canada”), of various forms of group accommodations, including a group home program (the “Group Homes Program”). ~~The purpose of the Group Homes Program was to take Indigenous children away from their families and communities, transport them to other communities, often far from their families and homes, and then house them in various forms of group accommodation, such as residences, hostels, dormitories and group homes (the~~

“Group Accommodations”). The purpose of these accommodations was to house Indigenous children who had been forcibly removed from their families and communities. While staying at the Group Accommodations, the children attended provincially or territorially run schools.

3. It was Canada’s decision to remove Indigenous children from their families and communities and to send them to distant locations to attend provincially or territorially run schools. Such a decision was consistent with assimilationist policies pursued by Canada for Indigenous families, communities and culture over many decades, including such programs as residential schools, day schools, boarding homes, and the Sixties Scoop.

4. Canada operated some Group Accommodations directly, with its employees and servants staffing the Group Accommodation. For other Group Accommodations, Canada contracted with other organizations to staff the Group Accommodation. Such organizations were agents of Canada and were subject to monitoring and supervision by Canada. In all cases, Canada decided who would be placed in Group Accommodations ~~under the Group Homes Program~~ and arranged those placements.

5. As a consequence of ~~the Group Homes Program~~ Canada’s actions, Indigenous children were separated by large geographical distances from their families and communities and were unreasonably denied access to their language, culture, traditions, customs and aboriginal and treaty rights and benefits.

6. The employees, agents or servants of Canada operating the Group Accommodations were sometimes predators who inflicted physical, sexual, emotional and psychological abuse on the Indigenous children they housed. Canada knew of this abuse and tolerated or acquiesced to it. Canada failed to remove Indigenous children from abusive Group Accommodations in a timely manner or at all.

7. The act of placing Indigenous children in Group Accommodations far away from the supervision and protection of their own families and communities itself created a risk of abuse.

8. At all material times, Canada had a duty to protect and preserve the culture and identity of the Indigenous children. Canada also had a duty to prevent injury to Indigenous children and to ensure their mental and physical health and well-being.

9. Canada's conduct and the conduct of its servants in establishing, implementing, administering and managing the Group Homes Program, the removal and placement of Indigenous children in Group Accommodations and in administering various Group Accommodations caused extreme and ongoing harm to the Plaintiffs and other class members.

10. Class members experienced a loss of their Indigenous culture, language and identity, suffered sexual, physical and psychological abuse and lost the opportunity to exercise their aboriginal and treaty rights. These harms continue to have devastating intergenerational effects on Indigenous families and communities.

10.1 The Plaintiffs' claim, and the claim of each Class Member, is limited to the amount of the Plaintiffs' or other Class Member's damages that would be apportioned to the Defendant in accordance with the relative degree of fault that is attributable to the Defendant. The Plaintiffs' claim is against the Defendant for those damages that are attributable to its proportionate degree of fault, and they do not seek, on their own behalf or on behalf of the Class, any damages that are found to be attributable to the fault or negligence of any other person, or for which the Defendant could claim contribution or indemnity. For greater certainty, without limiting the foregoing, the Plaintiffs do not seek, on their own behalf or on behalf of the Class, any damages for which the Defendant is vicariously liable as a result of harms perpetrated on Class Members in Group Accommodations that were operated by third parties and their agents and employees, whether or not acting within the authority granted to them by the Defendant, for which the Defendant could claim contribution or indemnity.

Parties and Class

Carol Smythe

11. The Plaintiff, Carol Smythe, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and is a member of the Nisga'a First Nation in British Columbia. She currently resides in Kincolith,

British Columbia. ~~Pursuant to the Group Homes Program~~, Canada removed Carol Smythe from her family and Nisga'a community in 1977 when she was 13.

12. Ms. Smythe was placed by Canada in a group home for Indigenous children in Aiyansh, British Columbia so that she could attend a local, provincially run school. She stayed at the group home for years, only returning to her parents and home community for summers and holidays.

13. Canada operated, supervised, staffed, maintained and funded the group home where Ms. Smythe stayed.

14. The group home did not support Indigenous language and culture. Ms. Smythe experienced profound disruption and disconnection from her family and community.

15. Ms. Smythe suffered physical and verbal abuse at the group home. She observed other students at the group home who also suffered physical and sexual abuse. The entire experience was terrifying for her.

Reginald Mueller

16. The Plaintiff, Reginald Mueller, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and is a member of the Tsq̓ésceñ First Nation at the Canim Lake Reserve in British Columbia. He currently resides in Vanderhoof, British Columbia. ~~Pursuant to the Group Homes Program~~, Canada removed Mr. Mueller from his family and Tsq̓ésceñ community in 1969 when he was ten.

17. Mr. Mueller was placed by Canada in a series of hostels for Indigenous children in Prince George, British Columbia so that he could attend school at Prince George College, a provincially run school. He stayed in these hostels and attended Prince George College for eight years, only returning to his parents and home community for summers and holidays.

18. Canada operated, staffed, maintained, paid for, and supervised these hostels in Prince George, British Columbia where Mr. Mueller stayed.

19. These hostels did not support Indigenous language and culture. Mr. Mueller experienced profound disruption and disconnection from his family and community.

Donna Kennedy

20. The Plaintiff, Donna Kennedy, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and is a member of the Garden Hill First Nation. She was born on January 6, 1953. Donna Kennedy currently resides in Winnipeg, Manitoba. Pursuant to the ~~Group Homes Program~~, Canada removed Donna Kennedy from her family and Garden Hill community in 1966 when she was 13.

21. Ms. Kennedy was placed by Canada in Teulon, Manitoba, at the Teulon Residence, which operated as a dormitory for Indigenous children who then attended Teulon Collegiate, a nearby, provincially run high school.

22. The United Church of Canada operated the Teulon Residence, but in 1960, Canada contracted with the United Church of Canada to operate it as a dormitory for Indigenous children. Canada paid for the placement of Indigenous children at the Teulon Residence, it decided whether to place Indigenous children at the Teulon Residence, and it maintained standards at the Teulon Residence. Canada regularly inspected the facility, provided guidance counsellors and medical examinations for the students, and gave money for school supplies and children's clothing.

23. Ms. Kennedy attended the Teulon Residence for four years, from Grade 9 to Grade 12. She went home to Garden Hill in the summers.

24. Teulon Residence did not support Indigenous language and culture. Ms. Kennedy experienced profound disruption and disconnection from her family and community.

Toby Forest

25. The Plaintiff, Toby Forest, is an Indian as defined by the *Indian Act*, RSC 1985, c I-5 and is a member of the Lac La Ronge First Nation in Saskatchewan, where he currently resides. Pursuant to the Group Homes Program, Canada removed Toby Forest from his family and Lac La Ronge community in 1968 when he was seven.

26. Mr. Forest was placed by Canada in Timber Lake, Saskatchewan, at the Timber Bay Children's Home, which operated as a dormitory for Indigenous children who then attended Timber Bay School, a nearby, provincially run school.

27. The Timber Bay Children's Home was owned by the Northern Canada Evangelical Mission from 1952 to 1969 and, after that, by the Brethren in Christ until 1994.

28. Canada contracted with the owners of the Timber Bay Children's Home for the placement of Indigenous children, and it paid the home for the placement of those children. There were regular inspections of the home by a guidance counsellor, which were paid for by Canada and reported to Canada.

29. Mr. Forest went to the Timber Bay Children's Home for six years until he was 13. He would stay there during the school year and then return to his home and family during the summer.

30. Mr. Forest experienced physical abuse at the Timber Bay Children's Home. He tried to escape from the home, and to return to his family 11 times. On his 11th attempt, he made it back to his parents in Sucker River, Saskatchewan. He did not go back to Timber Bay Children's Home after that.

31. Timber Bay Children's Home did not support Indigenous language and culture. Mr. Forest experienced profound disruption and disconnection from his family and community.

The Class Members

32. The Plaintiffs and class members were all apprehended by Canada and placed by Canada in Group Accommodations staffed with non-Indigenous employees, servants and agents of Canada in communities across Canada.

33. The Plaintiffs bring this action on their behalf and on behalf of a proposed class of Indigenous persons in Canada who were taken from their families and Indigenous communities and placed in Group Accommodations by Canada (“Class Members”, to be further defined in the Plaintiffs’ motion for class certification).

34. The Plaintiffs and Class Members are aboriginals within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11. The Plaintiffs and 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.

35. 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 “Family Class Members”, to be further defined in the Plaintiffs’ motion for class certification). 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.

The Defendant

36. At all times, Canada was responsible for administering 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.

37. Canada's liability arises from its negligence and breach of fiduciary duty, as well as from the conduct, negligence, and malfeasance of individuals who were Canada's employees, agents, and servants at all material times. Canada had authority and control over these employees, agents and servants and is vicariously liable for their torts and for the damage caused by their faults, pursuant to section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and its predecessor legislation. As set out in paragraph 10.1, the Plaintiffs do not assert vicarious liability for damages sustained in the Group Accommodations where the Group Accommodation was operated by a third party.

Group Accommodations ~~The Group Home Program~~ for Indian Students

38. In or around the early 1950s, Canada determined that the assimilation of Indigenous children into mainstream Canadian society could be accelerated if Indigenous students were removed from Indigenous communities and put into public provincial schools away from their communities. To facilitate this, Canada implemented a policy — lasting until the 1990s — of removing Indigenous children and placing them in Group Accommodations. ~~Canada created and implemented the Group Home Program to further this policy objective.~~

~~39. The Group Home Program operated throughout Canada and continued until the early 1990s.~~

40. At all relevant times, the ~~program~~ policy was operated, administered, implemented, and maintained by Canada's Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments.

41. Canada also entered into agreements with the provinces and territories pursuant to which the provinces and territories would permit Indigenous children to attend provincial and territorial

public schools, and Canada would provide payments to the provinces and territories to cover the cost of tuition, books and supplies for each Indigenous child in attendance.

42. ~~Pursuant to the Group Home Program,~~ Under the policy, Canada apprehended Indian, Inuit and Métis children, transported them to larger centres and placed them in Group Accommodations to live with strangers – sometimes hundreds of kilometres from their families and Indigenous communities.

43. ~~The various forms of accommodation, group homes, hostels, and dormitories were all part of the Group Home Program. Though varied terminology was used for the placement programs, they were all directed at providing residential accommodation in group settings for Indigenous children to attend provincial or territorial schools far from their homes, families and communities.~~ These ~~group accommodations~~ Group Accommodations were separate in concept from foster homes where legal custody or guardianship of the child had been transferred to a public authority.

44. ~~The Group Homes Program was~~ These claims are distinct from Indian residential schools and Indian Boarding Homes, and the claims resolved in the Indian Residential Schools Settlement Agreement, dated May 8, 2006, and the Indian Boarding Homes Settlement Agreement dated September 29, 2023 are excluded from this action.

Student Experiences

Loss of Culture

45. Canada's conduct in removing Indigenous Children and placing them in Group Accommodations ~~in the creation, administration, maintenance, funding and operation of the Group Home Program~~ furthered Canada's policy of forcibly assimilating Indigenous peoples, and it systematically eradicated the culture, society, language, customs, traditions, practices and spirituality of the Plaintiffs and other Class Members.

46. ~~Pursuant to the Group Home Program,~~ Class Members lived in Group Accommodations for extended stays – sometimes for years – far removed from their families, cultural communities and language.

47. Class Members were expected to assimilate into non-Indigenous culture and were taught to be ashamed of their Indigenous culture and identity.

48. Given the significant change in their environment, Class Members often suffered from culture shock, accompanied by depression and anxiety.

49. Class Members were discouraged or forbidden from maintaining contact with their Indigenous families. Given the geographical distance of the Group Accommodations 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.

50. Class Members were denied any reasonable opportunity to practice and maintain their Indigenous identity, language, culture, rights, customs and traditions. The employees, agents and servants of Canada operating the Group Accommodations did not speak Indigenous languages and did not teach Class Members about their Indigenous cultural traditions and practices.

51. 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.

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

Physical, Sexual and Psychological Abuse

53. ~~The Group Home Program was poorly executed and managed.~~ Canada insufficiently managed Group Accommodations and failed to ensure that Indigenous students in the Group Accommodations were safe and secure. Consequently, Class Members were subjected to egregious physical, sexual, emotional and psychological abuse perpetrated by their employees, agents and servants of Canada. This abuse was systemic and existed within the ~~Group Home Program~~ Group Accommodations at large.

54. Through its policies, acts and omissions, Canada created an environment where abuse of Class Members was commonplace, condoned and, arguably, encouraged.

55. Class Members often had no one to report the abuse and other harm to. When abuse and other injustices were reported to counsellors and other servants of Canada, no meaningful and timely action was taken to safeguard Class Members against further abuse and harm. And the perpetrators were not sufficiently punished.

Duties of the Defendant

Generally

56. In establishing, implementing, administering and managing the policy to remove Indigenous children and place them in the Group Accommodations and in administering and managing certain Group Accommodations, Group Home Program, Canada had a duty to protect and preserve the identity, culture, language, heritage, religion, rights, spirituality and traditions of the Plaintiffs and other Class Members. Canada also had a duty to ensure the safety and well-being of the Plaintiffs and other Class Members and to ensure that the Group Accommodations in which they were placed were free of physical, sexual, psychological and emotional abuse.

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

58. At all relevant 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 Indians and all Regulations promulgated under these Acts and their predecessors;
- b. the promotion of the physical and mental health, safety and well-being of the Plaintiffs and other Class Members;
- c. the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments;

- d. the decisions of, procedures of, regulations promulgated by, and operations and actions taken by the Department of Indian Affairs and Northern Development, its employees, servants, officers and agents and their predecessors;
- e. the hiring and supervision of employees, officers and management at the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments, including the Indian Commissioner and including the counsellors who dealt directly with the Plaintiffs and other Class Members, all of whom were Canada's servants and agents and all of whom were within Canada's direction and control;
- f. the establishment, creation, operation, management, maintenance and administration of the policy to remove and place Indigenous Children in Group Accommodations Group Home Program;
- g. the vetting, financing and supervision of the Group Accommodations, which housed the Plaintiffs and other Class Members;
- h. the staffing of and management of individual Group Accommodations;
- i. the funding of Indigenous education; and
- j. the preservation of the aboriginal and treaty rights of the Plaintiffs and other Class Members, including the right to:
 - i. retain their status as Indians;
 - ii. benefit from Indigenous laws, customs and traditions in relation to education, citizenship, adoption, family care, marriage, property and use of resources;
 - iii. retain and practice their culture, religion, language and traditions;
 - iv. fully learn their culture, religion, language and traditions from their families and communities; and
 - v. obtain monetary benefits under the *Indian Act*, RSC 1985, c I – 5 and its predecessor statutes and related legislation and policies.

Fiduciary Duty

59. 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.

60. Canada is obligated to consult with Indigenous peoples on matters relevant to their interests.

61. At all material times, the Plaintiffs and other Class Members were particularly vulnerable and – being children taken away from their families, homes and Indigenous communities – needed protection. With respect to these Class Members, Canada assumed *loco parentis* responsibility for their care and supervision while they were part of the Group Accommodations~~Home Program~~.

62. 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 safeguard, monitor, preserve, secure and protect these interests.

63. At all material 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.

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

Common Law Duty

65. At all material times, Canada owed a common law duty of care to the Plaintiffs and other Class Members ~~who were participants in the Group Home Program~~ to take steps to prevent them from losing their Indigenous identity and culture and to ensure their physical and mental safety and well-being.

66. Canada had a duty to consult with Indigenous communities regarding the provision of educational programs to Indigenous children. A special relationship – to which the law attached a duty of care – existed between Canada and Indigenous communities. This special relationship, by extension, existed between Canada and Class Members, all of whom were apprehended, pursuant to an educational program, and placed in Group Accommodations.

67. In the alternative, a common law duty of care arose by virtue of the relationship of proximity that existed between Canada and Class Members.

68. 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.

69. At all material times, the Plaintiffs and other Class Members were under Canada's reasonable care and control. The Plaintiffs and other Class Members reasonably expected that they would not be harmed – physically, sexually, psychologically, culturally and emotionally – while at the Group Accommodations participating in Canada's Group Home Program. The Plaintiffs and Class Members were, while living in Group Accommodations, wards of Canada. A relationship of proximity existed between Canada and Class Members.

70. 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, implementing, administering and managing the policy to remove Indigenous children and place them in the Group Accommodations and in administering and managing certain Group Accommodations, Group Home Program would cause significant harm to the Plaintiffs and other Class Members.

71. Canada was required to exercise a reasonable standard of care in establishing, implementing, administering and managing the policy to remove Indigenous children and place them in the Group Accommodations and in administering and managing certain Group

Accommodations, Group Home Program. The standard of care required by Canada 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 Group Accommodations were environments free from racism and sexual, physical, emotional and psychological abuse;
- c. ensuring that the language, culture, identity, religion, heritage, customs and rights of the Plaintiffs and other Class Members were protected and preserved;
- d. 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, heritage, customs and rights;
- e. preventing the cultural assimilation of the Plaintiffs and other Class Members;
- f. 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;
- g. consulting with Indian Bands and other Indigenous stakeholders ~~about the Group Home Program~~;
- h. ensuring that staff who administered and managed ~~the Group Home Program~~ Group Accommodations – all of whom were Canada's employees, servants and agents and all of whom were within Canada's direction and control – were appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;
- i. ensuring that staff was sufficiently supervised;
- j. using reasonable care in the establishment, implementation, administration and management of the policy to remove Indigenous children and place them in the Group Accommodations and in administering and managing certain Group Accommodations, Group Home Program;
- k. 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, cultural and psychological abuse;
- l. ensuring that sufficient systems were in place for reporting incidents of abuse and other harms;

- m. investigating and addressing complaints and allegations of abuse and other harms in a timely manner; and
- n. ensuring that perpetrators of abuse and other harms were appropriately punished.

Breach of the Defendant's Duties

72. With respect to the Plaintiffs and other Class Members who were placed in Group Accomodations ~~participated in the Group Home Program~~, Canada and its employees, agents, and 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 ensure that ~~the Group Home Program~~ their actions delivered appropriate child welfare and educational services for Indigenous children;
- e. supporting or acquiescing in the apprehension and removal of the Plaintiffs and other Class Members from their Indigenous families and communities;
- f. failing to take reasonable steps to prevent the Plaintiffs and other Class Members from being placed in the care of non-Indigenous employees, agents and servants of Canada;
- g. 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;
- h. failing to take reasonable steps to prevent the Plaintiffs and other Class Members from losing their Indigenous identity and culture;
- i. 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 Indigenous language, culture, identity, religion, heritage, customs and rights during the

- period of placement in Group Accommodations.
- j. supporting or acquiescing in denying the Plaintiffs and other Class Members a reasonable opportunity to exercise their rights as Indigenous peoples, including their aboriginal and treaty rights;
 - k. failing to take reasonable steps 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
 - l. failing to ameliorate the harmful effects of their actions ~~the Group Homes Program~~;
 - m. failing to ensure that Indigenous children were made aware of their aboriginal and treaty rights;
 - n. permitting unqualified and otherwise unsuitable employees, agents and servants to operate Group Accommodations without adequate screening and supervision;
 - o. failing to protect the Plaintiffs and other Class Members from harm and injury while they were resident in Group Accommodations;
 - p. failing to properly monitor and oversee the provision of funding it made to the Group Accommodations ~~Home Program~~;
 - q. failing to properly monitor and oversee the provision of funding it made to provincial and territorial public schools;
 - r. failing to establish, implement and enforce appropriate policies, guidelines and procedures to ensure that the Plaintiffs and other Class Members would have reasonable access to their families and Indigenous communities;
 - s. failing to ameliorate the harmful effects to the Plaintiffs and other Class Members of extended stays away from their families and Indigenous communities;
 - t. failing to ensure that ~~Group Home Program~~ Group Accommodations staff and staff of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments were appropriately trained and educated and understood that the abuse of Class Members would not be tolerated;
 - u. failing to ensure that Group Accommodations ~~Home Program~~ staff and staff of the Department of Indian Affairs and Northern Development and its predecessor Ministries and Departments were appropriately supervised;
 - v. failing to consult with Indigenous communities and other Indigenous stakeholders

- ~~about the Group Home Program about the removal of Indigenous Children and the operation of Group Accommodations, the provision of funding to the program for that purpose, and the policies and practices relating to that practice that would be adopted in operating and administering that program;~~
- w. actively promoting a policy of cultural assimilation;
 - x. investigating and addressing complaints and allegations of abuse and other harms in a timely manner; and
 - y. ensuring that perpetrators of abuse and other harms were appropriately punished.

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

74. Canada's conduct was in breach of its constitutional obligations arising under section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11.

75. 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. As set out in paragraph 10.1, the Plaintiffs do not assert vicarious liability for damages sustained in the Group Accommodations where the Group Accommodation was operated by a third party.

International Law

76. On November 12, 2010, Canada issued a statement of support for the *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP"). The actions of Canada ~~in establishing, implementing, administering and managing the Group Home Program~~ as set out above were contrary to the spirit of UNDRIP and the commitments set out in Article 1 and Article 8 of UNDRIP.

77. Article 1 of UNDRIP states:

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the

Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.

78. Article 8 of UNDRIP states:
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
 2. States shall provide effective mechanisms for prevention of, and redress for:
 - a. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - b. Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - c. Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - d. Any form of forced assimilation or integration;
 - e. Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Ongoing Loss and Damage

79. The Plaintiffs and other Class Members are Indigenous persons who, as children, enjoyed or were entitled to enjoy aboriginal and treaty rights, including the right to:

- a. benefit from Indigenous laws, customs and traditions in relation to education, citizenship, adoption, family care, marriage, property and use of resources;
- b. retain and practice their Indigenous culture, religion, language, heritage and traditions; and
- c. fully learn their Indigenous culture, religion, language, heritage and traditions from their families and communities.

80. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its employees, agents and servants, as set out above, the Plaintiffs and other Class Members were and are subjected to ongoing damage. Particulars of the past and ongoing loss or damage suffered by the Plaintiffs and other Class Members include:

- a. loss of their Indigenous culture and identity;
- b. loss of their Indigenous customs, language, heritage, religion, spirituality and traditions;
- c. loss of the opportunity to exercise their aboriginal rights;

- d. loss of the opportunity to exercise their treaty rights;
- e. loss of the opportunity to participate in traditional methods of education;
- f. loss of their status as Indians;
- g. isolation from their families, Indigenous communities and traditional homelands;
- h. physical, sexual, emotional, spiritual and psychological abuse and suffering;
- i. post-traumatic stress disorder;
- j. loss of self-esteem and diminished self-worth;
- k. repeated and ongoing nightmares;
- l. depression;
- m. anxiety;
- n. difficulty in coping with emotional stress;
- o. suicidal ideation;
- p. attempted suicide;
- q. feelings of guilt, responsibility, and self-blame;
- r. nervous shock;
- s. mental anguish;
- t. insomnia;
- u. forced cultural assimilation;
- v. deprivation of one's ability to pass one's culture and identity on to one's children;
- w. social dysfunctionality, failed relationships and alienation from family, spouses and children;
- x. loss of ability to obtain proper education or employment;
- y. loss of income, loss of competitive advantage in the employment field, loss of income earning potential and loss of income earning capacity;
- z. loss of ability to parent;
- aa. addiction, including addiction to alcohol, prescription and non-prescription drugs;
- bb. pain and suffering;
- cc. loss of consortium;
- dd. loss of enjoyment of life; and
- ee. the cost of psychological, psychiatric and medical treatment, including but not limited to the cost of counselling, rehabilitation, therapy, medication and hospitalization.

81. As a consequence of Canada's breaches of its fiduciary and common law duties and the fault and negligence of its employees, agents and servants, as set out above, Family 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. actual expenses incurred while supporting Class Members during counselling and/or recovery; and
- c. loss of income and/or the value of services provided by Family Class Members to Class Members, where such services, including nursing and housekeeping, have been provided.

82. Family Class Members seek compensation for the costs of loss of support, guidance, consortium, care and companionship they might reasonably have expected to receive from Class Members. Such loss and damage was reasonably foreseeable by Canada

Punitive Damages

83. 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.

84. The conduct of Canada was systemic, deliberate, lasted for decades, and represented a marked departure from ordinary standards of decent behaviour. Canada had detailed knowledge of the breach of aboriginal and treaty rights and the widespread psychological, emotional, sexual and cultural abuses of the Plaintiffs and other Class Members. Despite this knowledge, Canada did nothing to remedy the situation and continued to administer the Group Accommodations Home Program, thus continuing to permit the perpetration of grievous harm to the Plaintiffs and other Class Members. Canada deliberately planned the eradication of the identity, language, religion and culture of the Plaintiffs and other Class Members.

85. Canada's acts and omissions and the acts of omissions of its agents and servants, as set out in detail in this claim, showed a callous disregard for the rights and well-being of the Plaintiffs and other Class Members.

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

Disgorgement

87. 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.

88. Canada should be required to disgorge the profits and other financial benefits it has acquired inequitably through its wrongful acts and omissions.

Québec Class Members

89. Where the acts and omissions of Canada and its employees, agents and servants took place in Québec, they constituted fault, giving rise to extra-contractual liability pursuant to the *Civil Code of Québec*, 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 and any predecessor legislation. The conduct of Canada and its employees, agents and servants also constituted unlawful and intentional interference with the rights of Québec Class Members within the meaning of the *Charter of Human Rights and Freedoms*, CQLR c C-12 and any predecessor legislation.

90. Canada is liable to pay damages, including punitive damages, to the Québec Class Members pursuant to the *Civil Code of Québec*, CQLR, c CCQ-1991 and any predecessor legislation.

Legislation

91. The Plaintiffs and other Class Members plead and rely upon the common law and various statutes and regulations, including but not limited to:

- a. *Charter of Human Rights and Freedoms*, CQLR c C-12;
- b. *Civil Code of Quebec*, CQLR, c CCQ-1991;
- 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 Act*, SC 1952-53, c 30;
- f. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;
- g. *Family Law Act*, RSO 1990 c F-3;
- h. *Federal Courts Act*, RSC 1985, c F-7;
- i. *Federal Courts Rules*, SOR/98-107;
- j. *Health Care Costs Recovery Act*, SBC 2008, c 27;
- k. *Indian Act*, RSC 1951, c 149;
- l. *Indian Act*, RSC 1985, c I-5;
- m. *Interpretation Act*, RSC 1985, c I-21;
- n. *Limitation Act*, SBC 2012, c 13;
- o. *The Tortfeasors and Contributory Negligence Act*, CCSM, c T-90;
- p. *Tortfeasors Act*, RS 1989, c 471;
- q. *Tort-Feasors Act*, RSA 2000, c T-5;
- r. *Tortfeasors Act*, RSNB 2011, c 231; and
- s. All other comparable and relevant acts and regulations in Canada and their predecessor legislation;

Place of Trial

The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: October 21, 2024



David A. Klein
Douglas Lennox
Lawyers for the Plaintiffs

Klein Lawyers LLP
400 – 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Telephone: 604-874-7171
Fax: 604-874-7180