C A N A D A
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-06-001265-236

COUR SUPÉRIEURE
(Chambre des actions collectives)

HARRY DANDY

Demandeur

c.

PROCUREUR GÉNÉRAL DU QUÉBEC
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DU BAS-SAINT-LAURENT
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DU SAGUENAY-LAC-ST-JEAN
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE LA CAPITALE-NATIONALE
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-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DU CENTRE-SUD-DE-L'ÏLE-DE-MONTRÉAL
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE L'OUTAOUAIS
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CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE L'ABITIBI-TÉMISCAMINGUE
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CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE LA MONTÉRÉGIE-EST
-et-
RÉGIE RÉGIONALE DE LA SANTÉ ET DES SERVICES SOCIAUX DU NUNAVIK
-et-
CONSEIL CRI DE LA SANTÉ ET DES SERVICES SOCIAUX DE LA BAIE JAMES

Défendeurs

DEMANDE DU DÉFENDEUR, PROCUREUR GÉNÉRAL DU QUÉBEC, POUR SUSPENDRE L'INSTANCE
(Articles 2, 25, 49 C.p.c.)

À L'HONORABLE DONALD BISSON, J.C.S., SIÉGEANT DANS ET POUR LE DISTRICT DE MONTRÉAL, LE PROCUREUR GÉNÉRAL DU QUÉBEC (« PGQ »), EXPOSE CE QUI SUIT :

1. Par le biais de sa Demande pour autorisation d'exercer une action collective et obtenir le statut de représentant, ci-après sa « Demande », le représentant, Monsieur Harry Dandy, demande à la Cour la permission d'exercer une action collective pour le compte des personnes physiques faisant partie du groupe suivant :

> Any First Nations, Inuit or Métis person, including those without status, save for an *excluded person*, who was placed, on or after October 1, 1950, in a *Centre* pursuant to a *Youth Law*, when he or she was 17 years old or less and who was subject to *Measures*, *Discrimination*, sexual abuse or denied an education at a *Centre*.
>
> The italicized words have the following meanings:
>
> a) "**Centre**": means an industrial school, a youth protection school, a charitable institution, a reception centre, a secured unit, a detention centre, a transition centre, a child and youth protection centre, a rehabilitation centre, a rehabilitation centre for young persons with adjustment problems, an intensive supervision unit and a youth centre. It excludes a hospital centre or a foster family.
>
> b) "**Youth law**": means the *Youth Protection Schools Act*, the *Youth Protection Act,* the *Act Respecting Health Services and Social Services*, the *Act Respecting Health Services and Social Services for Cree Native Persons*, the *Juvenile Delinquents Act*, the *Young Offenders Act* and the *Youth Criminal Justice Act*.
>
> c) "**Measures**": means being placed in solitary confinement, confined in a common area, being locked up in a room or in a cell, being subject to the use of force, including by mechanical means or chemicals.
>
> d) "**Discrimination**": means being punished for speaking one's Indigenous language, practising one's Indigenous culture, being subjected to derogatory or degrading treatment or comments by staff members regarding one's Indigenous identity, or being subject to differential treatment without justification on the basis of one's race, ethnicity or nationality.
>
> e) "**Excluded person**":
>
> Any person who is part of the class on behalf of which a class action was authorized in connection with Mont d'Youville reception centre (200-06-000221-187), but this exclusion does not apply to any such person who was also admitted to reception centres other than Mont d'Youville.

Any person who received financial assistance and signed a release pursuant to the National Program of Reconciliation with the Duplessis Orphans or the National Reconciliation Program for Duplessis Orphans Who Were Residents of Certain Institutions (collectively, the "NPRDO"). This exclusion does not apply to any such persons if, beyond having been admitted to one of the institutions covered by the NPRDO between October 1, 1950, and December 31, 1964, (i) they were also admitted during this period to reception centres which are not covered by the NPRDO; or (ii) they were also admitted or readmitted, on or after January 1, 1965, to any reception centre.

2. Afin de présenter une contestation pleine et entière de la Demande, le PGQ demande à la Cour d'user de ses pouvoirs inhérents pour ordonner la suspension de la présente demande, jusqu'à ce qu'un jugement final relatif à la *Remodified Application for Authorization to Institute a class action and to obtain the status of reprenstative as of September 22nd 2023*, ci-après « Demande remodifiée » (**pièce PGQ-1**) soit rendu dans le dossier *A.B. et Jones* c. *Procureure générale du Québec et al.* (C.S. 500-06-001177-225), ci-après « A.B. ».

3. En effet, le groupe visé par la Demande remodifiée dans l'affaire A.B. est le suivant :

    a. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under The James Bay and Northern Québec Agreement ("**JBNQA**") or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

        i. Were under the age of 18; and

        ii. Were reported to, or otherwise brought to the attention of, the Directors of Youth Protection in Nunavik (*recevoir le signalement*), including, but not limited to, all persons taken in charge, apprehended and placed in care, whether through a voluntary agreement, by court order or otherwise (the "**Nunavik Child Class**");

    b. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under the JBNQA or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

        i. Were under the age of 18; and

        ii. Needed an essential service but did not receive such service or whose receipt of the service was delayed by either respondent or their departments or agents, on grounds including, but not limited to, lack of jurisdiction or a gap in services (the "Essential Services Class");

c. All parents and grandparents who were providing care to a member of the Nunavik Child Class and the Essential Services Class (…) (the "Nunavik Family Class") »;

d. All Indigenous persons in Québec who:

i. Were taken into out-of-home care between January 1,1992 and the date of authorization of this action,

ii. While they were under the age of 18,

iii. While they were not ordinarily resident on a Reserve,

iv. By Her Majesty the Queen in right of Canada (the "**Federal Crown**") or Her Majesty in right of Québec (the "**Provincial Crown**"), or any of their agents, and

v. Are not members of the Nunavik Child Class (the "**Québec Child Class**");

e. All parents and grandparents who were providing care to a member of the Class when that child was taken into out-of-home care (the "**Québec Family Class**");

4. La Demande remodifiée dans ce dossier a été entendue les 25 et 26 septembre 2023 devant l'honorable Marie-Christine Hivon, j.c.s., qui a pris la cause en délibéré.

5. Au stade préliminaire actuel du dossier en l'instance, le défendeur, Procureur général du Québec, considère qu'il y a une apparence de litispendance avec le dossier A.B., vu notamment les membres des groupes visés et les reproches formulés.

6. En effet, les termes utilisés dans la définition du groupe dans l'affaire A.B. « taken in charge, apprehended and placed in care » et « taken into out-of-home care » ne peuvent qu'inclure les personnes membres du groupe défini par la Demande.

7. De plus, la Demande remodifiée dans l'affaire A.B. allègue spécifiquement des fautes à chaque étape de l'application de la *Loi sur la protection de la jeunesse*, ci-après « LPJ », alors que le présent recours vise également spécifiquement les personnes placées en vertu de la LPJ.

8. Le chevauchement des personnes visées, des lois applicables et des situations factuelles en litige est flagrant.

9. Le présent recours allègue les reproches spécifiques de « Measures, Discrimination, sexual abuse or denied an education », tel que défini dans la Demande.

10. Dans l'affaire A.B., la Demande remodifiée allègue « abuse and neglect », « loss of culture and or language », « harms suffered due to the denial of proper child and family care that they were owed », « denial of essential services » et « distress, anguish, loss of care and companionship », conséquences d'un sous-financement des services de protection de la jeunesse pour les Autochtones, Inuits et Métis, partout au Québec.

11. Tant la présente Demande que la Demande remodifiée dans l'affaire A.B. s'appuient sur plusieurs rapports afin de soutenir les prétentions alléguées, ayant six de ces rapports en commun[1].

12. Ainsi, les critères de l'apparence de litispendance sont satisfaits. Il y a identité de parties, de cause et d'objet entre les deux dossiers à ce stade.

13. Dans un souci de saine gestion des ressources judiciaires, de proportionnalité et afin de tenir un débat constructif, le défendeur, Procureur général du Québec, considère que le dossier en l'instance devrait être suspendu avant toute autre étape, jusqu'au jugement définitif sur l'autorisation de l'action collective A.B.

14. La suspension de l'instance aurait pour objectif de cristalliser les balises du recours antérieur A.B., afin de circonscrire les causes d'action, les conclusions recherchées, la définition du groupe et la portée territoriale du recours.

15. La question de l'apparence de litispendance pourra être revue par la suite, le cas échéant, alors que la Cour aura le bénéfice d'un éclairage quant à la portée exacte de l'action collective A.B.

16. Il n'est pas dans l'intérêt de la justice et des parties que les deux actions collectives cheminent en parallèle, même au stade préliminaire actuel, compte tenu du risque de jugement contradictoire dès le stade de l'autorisation, des ressources nécessaires pour les parties compte tenu de l'ampleur actuelle de ces dossiers, ainsi que des ressources limitées de l'appareil judiciaire.

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

SUSPENDRE cette instance jusqu'à ce qu'un jugement final relatif à la Demande remodifiée dans l'affaire *A.B. et Jones* c. *Procureure générale du Québec et al.* (C.S. 500-06-001177-225)

LE TOUT avec les frais de justice.

Montréal, le 21 février 2024

Bernard, Roy (Justice - Québec)
(Mes Alexandra Hodder, Valérie Lamarche et Ruth Arless-Frandsen, avocates)
Avocats du défendeur
Procureur général du Québec

[1] R-02, R-03, R-09, R-14, R-13, R-16

AVIS DE PRÉSENTATION

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Avocats des défendeurs

PRENEZ AVIS que la présente Demande du défendeur, Procureur général du Québec pour suspendre l'instance, sera présentée devant la Cour supérieure, district de Montréal, au 1, rue Notre-Dame est, Montréal, devant l'Honorable juge Donald Bisson, à une date et une heure qu'il lui plaira de fixer.

VEUILLEZ AGIR EN CONSÉQUENCE.

Montréal, le 21 février 2024

Bernard, Roy (Justice - Québec)
(Mes Alexandra Hodder, Valérie Lamarche et Ruth Arless-Frandsen, avocates)
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-et-
CONSEIL CRI DE LA SANTÉ ET DES SERVICES SOCIAUX DE LA BAIE JAMES

Défendeurs

LISTE DES PIÈCES DU PROCUREUR GÉNÉRAL DU QUÉBEC
(Art. 247 C.p.c.)

PGQ-1 : *Remodified Application for Authorization to Institute a class action and to obtain the status of reprenstative as of September 22nd 2023; A.B. et Jones* c. *Procureure générale du Québec et al.* (C.S. 500-06-001177-225), ci-après « A.B.

Montréal, le 21 février 2024

Bernard, Roy (Justice - Québec)
(Mes Alexandra Hodder, Valérie Lamarche et Ruth Arless-Frandsen, avocates)
Avocats du défendeur
Procureur général du Québec

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-001177-225

S U P E R I O R C O U R T
(Class Action)

A.B. […], domiciled and residing at […], Province of Québec

-and-

TANYA JONES, domiciled and residing at 435 Rue Bédard, LaSalle, QC H8R 3A8, in the district of Montreal, Province of Québec

Petitioners

v.

ATTORNEY GENERAL OF QUEBEC, *ès qualité* representative of Minister of Justice and the Minister of Health and Social Services, having an office at 1 Notre-Dame Street East, suite 8.00, in the City and District of Montréal, Province of Québec, H2Y 1B6

-and-

ATTORNEY GENERAL OF CANADA, *ès qualité* representative of Her Majesty the Queen, having an office at 200 René-Lévesque Boulevard West, East Tower, 9th floor, Montréal, Québec H2Z 1X4

Respondents

RE-MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE AS OF SEPTEMBER 22, 2023
(Articles 574 et seq. C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

1. **General Overview**

1.1. This proposed Class Action addresses the long-standing discriminatory treatment of all Indigenous children and families living in Quebec, such as off-Reserve First Nations, Métis, and Inuit children, youth, and families living in Nunavik —a vast region in northern Quebec—by two levels of government with shared responsibility for their wellbeing.

1.2. This discriminatory treatment is rooted in the apathy and racism that the Respondents have historically exhibited towards the Indigenous peoples in Quebec such as the Inuit in Nunavik.

1.3. The Inuit in Nunavik have lived for decades neglected by the federal and Quebec governments. These Indigenous people have been forced off their traditional land and had their traditional ways of life disrupted by governments that coveted their natural resources but treated them as second or third-class citizens. A succession of government policies has forced these Inuit to endure continuous crisis: land grabs, neglect, disease, starvation, Indian Residential Schools and Federal Day Schools, amongst others.

1.4. In 1975, the Respondents entered into the James Bay and Northern Quebec Agreement with the Inuit. Since then, Quebec and Canada have shared the responsibility of providing health and social services to the Inuit in Nunavik.

1.5. In breach of their duties under the law and the Agreement, both Respondents have failed in providing basic child welfare and other essential health and social services.

1.6. The discrimination alleged in this proposed Class Action took two forms.

1.7. **First**, through systemic underfunding, neglect, and avoidance of their constitutional and legal duties to the Class, the Respondents failed generations of Indigenous children and youth who came into contact with the child welfare system (…) by:

1.7.1 Withholding funding for basic child welfare prevention services available to non-Indigenous Québécois and Canadian children. Adequate funding for such basic services is essential to ensure that the best interests of the children are paramount and that the supports needed to care for children at home are available;

1.7.2 Failing to adjust funding of child-welfare services to account for the unique circumstances of the Indigenous people, such as the Inuit in Nunavik, including their inter-generational trauma, historical disadvantages, and remoteness. These factors required significant

additional funding as compared to non-Indigenous largely urban child welfare services in order to provide Indigenous people, such as the Inuit children in Nunavik a semblance of true—or ***substantive*** equality—with children who did not face these extreme conditions and challenges. The obligation to provide substantive equality is inherent in the governments' constitutional obligations to Indigenous peoples, and the James Bay and Northern Quebec Agreement, but has been continuously and systematically disregarded by the Respondents;

1.7.3 Failing to provide adequate protection services to protect Indigenous people, such as the Inuit children experiencing abuse. Instead, both levels of governments turned a blind eye to the horrific abuse suffered by Inuit children in the child welfare system in Nunavik rather than increase funding to provide proper and urgently needed child and youth protection services; and

1.7.4 Scooping Indigenous children, such as the Inuit children from their families and communities as a first resort, often at birth, leading to the gross overrepresentation of Indigenous people, such as the Inuit children from Nunavik in the Quebec child welfare system.

1.8. **Second**, the respondents deprived Inuit children who required essential health, social and other services (the Essential Services Class, defined below) of services that were substantively equal to those available to non-Indigenous children in Quebec and Canada. The Respondents have been repeatedly admonished by parliamentary and other public institutions that Inuit children needing essential services face service gaps, delays and denials due to the gross underfunding of essential services in Nunavik. Instead of addressing these chronic failures, the Respondents evaded responsibility, and each pointed to the other as the one with the obligation and jurisdiction to provide the service needed by the Inuit child in need.

1.9. The discriminatory conduct alleged in this proposed Class Action is not the fault of individual child welfare workers in Nunavik or in the rest of Quebec, many of whom did the best they could. Rather, it is result of the Respondents' funding policies, which constantly deprived child welfare service providers of the resources necessary to provide the necessary prevention and protection services. This systemic underfunding was an extension of the historic policy of apathy and racism towards Indigenous people, such as the Inuit in Nunavik. Although underfunding and neglect were, on the surface, less overtly racist than the policies of the past, they were no less discriminatory and destructive in their result.

1.10. The Petitioners, **A.B. […]** and Tanya Jones, have both suffered the consequences of this discriminatory underfunding and neglect. Both were

removed from their families and placed in foster care in the broken child welfare system in Nunavik. Both suffered the trauma of horrendous physical and sexual abuse as young children in the child welfare system. Neither received mental wellbeing support, or any other support for that matter, to cope with the trauma of being torn from their families, and abused. Abandoned by a broken, underfunded and discriminatory system, both petitioners resorted to alcohol and drug addiction from as early as nine years old to cope with their trauma.

1.11. The Petitioners seek justice for all Indigenous people in Quebec (excluding First Nations ordinarily resident on-reserve), such as the Inuit children and parents who have suffered, and continue to suffer, as they did. The petitioners also seek to end the discrimination and to prevent yet another generation of Indigenous people in Quebec, such as the Inuit children becoming lost in the cycle of inter-generational crisis created by decades of discriminatory underfunding and neglect at the hands of the governments of Canada and Quebec.

2. **The Petitioners wish to institute a class action on behalf of the classes of persons hereinafter described, namely:**

2.1. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under The James Bay and Northern Québec Agreement ("**JBNQA**") or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

2.1.1 Were under the age of 18; and

2.1.2 Were reported to, or otherwise brought to the attention of, the Directors of Youth Protection in Nunavik (*recevoir le signalement*), including, but not limited to, all persons taken in charge, apprehended and placed in care, whether through a voluntary agreement, by court order or otherwise (the "**Nunavik Child Class**");

2.2. All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under the JBNQA or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

2.2.1 were under the age of 18; and

2.2.2 needed an essential service but did not receive such service or whose receipt of the service was delayed by either respondent or their departments or agents, on grounds including, but not limited to, lack of jurisdiction or a gap in services (the "**Essential Services Class**");

2.3. All parents and grandparents who were providing care to a member of the Nunavik Child Class and the Essential Services Class (…) (the "**Nunavik Family Class**");

2.4. All Indigenous persons in Québec who:

2.4.1 Were taken into out-of-home care between January 1,1992 and the date of authorization of this action,

2.4.2 While they were under the age of 18,

2.4.3 While they were not ordinarily resident on a Reserve,

2.4.4 By Her Majesty the Queen in right of Canada (the "**Federal Crown**") or Her Majesty in right of Québec (the "**Provincial Crown**"), or any of their agents, and

2.4.5 Are not members of the Nunavik Child Class (the "**Québec Child Class**");

2.5. All parents and grandparents who were providing care to a member of the Québec Child Class when that child was taken into out-of-home care (the "**Québec Family Class**");

3. **The Parties**

3.1. Petitioner **A.B. […]** is an Inuit resident of Nunavik. She was removed from her mother at birth due to the Respondents' failure to adequately fund and provide child and family services in Nunavik;

3.2. Petitioner Tanya Jones is also Inuit and was removed from her mother when she was three years old and placed into foster care. Her removal was also due to the Respondents' failure referred to above;

3.3. The respondent Attorney General of Canada is the legal representative of the Federal Crown, and is liable and vicariously liable for the conduct described herein. Federal legislative authority over the Inuit is established by s. 91(24) of the *Constitution Act, 1867*;

3.4. The Respondent, the Attorney General of Québec, represents the Provincial Crown, the Ministry of Justice of Québec as well as the Ministry of Health and Social Services. These ministries are responsible for enforcing the *Youth Protection Act*, c. P-34.1, the *Act Respecting Health Services and Social Services*, S-4.2, and the *Youth Criminal Justice Act*, S.C. 2002, c. 1;

4. **The Petitioners' personal claims against the Respondents are based on the following facts:**

A. CONTEXT

I. Residential School and the Sixties Scoop

4.1. The Federal Crown and the Provincial Crown have a long history of systemic discrimination against Indigenous children. This claim only deals with a small part of the most recent history: failings of Indigenous child services in Québec off-reserves since 1992, and in Nunavik since 1975. However, to understand the goals and effects of that part of the history, it is necessary to view it in the context of the entire history.

4.2. Starting in the 19th century, the Federal Crown systematically separated Indigenous children from their families and placed them in residential schools.

4.3. The full horrors of these institutions are comprehensively described in the Truth and Reconciliation Commission of Canada's final report dated 2015 (the "**TRC Report**"), a copy of which is attached as **Exhibit R-1**. The TRC Report concluded that:

4.3.1 Roughly 150,000 Indigenous children were forced to attend residential schools, often taken forcibly from their parents and not allowed to return for years at a time;

4.3.2 Residential schools were characterized by institutionalized neglect, physical and sexual abuse, and death rates so much higher than the population average that children were buried in unmarked, mass graves;

4.3.3 The fundamental premise behind residential schools was that Indigenous parents were unfit to be parents – an assumption that was demonstrably false; and

4.3.4 The goal of residential schools was not to educate Indigenous children, but rather to break the links Indigenous children had to their families and cultures, which amounted to cultural genocide.

4.4. In 1920, the *Indian Act* mandated attendance at designated schools for all Indigenous children between the ages of 7 and 15 years old who were physically able to attend. There were 11 residential schools in Québec.

4.5. The last residential school in Québec closed in 1991. That did not prevent the Federal Crown or the Provincial Crown from perpetuating the same racist premise and causing the same types of trauma, this time under a new name: child and family services.

4.6. Between 1951 and 1991, Québec created child and family services programs. In theory, they served all children, but in practice they targeted Indigenous children. These programs removed more than 1 in 3 Indigenous children from their parents, placing 70% of them with non-Indigenous families. This is now known as the "**Sixties Scoop**". They relied on the same racist premise as residential schools: a belief that Indigenous communities were unfit to raise their own children. Again, the goal was to break the links Indigenous children had to their families and cultures. Again, this was cultural genocide.

4.7. In a decision reported at 2022 QCCA 185, the Court of Appeal of Québec recently summarized the assimilationist goals and devastating effects of residential schools and the Sixties Scoop:

> « Dès 1883, la politique assimilatrice engendre les pensionnats pour enfants autochtones, que l'on arrache ainsi à leurs familles. Témoignant en 1920 devant un comité parlementaire, un sous-ministre déclare avoir pour objectif « qu'il n'y ait plus un seul Indien au Canada qui n'ait pas été absorbé par la société ». Suivent à compter de 1940 les écoles résidentielles, un parallèle fonctionnel mais très approximatif des services de protection de la jeunesse provinciaux. On y dispense une éducation médiocre dans des conditions de grand dénuement et où l'usage des langues autochtones est réprimé. En raison de la propagation de maladies comme la tuberculose, le taux de mortalité des enfants y est anormalement élevé. Il y règne ce qui plus tard sera qualifié d'une indicible cruauté. …
>
> Plus de 150 000 enfants autochtones ont fréquenté des pensionnats autochtones jusqu'aux années 1990. Des milliers d'entre eux ont été victimes de sévices physiques, psychologiques et sexuels. La fin progressive du système des pensionnats ne mettra cependant pas un terme à la séparation forcée des enfants autochtones de leurs familles. Aux pensionnats succèdent les familles d'accueil allochtones, ce qu'on appellera par la suite la « rafle des années soixante ». L'adoption massive d'enfants autochtones entraînera chez eux d'importants problèmes identitaires et comportementaux. »

4.8. These historical wrongs continue to affect Indigenous peoples. Québec's Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec (the "**Viens Commission**") summarized some of the effects in its 2019 report (the "**Viens Report**"), a copy of which is attached as **Exhibit R-2**. The Viens Report held:

> "The unequal relationship imposed on Indigenous peoples stripped them of the ability to control their own destiny and

> fuelled a degree of distrust of public services that has been reinforced even further by certain events of the recent past. Take, for example, the case of residential schools, the last of which was closed in 1991 in Québec … Far from forgotten, these events form part of Indigenous peoples' cultural heritage, with the result that individuals and communities remain in situations of extreme cultural, relational, social and economic vulnerability. For proof, one need only look at the enormous disparity in living and health conditions between Indigenous peoples and the rest of the population."

4.9. Additionally, as explained in more depth below, the racist assumptions that underlay residential schools and the Sixties Scoop are now seen in the fact that Indigenous child services prioritize Apprehension over Prevention.

II. Two Models of Child Services

4.10. Child services fall into two categories: "apprehension" and "prevention".

4.11. "**Apprehension**" refers to taking a child away from their family and placing them in out-of-home care. This is meant to be a last resort, as it uproots the child from their family and community. If done in a culturally unsafe manner, it can also cut them off from their cultures, languages, and the value systems and spiritual beliefs derived therefrom. This model of child services is also called "removal" or "protection services".

4.12. "**Prevention**": Anything short of apprehension is called "prevention services" or "family enhancement". This includes but is not limited to:

4.12.1 Services targeted at the community to prevent hardship to children, such as a hotline for reporting exploitation and human trafficking;

4.12.2 Services provided to parents to identify problematic circumstances, such as when a child may be malnourished;

4.12.3 Services provided to parents to enable them to better care for their children, such as parenting skills courses, daycare services, or help finding employment, housing, or cultural or spiritual guidance;

4.12.4 Services provided to both parents and children to respond to crises that have already occurred, such as post-trauma counselling, mental health care, and addiction services;

4.12.5 Services provided to children to address uniquely difficult challenges, such as special needs education; and

4.12.6 Services provided to children to proactively build joy and opportunity, thereby reducing the risk of depression and suicide, such as fitness classes, language training, cultural connections, and mentorship.

4.13. Prevention should always be preferred, for two reasons:

4.13.1 Prevention is cheaper and more effective than Apprehension; and

4.13.2 Excessive use of Apprehension, especially if applied to Indigenous children, is discriminatory.

4.14. Apprehension relies on the same racist premise as residential schools: that Indigenous parents are unfit, and will always be unfit, to care for their child. Thus, Indigenous child services systems that rely too heavily on Apprehension perpetuate and exacerbate intergenerational trauma.

III. Additional Persecution of the Inuit in Nunavik

4.15. In addition to generally mistreating Indigenous peoples, the Federal Crown and the Provincial Crown also have a legacy of specifically mistreating the Inuit in Nunavik – the region of Québec above the 55th parallel. There are several examples in the Viens Report (**Exhibit R-2**) and the "Parnasimautik Consultation Report" published in 2013 (the "**Parnasimautik Report**"), a copy of which is attached as **Exhibits R-3**.

4.15.1 In the 1950s, they forced Inuit to relocate further north as part of a Cold War scheme to claim more territory for Canada. They promised better living conditions, better hunting grounds, and a right to return, but "none of those promises were kept". The land "looked pretty much like a dead planet", and groups were cut off from each other.

4.15.2 In the 1950s and 1960s, they also "enticed" Inuit off the land and into small communities that were "more easily administered". This forced many Inuit to abandon hunting, fishing, and trapping in favour of wage labour, and to speak less Inuktitut in favour of the languages of their employers. This was compounded by the loss of culture forced on their children by residential schools and the Sixties Scoop.

4.15.3 In the 1950s and 1960s, the Royal Canadian Mounted Police of the Federal Crown and the Sûreté du Québec of the Provincial Crown slaughtered more than 1,000 sled dogs. These dogs were "essential to the livelihood of the Inuit". Slaughtering them not only caused "material and spiritual deprivation", but also undermined Inuit "identity, independence, [and] way of life", and further isolated communities.

4.15.4 In the 1960s and 1970s, Inuit children were taken south, outside Nunavik, and hospitalized in hospitals or sanitoriums. Sometimes,

their parents were not notified that their children would be or had been taken, and the children never returned.

4.16. The legacy of the past endures to this day, making the Inuit in Nunavik one of the most marginalized and neglected communities in Canada. Some of the relevant statistics are listed in the Parnasimautik Report (**Exhibit R-3**), the "Investigation into child and youth protection services in Ungava Bay and Hudson Bay" published in 2007 (the "**Gagnon Report**"), Statistics Canada's 2011 National Household Survey, and the 2012 Aboriginal Peoples Survey in Nunavik. Copies of the last three are attached as **Exhibits R-4**, **R-5**, **and R-6**, respectively.

4.16.1 **Life Expectancy**: Life expectancy for Inuit in Nunavik was 64.5 years for men (compared to 78.5 years in the rest of Québec) and 68.1 years for women (compared to 83.1 years in the rest of Québec).

4.16.2 **Poverty**: More than a third (37.5%) of Inuit households in Nunavik lived in poverty, while at the same time the cost of living in Nunavik was much higher in Nunavik than in the rest of Québec across all categories, including food (52% higher), personal care products (91% higher), and household items (97% higher).

4.16.3 **Education**: More than half (59.7%) of Inuit people in Nunavik between the ages of 25 and 64 had no high school diploma (compared to 5.3% for non-Indigenous people in Nunavik), and fewer than one in fifty (1.4%) had an undergraduate degree (compared to 49.2% of non-Indigenous people in Nunavik).

4.16.4 **Employment**: Barely half (54.2%) of Indigenous people in Nunavik over the age of 15 were employed.

4.16.5 **Housing**: The rate of Indigenous homeownership in Nunavik was less than one in thirty (3.2%), more than a third (38.7%) of Inuit households in Nunavik needed "major repairs" (compared to 21.2% for non-Indigenous households), and almost half (48.8%) of Inuit households are crowded, meaning that more people live in the household than there are rooms (compared to 6.8% for non-Indigenous households). It is common for 12 to 15 people to live in a single house, which increases the risk of violent conflict and abuse.

4.16.6 **Social Problems**: As a result of all of the problems listed above, Nunavik suffers from high rates of teen pregnancy, drug and alcohol addiction, mental health problems, and suicide.

B. INDIGENOUS CHILD SERVICES ACROSS QUÉBEC

4.17. Indigenous child services in Québec have been marked by a wide variety of problems reflecting the legacy of assimilation and cultural genocide described above. Multiple reports have touched on these problems.

4.17.1 In 2007, the *groupe du travail sur le régime québécois de l'adoption* published a report titled « Pour une adoption Québécoise à la mesure de chaque enfant » (the "**Lavallée Report**"), a copy of which is attached as **Exhibit R-7**;

4.17.2 Between 2013 and 2016, the First Nations of Québec and Labrador Health and Social Services Commission published a report titled "Analysis Project on the trajectories of First Nations youth subject to the *Youth Protection Act*" (the "**FNQLHSSC Report**"), a copy of which is attached as **Exhibit R-8**; and

4.17.3 In 2021, the Special Commission on the Rights of Children and the Protection of Youth published a report on this system titled « Instaurer une société bienveillante pour nos enfants et nos jeunes » (the "**Laurent Report**"), a copy of which is attached as **Exhibit R-9**.

4.18. Collectively, the Lavallée Report, the FNQLHSSC Report, the Viens Report, and the Laurent Report have come to the following conclusions.

4.18.1 Child services staff are 4.4 times more likely to retain (i.e. investigate) a complaint about an Indigenous child than a non-Indigenous child.

4.18.2 Child services staff are 6.0 times more likely to substantiate a complaint (i.e. find that the allegations are warranted) about an Indigenous child than a non-Indigenous child. That rises to 9.4 times if a previous complaint about the child was closed.

4.18.3 Child services staff are 7.9 times more likely to Apprehend an Indigenous child than a non-Indigenous child.

4.18.4 One reason for the disparities is that child services staff have a long list of biases against Indigenous peoples, including that they are "[d]isorganized, unable to care for their families and children, uninformed, violent, dependent, neglectful of their health and property, [and] privileged due to their exemption from paying taxes". As a result, child services staff have "refused to consider the parents' version of the facts in many situations, even when supported by credible evidence", and investigations have often "focused exclusively on [Indigenous parents'] weaknesses while ignoring their strengths".

4.18.5 Another reason for the disparities is that Indigenous parents are more likely to be accused of neglect. Child services staff interpret that term to include leaving a child in the care of a family member. This is problematic because some Indigenous cultures encourage parents to leave children in the care of family members or someone else whom they trust to provide care as good as if the child was in the parent's care. Child services staff also interpret that term to include leaving a child to learn on their own, rather than setting rigid schedules for studying. This is also problematic because some Indigenous cultures value learning on one's own, by experience, over structured learning.

4.18.6 Another reason for the disparities is that, in assessing what is in the best interest of a child, child services staff weigh poverty of a parent as a factor in favour of Apprehension. This is "discriminatory" given that Indigenous people face higher levels of poverty in part because of the intergenerational trauma caused by the Federal Crown and the Provincial Crown through residential schools and the Sixties Scoop.

4.18.7 Another reason for the disparities is that the tools that child services staff use to assess whether Apprehension is warranted "have not been validated with Indigenous people". This, "combined with the lack of understanding and misinterpretation of cultural differences, may decrease the ability of [child services staff] to make equitable, informed judgments about families and their situations".

4.18.8 Another reason for the disparities is that child services staff are subject to deadlines for deciding whether to Apprehend a child that give them "very little time to study complex situations", which "substantially restricts the ability to consider the historical, cultural and systemic factors that affect Indigenous children".

4.18.9 Another reason for the disparities is that child services staff do not adequately consider the possibility of customary care. This is an Indigenous concept: allowing a child to be raised collectively by their community, rather than assigning them to a single foster parent. Using customary care not only recognizes the validity of Indigenous adoption customs, but also reinforces community and cultural ties for the child. Despite these advantages, customary care was not officially recognized until 2017. It remains underused, in part because child services staff are ideologically committed to "attachment theory" – the idea that attachments to multiple caregivers are inherently insecure attachments, and should be replaced by a single attachment – and the primacy of parental responsibility. Both of those are mandated by sections 53.0.1 and 91.1 of the *Youth Protection Act*, CQLR c P-34.1 (the "***YPA***"). However, these are simply "not appropriate in an Indigenous context".

4.18.10 Another reason for the disparities is that, when children are placed with kinship foster families, those families are not compensated. This increases the burden on those families relative to other foster families, making it more likely that the child will be subsequently Apprehended. The problem runs commonly across the board against all Indigenous peoples but is even worse for Inuit, Cree, and Naskapi children subject to an agreement, who are “discriminated against financially”.

4.18.11 Another reason for the high level of Apprehension is the absence of sufficient resources for Prevention: “preventive social services are insufficient or even unavailable in a number of communities. Funding is the core of the problem”. “The problem is even more pressing in remote communities where the lack of services often makes it impossible to implement the recommendations of reviewers or judges or to comply with the obligations entered on orders”.

4.18.12 Once the decision is made to Apprehend an Indigenous child, they are sometimes placed in non-Indigenous homes even though an Indigenous family member would have been willing and able to care for them. Confidentiality rules prevent some extended family from discovering the proceeding, denying them the opportunity to offer to become foster parents. Even if there are no confidentiality concerns, child services staff do not always reach out to extended family to inform them that they are looking for a caregiver. Sometimes, they provide misinformation, causing family members to miss court dates. There are policies prohibiting placements with those above a certain age or with certain health issues, and sometimes child services staff will assume that a grandparent has health issues without giving them an opportunity to provide medical evidence to the contrary. There are policies prohibiting placements with those who do not have home insurance, even though insurance is often unavailable in the area, or unaffordable for family members.

4.18.13 Once a child is taken into care, child services staff often prevent parents from visiting their children, or sometimes even knowing where their children are. When visitation is allowed, it is a “wholly inadequate amount of time”, and the burden falls entirely on the parents to pursue visitation, which is especially problematic if parents lack access to transportation, or to the financial means to visit. “The system also penalizes parents’ attempts to preserve their relationships with their children.” All of this further cuts off Indigenous children in care from their families, communities, cultures, languages, and the value systems and spiritual beliefs derived therefrom.

4.18.14 All of these problems are compounded by the fact that there are few Indigenous child services staff, little training for staff on Indigenous

> history, cultures, or languages, and few Protection services available in Indigenous languages. Some Indigenous families cannot access any Protection services because they do not speak French – even if they speak English as a second language.

4.19. When presented with this evidence, the Provincial Crown blamed Indigenous parents. A copy of its submissions to the Viens Commission (the "**Provincial Crown's Submissions**") is attached as **Exhibit R-10**. The Provincial Crown's Submissions impugn the intelligence of those accessing child services:

> « La prestation de services publics est tributaire de très nombreux enjeux techniques, opérationnels et stratégiques différents, qui n'ont souvent aucun lien avec les usagers eux-mêmes … et il peut parfois être difficile, pour le non-initié, d'appréhender cette réalité. »

4.20. In all of these ways, the Federal Crown and the Provincial Crown prioritize Apprehension – and in particular placements with non-Indigenous, non-family members – over Prevention. This is discriminatory, and premised on the same racist assumptions that underlay residential schools and the Sixties Scoop.

C. INDIGENOUS CHILD SERVICES IN NUNAVIK

4.21. The general rules applicable to child services across Québec – including the *YPA* – also apply in Nunavik, but they are administered under the JBNQA and subsequent treaties. These treaties and their terms are described below.

IV. The Treaties

4.22. In the early 1970s, Québec initiated a major hydroelectric project in Nunavik without consulting the Indigenous population. Litigation to halt the project ensued, which was settled through the JBNQA.

4.23. In 1975, the Federal Crown, the Northern Québec Inuit Association, the Provincial Crown, and three Québec Crown corporations entered into the JBNQA, a copy of which is attached herewith as **Exhibit R-11**.

4.24. (…) Pursuant to the JBNQA, the Kativik Health and Social Services Council would provide the services under the *YPA* in Nunavik. In 1978, this Council was replaced by the Makivik Corporation ("**Makivik**"). (…) The JBNQA (**Exhibit R-11**) defined the following principles for the Federal Crown, the Provincial Crown, and Makivik to follow in providing child services in Nunavik:

> "These [Inuit and other Indigenous] people are inhabitants of the territory of Québec. It is normal and natural for Québec to assume its responsibilities for them, as it does for the rest of the population. And that is what the Québec Government will be in

> a position to do as a result of this Agreement(…). It will be the guarantor of the rights, the legal status and the well-being of the native peoples of its northern territory."
>
> "The inhabitants of Québec's North, like everybody else, have to have schools. They have to be able to depend on health services. They have to have the security of justice and a system of law enforcement. This Agreement responds to these needs, and provides the structures through which they can be met. There will be local school boards, health and social services boards, police units, fire brigades, municipal courts, public utilities, roads, and sanitation services. And all of these agencies will answer to the appropriate ministry of the Québec Government. The proper jurisdiction of all ministries, such as, for example, the Ministry of Education, will remain intact. The services will all be provided through structures put in place by the Government of Québec."
>
> "In implementing the Agreement, Québec should recognize and allow to the maximum extent possible for the unique difficulties of operating facilities and services in the North
>
> > a) in recruiting and retaining staff, generally; working conditions and benefits should be sufficiently attractive to encourage competent personnel from outside Region 1 OA to accept posts for periods of time ranging from three (3) to five (5) years;
> >
> > b) in providing employment and advancement opportunities for Native people in the fields of health and social services, and in providing special educational programs to overcome barriers to such employment and advancement[; and]
> >
> > c) in budgeting for the development and operating of health and social services and facilities so as to compensate for the disproportionate impact of northern costs, including transportation, construction and fuel costs."

4.25. These principles confirm and reinforce the rights to substantive equality in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the "**Canadian Charter**"); the *Charter of Human Rights and Freedoms*, CQLR c C-12 (the "**Québec Charter**"); and the *Canadian Bill of Rights*, SC 1960, c 44 (the "**Bill of Rights**").

4.26. The JBNQA has been recognized as a modern treaty. However, unlike most other modern treaties, the JBNQA was an out-of-court settlement reached with the Inuit under extreme pressure. Québec had resumed work on the hydroelectric project as JBNQA negotiations continued. While the Inuit in Nunavik were negotiating, their lands were being destroyed.

4.27. The Federal Crown and the Provincial Crown also required (…) the Inuit to surrender their aboriginal title to land and give rights to the Provincial Crown and Hydro-Québec to develop Nunavik's resources, in exchange for essential services available to any Canadian citizen(…). This was enshrined in the *James Bay and Northern Quebec Native Claims Settlement Act* (the "***Settlement Act***"), a copy of which is attached herewith as **Exhibit R-12.**

4.28. The JBNQA did not include a funding plan to ensure that the Federal Crown and the Provincial Crown (…) fulfilled their obligation to provide basic services to the Inuit. (…) Instead, the Federal Crown and the Provincial Crown adopted a policy of avoiding their legal and constitutional obligations, and a policy of dire neglect of the Inuit.

4.29. In 1981, the Federal Crown transferred responsibility for housing and child services in Nunavik to the Provincial Crown. This was memorialized in the *Northern Québec Transfer Agreement* (the "**Transfer Agreement**"). (…) Neither the Federal Crown nor the Provincial Crown consulted Makivik, or the Kativik Regional Government, before entering into the Transfer Agreement. The Inuit in Nunavik strongly objected to (…) the transfer.(…)

4.30. Notwithstanding the Transfer Agreement, the Federal Crown remains a major player in Nunavik. It still has (...) historical, legal and constitutional responsibilities to the Inuit in Nunavik, and (…) it still subsidizes many services that are now provided by local governments and Québec.

4.31. In 1990, Makivik and the Federal Crown (…) finally agreed on a plan to implement the JBNQA (the "**Implementation Agreement**"), a copy of which is attached as **Exhibit R-13**. (…) The Implementation Agreement expressly confirms:

4.31.1 The Federal Crown is responsible for providing adequate services to the Inuit in Nunavik unless the Provincial Crown provides services that are of "equivalent benefit";

4.31.2 Specifically, if the Provincial Crown does not offer "equivalent programs", the Inuit in Nunavik will "have access to applicable federal health and social programs"; and

4.31.3 The Federal Crown will not reduce those programs and services.

V. Youth Protection Services in Nunavik

4.32. The Directors of Youth Protection ("**DYP**") under the Québec Ministry of Health and Social Services (*Ministère de la santé et des services sociaux*) are responsible for child protection in Québec, which is now legislated under the *Youth Protection Act* and *An Act Respecting Health and Social Services*.

4.33. Pursuant to the sections 2.3, 4, and 5 of the *Youth Protection Act*, any intervention in respect of a child and the child's parents in Québec must be designed to put an end to and prevent the recurrence of a situation in which the security or development of a child is in danger. If the circumstances are appropriate, interventions must focus on allowing the child and the child's parents to take an active part in decisions and choosing measures that concern them. Every decision made regarding a child must aim at keeping the child in the family environment. If the child cannot stay within the family environment, every effort must be made to place the child with extended family or closest to a family environment. In addition, the involvement of parents must always be encouraged with a view to helping them exercise their parental responsibilities. Parents are entitled to full information regarding the proposed intervention strategy and must be given an opportunity to be heard:

> 2.3. Any intervention in respect of a child and the child's parents under this Act
>
> (a) must be designed to put an end to and prevent the recurrence of a situation in which the security or the development of the child is in danger; and
>
> (b) must, if the circumstances are appropriate, favour the means that allow the child and the child's parents to take an active part in making decisions and choosing measures that concern them.
>
> Every person, body or institution having responsibilities under this Act towards a child and the child's parents must encourage the participation of the child and the parents, and the involvement of the community.
>
> The parents must, whenever possible, take an active part in the application of the measures designed to put an end to and prevent the recurrence of the situation in which the security or development of their child is in danger.
>
> […]
>
> 4. Every decision made under this Act must aim at keeping the child in the family environment.

> If, in the interest of the child, it is not possible to keep the child in the family environment, the decision must aim at ensuring that the child benefits, insofar as possible with the persons most important to the child, in particular the grandparents or other members of the extended family, from continuity of care, stable relationships and stable living conditions corresponding to the child's needs and age and as nearly similar to those of a normal family environment as possible. Moreover, the parents' involvement must always be fostered, with a view to encouraging and helping them to exercise their parental responsibilities.
>
> If, in the interest of the child, returning the child to the family is impossible, the decision must aim at ensuring continuity of care, stable relationships and stable living conditions corresponding to the child's needs and age on a permanent basis.
>
> […]
>
> 5. Persons having responsibilities regarding a child under this Act must inform him and his parents as fully as possible of their rights under this Act and in particular, of the right to consult an advocate and of the rights of appeal provided for in this Act.
>
> In the case of an intervention under this Act, a child as well as his parents must obtain a description of the means and stages of protection and rehabilitation envisaged towards ending the intervention.

4.34. In addition, pursuant to sections 3 and 4 (4), in the case of an Indigenous child, the preservation of the child's cultural identity must be taken into account. If an Indigenous child is unable to stay within his or her family environment, attempts must be made for the child to be placed in a living environment capable of preserving his or her cultural identity, by giving preference to a member of the extended family or the community.

> 3. Decisions made under this Act must be in the interest of the child and respect his rights.
>
> In addition to the moral, intellectual, emotional and material needs of the child, his age, health, personality and family environment and the other aspects of his situation must be taken into account. In the case of a Native child, the preservation of the child's cultural identity must also be taken into account.
>
> […]

> 4. […] A decision made under the second or third paragraph regarding a Native child must aim at entrusting the child to an alternative living environment capable of preserving his cultural identity, by giving preference to a member of his extended family or his community or nation.

4.35. In Nunavik, these services are managed pursuant to the JBNQA.

VI. Systemic Underfunding and Under-Provision of Child and Family, and Other Essential Services in Nunavik

4.36. Many Nunavik families and youth have been in a state of crisis resulting from the provincial youth protection system. The provincial legislative regime has long proven inadequate to secure the well-being and cultural continuity of Inuit children, youth and families. Instead of taking action to resolve the crisis, the Respondents have subjected the Inuit in Nunavik to neglect, underfunding and under-provision of child welfare, and other essential services.

4.37. Inuit children and families in Nunavik experience this policy of neglect, gross underfunding and deprivation at the hands of the Federal Crown, and as of 1975, both Québec and the Federal Crown.

4.38. As a result of the Respondents' conduct, throughout the class period:

4.38.1 Inuit children in Nunavik have been deprived of adequate child welfare prevention and protection services aimed at protecting them against abuse and neglect. They have also been removed from their homes in disproportionate numbers. While in care, these children have been moved through sometimes dozens of placements in and outside their community, where they had no sense of stability and found themselves vulnerable to horrendous abuse;

4.38.2 Inuit children in Nunavik have been denied the essential services that they needed, or received them after delays. These Inuit children also needed but did not receive essential services including, but not limited to, services relating to allied health, education, infrastructure, medical equipment and supplies, medical transportation, medications, mental wellness, oral health, respite care, and vision care; and

4.38.3 Inuit families in Nunavik have suffered the loss and witnessed the pain and suffering of their children without receiving the most basic child and family services and essential supports to assist them in caring for their children at home or to meet the needs of their children for essential services.

VII. Child and Family Services

4.39. Throughout the class period, the Respondents, through lack of funding, have neglected Inuit children and families in Nunavik in need of child and family services.

4.40. The child and family program in Nunavik demonstrated major deficiencies at each stage in the application of the *Youth Protection Act*. The Respondents created a system that failed to ensure that Inuit children and families received substantively equal services. The Respondents also failed to ensure that Inuit children received services superficially equal to other children and families in Québec, even though superficially equal services would have also been grossly inadequate given the class members' historic disadvantages, inter-generational trauma, and geographic remoteness and isolation.

4.41. The DYP in charge of child and family services in Nunavik lacked resources and support to such an extent that a general lack of knowledge of *Youth Protection Act* provisions has prevailed. Limited or no trained staff existed; no intervention plans or follow-ups were provided for children whose security or development were determined to be in danger; many prevention programs and specialized resources, including social services offered in schools, were unavailable.

4.42. In 2002, Québec's *Commission des droits de la personne et des droits de la jeunesse* ("**Commission**") received complaints about Inuit children not receiving adequate social services in Nunavik. The Commission launched an investigation, authorizing a systemic investigation into the youth protection services provided to children in Nunavik and examining 139 files—amounting to approximately 25% of all files at the time. In the Gagnon Report (**Exhibit R-4**), they made findings of gross neglect and underfunding, and came to the following conclusions:

(…)

4.42.1 Children faced living conditions of economic and social hardship, housing problems, poor organization of health and social services and the precarious situation of the safety net available to them, which was practically non-existent;

4.42.2 There were not enough staff to ensure the adequate, ongoing and personalized delivery of services, which meant that the organizations had to operate in a continual state of crisis;

4.42.3 Not only were prevention services lacking, even protection services were not provided in a meaningful way;

4.42.4 The Nunavik health centers did not have funds available to provide prevention services;

4.42.5 The most common ground for reporting a child to Youth Protection Services was neglect (as opposed to physical or sexual abuse), as repeatedly confirmed by judges of the Court of Québec; the neglect originates from lack of prevention and support services;

4.42.6 Often no urgent protection measures were taken even though the reported facts showed that the child was in imminent danger;

4.42.7 Serious deficiencies affected the way in which the situation of children whose security or development was considered to be in danger was taken into care. In several situations examined, the child who was taken into care continued to suffer abuse or neglect, whether in the child's natural or foster family;

4.42.8 In cases of imminent harm to a child, proper investigation was lacking. For instance, in situations of physical or sexual abuse, the evaluation involved only having the child undergo a medical examination. The lack of marks or physical traces of abuse led to a decision that the child was not in danger;

4.42.9 In many cases where an investigation was carried out and danger to the child identified, nothing or only voluntary measures were undertaken;

4.42.10 In cases where the Youth Division of the Court of Québec declared that the child's security or development was in danger, not much if anything was done to protect the child. (Despite the fact that the overall situation of the children was seldom presented to the Court, which was generally only informed of the child's behavioural difficulties, in 17% of the files examined the Court made a finding of danger.);

4.42.11 Despite the legal requirement that the DYP review the cases of all children whose situation was taken in charge, the DYP rarely did so. Some 10% of the files were reviewed and contained a written report;

4.42.12 Most of the files were closed when the voluntary or court-ordered measures expired, even if the initial situation that placed the child in danger persisted;

4.42.13 Cases that were investigated, were evaluated in a very summary manner ridden with flaws, omitting some of the elements required to understand the child's overall situation and offer appropriate social services where necessary. None of the evaluations involved the use

of evaluation tools recognized by the Association des centres de jeunesse du Québec;

4.42.14 All voluntary agreements included apprehension of the child. In many cases this was the only measure implemented to help the child and the family;

4.42.15 Most voluntary agreements included no prevention measures;

4.42.16 Major deficiencies existed in the evaluation, follow-up and the training of foster families. In general, there were no guidelines. There were no assessment grids or model contracts. Intervention and service plans and general support for foster families were, in practice, non-existent;

4.42.17 Some foster parents were related to the child's parents, received threats, or were retained to be foster families because they did not want to fall out of favour with their family; others did not have the basic skills needed to foster a child, or were themselves dealing with problems of conjugal violence or alcohol abuse;

4.42.18 Some families acted as foster families even though their own children were considered to be compromised; and

4.42.19 Children had to be placed outside their home village because foster families were not available.

4.43. The Commission concluded as follows:

> As a result of its investigation, the Commission declares that the rights of the Inuit children and young people of Nunavik, as recognized in the *Youth Protection Act* and the *Youth Criminal Justice Act*, have been infringed.
>
> In addition, the Commission declares that the fundamental rights of the children and young people, as recognized in sections 1, 4 and 39 of *Québec's Charter of human rights and freedoms*, have been infringed, in particular the right to personal inviolability, to the safeguard of their dignity, and to the protection, security and attention that their parents or the persons acting in their stead are capable of providing.

4.44. The Respondents did not correct the situation. Québec did not stop the harm to the class by providing the necessary supports and resources. The Federal Crown did not offer supplemental support to the class in compliance with its constitutional and other legal obligations to the Inuit children and families in Nunavik, including under the Implementation Agreement, nor did it compel Québec to do so under the JBNQA;

4.45. In 2010, the Commission published a follow-up report on the implementation of its 2007 recommendations (the "**Sirois Report**"), a copy of which is attached as **Exhibit R-14**. The Sirois Report concluded that, although regional agencies had made significant efforts, the situation remained precarious and conveyed a sense of urgency;

4.46. The Respondents continued their policy of neglect and avoidance;

4.47. The Parnasimautik Report (**Exhibit R-3**) (…) made findings similar to the Commission's:

4.47.1 There were alarming rates of children in the child welfare system;

4.47.2 Cycles of trauma, such as the imposition of Christianity, residential schools and day schools, the Western legal and education systems as well as social and youth protection services undermined the ability of many Inuit to transmit their Inuit life model and identity for the proper education, protection and support of their children;

4.47.3 Mental health problems, such as post-traumatic stress and depression, addiction and incarceration prevented some parents from caring for their children in the absence of prevention services and supports for parents, families and youth in difficulty;

4.47.4 Direct support services were unavailable to Inuit children identified as at risk and their parents; and

4.47.5 Inuit workers were not being recruited or trained on a priority basis.

4.48. The Parnasimautik Report also made a number of recommendations regarding a number of social issues in Nunavik, including the urgent need for well-trained front-line workers and prevention services in youth protection.

4.49. In 2014, the Commission was informed of more cases involving children in Ungava Bay, and alerted the Québec Minister of Justice and the Minister of Health and Social Services regarding the protection of children in Nunavik. The Commission asked the Minister to take urgent action in response to these persistent and recurrent situations of children in danger (…).

4.50. In 2018, the Commission expressed once more the recurrence of the same problems and findings in its investigations. The Commission "presented the findings of an investigation report to its Investigation Committee members, which clearly demonstrate that the findings leading to the action plan in Nunavik are still very current"(…).

4.51. In 2019, the Commission sent a letter to the Québec Minister of Health and Social Services and the Minister Delegate for Health and Social Services

regarding the child and youth protection services in Nunavik (the "**Letter**"), a copy of which is attached as **Exhibit R-15**. In the Letter, the Commission stated: "The various problems identified regarding the application of the Youth Protection Act to Nunavik children and youth and their families persist" (…). The Letter also references the information in the previous two paragraphs.

(…)

4.52. (…) The Viens Report found that:

> Not only are parents and children separated very quickly, but placing them in non-Indigenous foster homes makes it hard to preserve children's culture and maternal language, as many of the testimonies demonstrate;

4.53. For some witnesses, the current approach to child placement is just part of a continuum of disappearances, like the residential school system and the illegal adoptions known as the Sixties Scoop, it contributes to the erasure and weakening of the Indigenous communities' social fabric. In the Viens Report, the 2019 Public Inquiry also reaffirmed the Commission's concerns regarding the child and family system for Inuit children in Nunavik, including lack of training for youth protection workers, lack of communication, concerns regarding mainstream approaches and understandings of Inuit family structures, and a lack of prevention services;

4.54. The Viens Report issued several Calls For Action, to change the broken child and family system imposed on the Inuit, including:

> Increase availability and funding for local services intended for Indigenous children and their families, including crisis management services, in communities covered by an agreement and in urban environments.

4.55. Once the removed Inuit children in the Québec child welfare system reached the age of majority, they were abandoned without any post-majority services to enable them to transition to adulthood. Post-majority services include a range of services provided to individuals who were formerly in out-of-home care as children, to assist them with their transition to adulthood upon reaching the age of majority. The Respondents did not fund those services for the class members;

VIII. Lack of Essential Services

4.56. The Federal Crown, via the First Nations and Inuit Health Branch of Indigenous Services Canada, has funded or delivered health programs and services for the Inuit population in Nunavik. Under section 15.0.1 of the

JBNQA, Québec also assumed responsibility for the delivery of health and social services to the Inuit in Quebec;

4.57. The Respondents failed to provide substantively, or otherwise, equal essential services to the Inuit children in Nunavik;

4.58. The House of Commons signaled in 1981 that the Inuit faced discriminatory jurisdictional impediments to the receipt of essential services. In February 1981, the House of Commons' Special Committee on the Disabled and the Handicapped issued a report titled "Obstacles" (the "**House of Commons Report 1**"). Chapter 18 of the (…) House of Commons Report is attached as **Exhibit R-16**. It raised concerns with the services that Indigenous people with disabilities received in Canada, and made some recommendations to address those concerns. One of the concerns of the Committee was:

> Indian and Inuit people do not understand or appreciate the concept of different government departments. … They become discouraged when poor coordination among these organizations means that promised services are not delivered, or are delivered badly.

4.59. In December 1981, the House of Commons' Special Committee on the Disabled and the Handicapped issued a report titled "Follow-Up Report – Native Population" (the "**House of Commons Report 2**"), a copy of which is attached herewith as **Exhibit R-17.** In March 1993, the House of Commons' Standing Committee on Human Rights and the Status of Disabled Persons issued a report titled "Completing the Circle: A Report on Aboriginal People with Disabilities" (the "**House of Commons Report 3**"), a copy of which is attached herewith as **Exhibit R-18**. The House of Commons Report 3 reaffirmed:

> The federal/provincial jurisdictional logjam shows up most graphically in the provision of health and social services to Aboriginal people [including the Inuit] … Aboriginal people with disabilities have every right to expect the federal government to assume ultimate responsibility for their needs and concerns. Since their need for services cuts across federal/provincial boundaries, the federal government must assume leadership in removing these barriers.

4.60. These jurisdictional obstacles were the same circumstances that eventually gave rise to Jordan's Principle in the First Nations context. Jordan's Principle is a child-first and needs-based principle of substantive equality to ensure that First Nations children have equitable access to all essential services. Children should not be denied access to public services while governments or government departments fight over jurisdiction and who should pay for those

services or as a result of gaps in essential services, the whole as set out in an explanatory document from Indigenous Services Canada, regarding the implementation and content of Jordan's Principle (the "**ISC Report**"), attached herewith as **Exhibit R-19**;

4.61. Th explanatory document from Indigenous Services Canada titled "Jordan's Principle and the Inuit Child First Initiative" highlights the following facts:

4.61.1 Compelled by orders of the Canadian Human Rights Tribunal, the Federal Crown stopped discriminating against First Nations children in the provision of essential services as of November 2, 2017 and complied with Jordan's Principle;

4.61.2 It was only on September 10, 2018 when the Federal Crown announced the implementation of a program named the "Inuit Child First Initiative" similar to Jordan's Principle for Inuit children;

4.62. Despite the Inuit Child First Initiative, the Inuit in Nunavik have continued to suffer gaps, denials and delays in essential services. The Viens Report (**Exhibit R-2**), found "major weaknesses in access to services for Indigenous peoples … in Inuit villages and in urban settings", such as:

4.62.1 lack of ambulatory and aero-medical evacuation in some communities;

4.62.2 lack of social services, such as those needed by special needs children; and

4.62.3 lack of services to prevent and deal with the implications of sexual violence, addictions, and suicide.

4.63. An Inuit witness testifying before the 2019 Public Inquiry, whose testimony is included in the Viens Report ((…) **Exhibit R-2**), summarized the current situation in Nunavik and its impact on Inuit children and families as follows:

> There have been no counselling or support for the victims, and this—there is no aftercare, and that has led to many families being destroyed by addictions and suicides, homicides, and not diagnosed, and there was family violence and because of addictions that led to poverty. We see that in the communities and it is transferred to the next generation. I'll use sexual abuse victims as becoming the abusers themselves, and then, the victims transfer it to the next generation, so but has led to many problems in the families and the communities, and we don't see any counselling or care [] I have tried counselling with the psychologist over visioconferencing [sic], but it's not very pleasant: you have all the staff or all the other patients listening

> in the back. So, that didn't work. The psychologist was sent to Inukjuak every six months, and it is always a new counsellor [...] But, before, we had to travel to another community by plane to go see the psychologist.

IX. The Specific Situations of Petitioners

A.B. […]

4.64. The petitioner, **A.B. […],** is Inuit registered with the Inuit land claim organization in Nunavik, and is a resident of Nunavik;

4.65. **A.B. […]** was born in Nunavik in 1975. She was removed from her mother at birth for unknown reasons. She was sent to live with an adoptive family, but caught meningitis as a newborn and was sent to a hospital in Montreal, alone and with no escort, where she was hospitalized for seven months;

4.66. She was then returned to the adoptive family. As a child, her adoptive mother physically abused her, and her adoptive brother sexually abused her until she turned eight. She was sent to kindergarten while with her adoptive family where her teacher also physically abused her;

4.67. She remained in care in Val-d'Or, Québec, until approximately the age of 17 years old. She received no support, therapy or other essential services. She turned to alcoholism as a child to cope with the abuse that she suffered. When she turned 18, she was left to fend for herself with no support to transition to adulthood or cope with the trauma that she carried with her.

4.68. Two of her classmates suffered similar abuse together with her at the school they were sent to as removed Inuit children. **A.B. […]** witnessed her friends being abused. Her friends have both committed suicide;

4.69. **A.B. […]** has been struggling to cope with the scars of her childhood throughout her life. She is now the single mother of five Inuit children, living in Nunavik. She cannot work, and lives on welfare. Given her circumstances of poverty and trauma, Québec has removed one of her two remaining minor children and placed him initially in group homes and currently in kinship care. Her youngest child, who is nine years old, is also in the process of being removed from her;

4.70. Whether as an infant, a child or a mother, **A.B. […]** has never received prevention and other essential services required to enable her parents and her to enjoy normal family life. **A.B.'s […]** mother received no support and her child was removed at birth. **A.B. […]** has received no support to cope with her trauma and to care for her children at home; she has lost one child to the child welfare system and is currently facing the prospects of her last remaining child being taken away from her;

4.71. Until this year, **A.B. […]** was unaware of the connection between the Respondents' systemic underfunding of child and family services in Nunavik and the multiple placements and associated harms she has suffered;

Tanya Jones

4.72. The petitioner, Tanya Jones, is Inuit registered with the Inuit land claim organization in Nunavik, and currently resides in Lasalle, Québec. She was born in 1984;

4.73. Ms. Jones lived with her mother in Kuujjuaq, Nunavik, until she turned three years old. Her mother received no services or supports to deal with her own trauma and difficulties and to be able to keep her children at home. Despite her grandfather's many efforts to keep the children in the family, Ms. Jones and her brother were removed from their mother, and placed in foster care;

4.74. She was moved through over 10 placements inside and outside Nunavik during this time. She was reunited and separated from her mother, younger sister, and brother several times;

4.75. Shortly after her removal from her mother, Ms. Jones was placed in a foster home where she was repeatedly subjected to sexual and other abuse. Her foster father and foster brother were both later convicted of child molestation regarding other children;

4.76. As a teenager, Ms. Jones received no therapy or other essential services to cope with her trauma. She took to drugs and alcohol to alleviate her pain;

4.77. Even though Ms. Jones has been diagnosed with post-traumatic stress disorder from her traumatic childhood and still suffers from paralyzing anxiety and panic attacks, she has rebuilt her life by focusing on her Inuit art;

4.78. Ms. Jones only learned of the systemic underfunding of child and family services and its connection to her placement in foster care in the past year;

4.79. Until that time, Ms. Jones was unaware of the causal role that the Respondents' discriminatory and inadequate delivery of child and family services has had in her placement in foster care, the multiple homes and centres to which she was sent, and the abuses inflicted upon her, among the lifelong trauma and associated harms that she has endured;

D. THE RESPONDENTS' LIABILITY

I. Breach of Fiduciary Duty

4.80. The Respondents stand in a special, fiduciary relationship with Indigenous peoples across Québec, including the Inuit in Nunavik and, elsewhere across Québec, the Métis and First Nations.

4.81. The Respondents have assumed and maintain a large degree of discretionary control over Indigenous (…) lives and interests in general, and the care and welfare of the members of the class in particular.

4.82. The Respondents exercised this discretionary authority by undertaking (…) to fund, deliver, and/or maintain equality in the provisioning of child and family services to members of the class (…). They consequently assumed discretionary control over the interests of members of the class.

4.83. Class members were vulnerable to the Respondents' exercise of this authority, which failed to meet the needs of class members and failed to meet standards of care applicable to child and family services.

4.84. This failure has had well-documented adverse effects on the Nunavik Child Class (…) and the Québec Child Class who have been denied basic protection and prevention services, placed in care at alarming rates, removed from their families and their communities, often losing or being denied the opportunity to speak their language and practice their culture, and denied post-majority services once they reached the age of eighteen.

4.85. Further, the Respondents bore a responsibility and undertook to maintain substantively equal access to essential health and social services and products for Indigenous children regardless of which level of government or which government department had the ultimate spending responsibility.

4.86. It was in fact precisely disputes over the payment for services between levels of government or governmental departments that caused denials or delays in the provision of treatment and care as well as essential service gaps, which eventually led the Federal Crown to put a name to the injustice that Inuit children have endured, namely the Inuit Child First Initiative, and implement a program as of 2018 to address it.

4.87. The Inuit Child First Initiative is similar to and follows the footsteps of Jordan's Principle, in that it ensures that a child is not denied or delayed receipt of an essential public service as a result of a disagreement between the federal and provincial government or a dispute between departments within the same government over which is responsible for funding the service or product, and that an Inuit child does not suffer gaps in essential services.

4.88. Petitioners assert that the Provincial Crown bore a fiduciary duty toward the Essential Services Class to ensure that its essential service obligations set out in the JBNQA (as most recently recognized in the Inuit Child First Initiative) were met during the class period.

4.89. Despite the Federal Crown's recognition that Inuit children should not suffer because of these types of disputes, and despite the Provincial Crown being similarly bound by its fiduciary obligations to ascertain that Inuit children in Nunavik do not suffer delays, denials or gaps in the receipt of essential services, both Respondents have failed to meet their obligations in this respect.

4.90. The Respondents' breaches of their fiduciary duties toward class members have included:

4.90.1 Failure to deliver an appropriate child welfare program for the class members(…);

4.90.2 Maintaining funding formulas that were structured in such a way that they promoted negative outcomes for Indigenous children and families, namely the incentive to take children into out-of-home care. As a result, many Inuit children and their families were denied the opportunity to remain together or be reunited in a timely manner;

4.90.3 Failure to provide substantively, or otherwise, equal essential services factoring in the specific needs of the Inuit communities or the individual families and children residing therein;

4.90.4 Failure to adjust funding for increasing costs over time for items such as salaries, benefits, capital expenditures, cost of living, and travel for service providers to attract and retain staff and, generally, to keep up with provincial requirements;

4.90.5 Failure to consider the actual needs of the Inuit communities and class members, making provincial operational standards unattainable for them;

4.90.6 Failure by the Federal Crown to respect the class members' substantive equality rights underlying Jordan's Principle (…); and

4.90.7 Failure by the Provincial Crown to recognize its obligations similar to the Inuit Child First Initiative.

4.91. These breaches deprived the Essential Services Class members of their right to non-discriminatory essential services. The Petitioners, for example, needed mental wellness support as children to cope with their trauma, but did not receive adequate support.

4.92. The breaches resulted in Essential Services Class members being deprived of access to essential public services.

II. Breach of the Canadian Charter and of the Quebec Charter

4.93 The Respondents have breached sections 7 and 15 of the *Canadian Charter*, which provide:

> "7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."
>
> "15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

4.94. In addition, the Respondents have breached sections 1, 4 and 10 of the Quebec Charter, which provide:

> "1. Every human being has a right to life, and to personal security, inviolability and freedom."
>
> "4. Every person has a right to the safeguard of his dignity, honour and reputation."
>
> "10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.
>
> Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right."

4.95. The Respondents' failure to provide adequate child and family services or essential services was directed exclusively to Indigenous children and families, therefore discriminated on an enumerated ground, i.e., race, national or ethnic origin.

4.96. The discriminatory underfunding of child and family, and other essential services (…) occurred because members of the classes were Indigenous and caught in the neglect and jurisdictional uncertainty of which the Respondents took advantage.

4.97. This discrimination exacerbated the disadvantages of members of the classes by perpetuating historical prejudice caused by the legacy of the Residential Schools and the Sixties Scoop.

4.98. In turn, this discriminatory treatment directly resulted in the violation of the class members' constitutional rights to life, liberty, security, inviolability and dignity provided by the Canadian Charter and the Quebec Charter in a way that violated the principles of fundamental justice. The Respondents' policies of neglect and avoidance particularized herein impinged on class members' life, liberty, security and dignity in an arbitrary and all-encompassing fashion, bearing grossly disproportionate consequences in light of the class members' situation as children and historically disadvantaged as Indigenous.

III. Civil Liability

4.99. The Respondents' conduct also constituted a fault within the meaning of Article 1457 of the *Civil Code of Québec*, CQLR c CCQ-1991.

4.100. The Respondents knew or ought to have known that their failure to provide services to class members on a substantively equal level to what non-Indigenous children receive would cause them tremendous harm.

4.101. Members of the classes sustained bodily and moral injuries as a direct and immediate consequence of the Respondents' conduct including, but not limited to, loss of language, culture, community ties and resultant pain and suffering, psychological trauma and substance abuse.

IV. The Class Period

4.102 (…)

4.103. The TRC Report (…) called on the Federal Crown to cease relying on limitation/prescription to defend actions of historical abuse by Indigenous peoples related to failures of child services.

4.104. In response to this call to action, the Attorney General of Canada issued a directive through the Department of Justice's Litigation Guidelines, which eschews reliance on limitations/prescription and equitable defences, particularly where reconciliation is at issue (the "**DoJ Memo**"), (…) a screenshot of which taken from its website is attached as **Exhibit R-20**.

4.105. Notwithstanding the foregoing, the class members were born into the discriminatory framework, and it was impossible in fact for them to understand that the problems from which they suffer are linked to the systemic and discriminatory failure on the part of the Respondents to ensure the provision of necessary services for which they have at all times been responsible.

4.106. It is accordingly appropriate to begin the class period for the Nunavik Child Class, the Essential Services Class and the Nunavik Family Class on November 11, 1975, namely, the date of the signing of the JBNQA. It would be appropriate to begin the class period for the Québec Child Class and the Québec Family Class on the same date. However, a settlement in another class proceeding may have already dealt with the claims of these two classes until the end of 1991, so it is appropriate to begin the class periods for those two classes on January 1, 1992.

4.107. Class members have suffered damages as a result of the Respondents' failures to meet their obligations under the JBNQA, which have continued unabated until today.

E. THE REMEDIES

4.108. Due to the Respondents' conduct, Petitioners claim compensatory damages ranging from $40,000 to $300,000, per class member, depending on the severity and extent of damages suffered, as well as punitive damages and Charter damages in application of section 24(1) of the Canadian Charter in an amount to be determined by the Court.

4.109. Petitioners request that the Court order collective recovery of the amounts claimed for class members based on a sufficiently precise determination of the number of children who have been affected by the Respondents' systemic and discriminatory failure to ensure the provision of adequate resources for child and family services.

5. **The personal claims of each of the members of the class against Respondents are based on the following facts:**

5.1. All Nunavik Child Class and Québec Child Class members were denied prevention and appropriate protection services, or were removed from their homes due to the chronic deficiencies associated with the provision of child and family services (…) and placed in foster homes, which caused class members to suffer abuse and neglect or severed class members' ties to their communities and caused them to lose their culture and/or language.

5.2. All members of the Nunavik Child Class and the Québec Child Class are consequently entitled to recover damages from Respondents for the harms they suffered due to the denial of proper and adequate child and family care that they were owed.

5.3. All members of the Nunavik Family Class and the Québec Family Class were deprived of custody and access to their children in the Nunavik Child Class and Québec Child Class, respectively, or, in the case of the Nunavilk Family Class, otherwise suffered from the denial of essential services owed to the Essential Services Class. They are consequently entitled to recover damages

from the Respondents for the distress, anguish, loss of care and companionship they suffered.

5.4. All members of the Essential Services Class were owed essential health and social services and products without delay.

5.5. All members of the Essential Services Class were denied or delayed receipt of said services and products due to Respondents' failure to meet their obligations in this respect.

6. **The composition of the classes makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings:**

6.1. According to the 2016 Canadian Census, there were 12,570 Inuit living in the Province of Quebec; the Métis and off-reserve First Nations have populations estimated to be : 69 360 Métis and 55 897 off-reserve First Nations, according to the Government of Canada website (https://www.sac-isc.gc.ca/eng/1634312499368/1634312554965 and https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=24&TOPIC=9).

6.2. The majority of Inuit in Quebec reside in the territory of Nunavik, which spans over 500,000 square kilometers; the Métis and off-reserve First Nations live across Québec;

6.3. Petitioners estimate that there are several thousand members of each of the Nunavik Child Class, the Nunavik Family Class, the Québec Child Class, the Québec Family Class, and the Essential Services Class, and they are geographically dispersed throughout Québec;

6.4. Given the foregoing, Petitioners submit that it would be impractical and impossible to obtain mandates to institute proceedings on their behalf or proceed by consolidating proceedings;

7. **The identical, similar or related questions of law or of fact between each member of the class and the Respondents, which Petitioners wish to have decided by this class action, are:**

7.1. With respect to the Nunavik Child Class and the Québec Child Class:

7.1.1 Did the Respondents have a fiduciary duty toward members of the Nunavik Child Class and the Québec Child Class in their design, implementation, funding and delivery of child and family services?

7.1.2 If so, did the Respondents breach their fiduciary duty?

7.1.3 Did the Respondents commit a fault in their design, implementation, funding and delivery of child and family services to the members of the Nunavik Child Class and the Québec Child Class?

7.1.4 Did the Respondents discriminate against class members, or otherwise breach their constitutional rights under sections 7 and 15 of the Canadian Charter and under sections 1, 4 and 10 of the Quebec Charter, in their design, implementation, funding and delivery of child and family services to the members of the Nunavik Child Class and the Québec Child Class?

7.1.5 If the Respondents failed to fulfil their fiduciary obligation and/or committed a fault and/or engaged in discrimination and/or breached constitutional rights, are the Respondents liable for the damages caused to the members of the Nunavik Child Class and the Québec Child Class?

7.1.6 If the answer to the foregoing question is “yes”, is there an amount of compensatory damages that can and should be awarded to each of the members of the Nunavik Child Class and the Québec Child Class, to be recovered collectively?

7.1.7 Is the Respondent required to pay punitive damages and Charter damages as a result of the systemic discriminatory conduct and breach of constitutional rights engaged in, to the detriment of the members of the Nunavik Child Class and the Québec Child Class and, if so, what amount of punitive damages and Charter damages should be ordered, to be recovered collectively?

7.2. With respect to the Nunavik Family Class and the Québec Family Class:

7.2.1 Did the Respondents have an obligation to ensure that the design, implementation, funding and delivery of child and family services would only remove a child as a last resort?

7.2.2 Did the Respondents have an obligation to ensure that the design, implementation, funding and delivery of child and family services keep families together, wherever possible?

7.2.3 With respect to the Nunavik Family Class only, did the Respondents have an obligation to ensure that their Inuit children received essential public products or services without delay or service gaps without regard to jurisdictional disputes between the federal and provincial governments over funding or inter-departmental disputes within the same level of government?

7.2.4 If so, did the Respondents breach their obligations and/or commit a fault and/or breach constitutional rights and/or discriminate against members of the Nunavik Family Class and the Québec Family Class?

7.2.5 If the answer to the foregoing question is “yes”, are the Respondents liable to pay compensatory damages, Charter damages and/or punitive damages and, if so, in what amount?

7.2.6 If the Respondents are required to pay compensatory damages, Charter damages and/or punitive damages, should these damages be recovered collectively?

7.3. With respect to the Essential Services Class members:

7.3.1 Did the Respondents have an obligation to ensure that Essential Services Class members received essential public products or services without delay or service gaps without regard to jurisdictional disputes between the federal and provincial governments over funding or inter-departmental disputes within the same level of government?

7.3.2 Did the Respondents delay or deny the delivery of essential health and social services and products that were owed to Essential Services Class members in violation of their obligations stated in the question above?

7.3.3 Did the Respondents owe a fiduciary duty to Essential Services Class members with respect to question 7.3.1?

7.3.4 If so, did the Respondents breach their fiduciary duty and/or commit a fault and/or breach constitutional rights and/or discriminate, against Essential Services Class members?

7.3.5 If the answer to the foregoing question is “yes”, are the Respondents liable to pay compensatory damages, Charter damages and/or punitive damages and, if so, in what amount?

7.3.6 If the Respondents are required to pay compensatory damages, Charter damages and/or punitive damages, should these damages be recovered collectively?

7.4. With respect to all of the classes:

7.4.1 What is the applicable class period to each class?

7.4.2 What factors do the class members have in common with respect to their situation of impossibility in fact to act?

8. **The questions of law or of fact which are particular to each of the members of the class are:**

8.1. With respect to the Nunavik Child Class and the Québec Child Class:

8.1.1 How long was the placement into care?

8.1.2 How many placements did each member incur?

8.1.3 Did class members suffer abuse while in care?

8.2. With respect to the Essential Services Class:

8.2.1 What health and/or social services and products were class members owed and failed to receive or received with delay due to Respondents' breach of their legal obligations?

8.2.2 What type of injury was caused to each class member because of Respondents' breaches?

9. **The nature of the recourse which the Petitioners wish to exercise on behalf of the class members is:**

9.1. An action to recover compensatory, Charter and punitive damages for breach of fiduciary obligations and constitutional rights, for negligence on the part of the Respondents, and for discrimination on the basis of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, the *Charter of Human Rights and Freedoms*, CQLR c C-12, and the *Canadian Bill of Rights*, SC 1960, c 44;

10. **The conclusions sought by Petitioners against the Respondents are as follows:**

GRANT the Class Action against the Respondents;

CONDEMN the Respondents to pay members of the Nunavik Child Class and the Québec Child Class compensatory damages in the amount to be determined by the Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay members of the Nunavik Family Class and the Quebec Family Class compensatory damages in the amount to be determined by the

Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay members of the Essential Services Class compensatory damages in the amount to be determined by the Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay Charter and punitive damages in an amount to be determined by the Court, to be recovered collectively, the whole with interest and the additional indemnity provided by law;

ORDER that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 599 to 601 C.C.P. or, if impractical or inefficient, order the Respondents to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

CONDEMN the Respondents to any further relief as may be just and proper;

THE WHOLE with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

11. **Petitioners request that they be ascribed the status of representatives. Petitioners are in a position to represent the members of the classes adequately for the following reasons:**

11.1. Petitioners are both victims of the Respondents' conduct and are accordingly members of the Nunavik Child Class and of the Essential Services Class;

11.2. Petitioner **A.B.** […] is also a member of the Nunavik Family Class, given that she has already lost one child to the child welfare system;

11.3. Petitioners wish to correct the wrongs of the system of child placement and to seek change for the benefit of children today and for future generations;

11.4. Prior to the filing of the present Application, Petitioners discussed their roles and obligations with the undersigned attorneys;

11.5. Petitioners are aware of the fact that they will be required to attend hearings, make themselves available to attend court and out-of-court depositions, and they are committed to collaborating with their legal counsel and devoting the time necessary to fulfil their obligations in this respect;

11.6. Despite the psychological hardship of having to reveal and relive the trauma of their experiences in the child welfare system and the intergenerational trauma of their parents, Petitioners are willing and prepared to represent the members of the classes;

11.7. Petitioners consider that they have an important function to represent the best interests of the class members, in order to ensure that the Respondents' conduct does not continue, does not go unpunished and does not leave the class members without remedy;

11.8. Petitioners have overcome many hardships, and have the courage, commitment and desire to serve as the representatives of this class action;

11.9. Petitioners have no conflict with members of the classes and are acting in good faith and with the desire to vindicate their rights and those of the class;

12. **Petitioners suggest that the class action be brought before the Superior Court for the district of Montréal for the following reasons:**

12.1. The Attorney General of Canada has an office in Montreal;

12.2. The Attorney General of Quebec has an office in Montreal;

12.3. The Petitioners' attorneys are located in Montreal;

12.4. Petitioner Jones resides in Lasalle, in the City of Montreal;

12.5. It was estimated in 2014 that approximately 800 Inuit live in Montreal, according to the Parnasimautik Report (**Exhibit R-3**). It is also appropriate to estimate that several thousands of Métis and off-reserve First Nations live in Montreal;

13. The present Application is well founded in fact and in law.

WHEREFORE THE PETITIONERS PRAY THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Application;

AUTHORIZE the institution of the Class action;

GRANT the status of representative to Petitioner **A.B. […]** and to Petitioner Tanya Jones for the purpose of instituting the said class action for the benefit of the following groups of persons, namely:

> All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under The James Bay and Northern Québec Agreement ("**JBNQA**") or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action:

Were under the age of 18; and

Were reported to, or otherwise brought to the attention of, the Directors of Youth Protection in Nunavik (*recevoir le signalement*), including, but not limited to, all persons taken in charge, apprehended and placed in care, whether through a voluntary agreement, by court order or otherwise (the "**Nunavik Child Class**");

All Inuit persons ordinarily resident in Nunavik and registered or entitled to be registered as a beneficiary under The James Bay and Northern Québec Agreement ("JBNQA") or registered with an Inuit land claim organization who between November 11, 1975 and the date of authorization of this action::

Were under the age of 18; and

Needed an essential service but did not receive such service or whose receipt of the service was delayed by either respondent or their departments or agents, on grounds including, but not limited to, lack of jurisdiction or a gap in services (the "**Essential Services Class**").

All parents and grandparents who were providing care to a member of the Nunavik Child Class or the Essential Services Class (the "**Nunavik Family Class**");

All Indigenous persons ordinarily resident in Québec who:

Were taken into out-of-home care between January 1,1992 and the date of authorization of this action,

While they were under the age of 18,

While they were not ordinarily resident on a Reserve,

By the Federal Crown or the Provincial Crown, or any of their agents, and

Are not members of the Nunavik Child Welfare Class (the "**Québec Child Class**");

All parents and grandparents who were providing care to a member of the Québec Child Class when that child was taken into out-of-home care (the "**Québec Family Class**")

(…)

IDENTIFY the principal questions of law and of fact to be dealt with collectively as follows:

13.1. With respect to the Nunavik Child Class and the Québec Child Class:

13.1.1 Did the Respondents have a fiduciary duty toward the members of the Nunavik Child Class and the Québec Child Class in their design, implementation, funding and delivery of child and family services?

13.1.2 If so, did the Respondents breach their fiduciary duty?

13.1.3 Did the Respondents commit a fault in their design, implementation, funding and delivery of child and family services to the members of the Nunavik Child Class and the Québec Child Class?

13.1.4 Did the Respondents discriminate against class members, or otherwise breach their constitutional rights under sections 7 and 15 of the Canadian Charter and under sections 1, 4 and 10 of the Quebec Charter, in their design, implementation, funding and delivery of child and family services to the members of the Nunavik Child Class and the Québec Child Class?

13.1.5 If the Respondents failed to fulfil their fiduciary obligation and/or committed a fault and/or engaged in discrimination and/or breached constitutional rights, are the Respondents liable for the damages caused to the members of the Nunavik Child Class and the Québec Child Class?

13.1.6 If the answer to the foregoing question is “yes”, is there an amount of compensatory damages that can and should be awarded to each of the Nunavik Child Class and the Québec Child Class to be recovered collectively?

13.1.7 Is the Respondent required to pay punitive damages and Charter damages as a result of the systemic discriminatory conduct and breach of constitutional rights engaged in, to the detriment of the members of the Nunavik Child Class and the Québec Child Class and, if so, what amount of punitive damages and Charter damages should be ordered, to be recovered collectively?

13.2. With respect to the Nunavik Family Class and the Québec Family Class:

13.2.1 Did the Respondents have an obligation to ensure that the design, implementation, funding and delivery of child and family services would only remove a child as a last resort?

13.2.2 Did the Respondents have an obligation to ensure that the design, implementation, funding and delivery of child and family services keep families together, wherever possible?

13.2.3 With respect to the Nunavik Family Class only, did the Respondents have an obligation to ensure that their Inuit children received essential public products or services without delay or service gaps without regard to jurisdictional disputes between the federal and provincial governments over funding or inter-departmental disputes within the same level of government?

13.2.4 If so, did the Respondents breach their obligations and/or commit a fault and/or breach constitutional rights and/or discriminate against members of the Nunavik Family Class and the Québec Family Class?

13.2.5 If the answer to the foregoing question is “yes”, are the Respondents liable to pay compensatory damages, Charter damages and/or punitive damages and, if so, in what amount?

13.2.6 If the Respondents are required to pay compensatory damages, Charter damages and/or punitive damages, should these damages be recovered collectively?

13.3. With respect to the Essential Services Class members:

13.3.1 Did the Respondents have an obligation to ensure that Essential Services Class members received essential public products or services without delay or service gaps without regard to jurisdictional disputes between the federal and provincial governments over funding or inter-departmental disputes within the same level of government?

13.3.2 Did the Respondents delay or deny the delivery of health and social services and products that were owed to Essential Services Class members in violation of their obligations stated in the question above?

13.3.3 Did the Respondents owe a fiduciary duty to Essential Services Class members with respect to question 13.2.1?

13.3.4 If so, did the Respondents breach their fiduciary duty and/or commit a fault and/or breach constitutional rights and/or discriminate against Essential Services Class members?

13.3.5 If the answer to the foregoing question is “yes”, are the Respondents liable to pay compensatory damages, Charter damages and/or punitive damages and, if so, in what amount?

13.3.6 If the Respondents are required to pay compensatory damages, Charter damages and/or punitive damages, should these damages be recovered collectively?

13.4. With respect to all of the classes:

13.4.1 What is the applicable class period to each class?

13.4.2 What factors do the Class members have in common with respect to their situation of impossibility in fact to act?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Class Action against the Respondents;

CONDEMN the Respondents to pay members of the Nunavik Child Class and the Quebec Child Class compensatory damages in the amount to be determined by the Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay members of the Nunavik Family Class and the Québec Family Class compensatory damages in the amount to be determined by the Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay members of the Essential Services Class compensatory damages in the amount to be determined by the Court, to be recovered collectively, with interest and the additional indemnity provided by law;

CONDEMN the Respondents to pay Charter and punitive damages in an amount to be determined by the Court, to be recovered collectively, the whole with interest and the additional indemnity provided by law;

ORDER that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 599 to 601 C.C.P. or, if impractical or inefficient, order the Respondents to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

CONDEMN the Respondents to any further relief as may be just and proper;

THE WHOLE with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

DECLARE that any member of the Class who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the Class action, in accordance with law;

FIX the delay for exclusion from the Class at sixty (60) days from the date of notice to the members, and at the expiry of such delay, the members of the Class who have not requested exclusion be bound by any such judgment;

REFER the record to the Chief Justice so that he may fix the district in which the Class action is to be brought and the Judge before whom it will be heard;

THE WHOLE with legal costs, including the costs of publication of notices.

MONTREAL, **September 22, 2023**

Kugler Kandestin LLP

_____

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_____

Attorneys for Petitioners

PROOF REPORT (E-SERVICE)

Subject	
Case name	RE-MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE AS OF SEPTEMBER 22, 2023 (Articles 574 et seq.C.C.P.)
Court file number	A.B. and Tanya Jones -vs- Attorney General of Quebec and Attorney General of Canada
Internal file number	500-06-001177-225
Generated on	7081-001
Report number	Tuesday, September 26 2023, at 17:28
	A409461R324540

Document(s) Notified

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Name	Me Valérie Gourvil
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No: 500-06-001177-225

SUPERIOR COURT (Class Action)
DISTRICT OF MONTREAL

A.B.
-and-
TANYA JONES

Petitioners

-vs-

ATTORNEY GENERAL OF QUEBEC
-and-
ATTORNEY GENERAL OF CANADA

Respondents

RE-MODIFIED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE AS OF SEPTEMBER 22, 2023
(Articles 574 et seq. C.C.P.)

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Justice Québec

COUR SUPÉRIEURE
(Chambre des actions collectives)

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-06-001265-236

HARRY DANDY

Demandeur

c.

PROCUREUR GÉNÉRAL DU QUÉBEC
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DU BAS-SAINT-LAURENT ET AL.

Défendeurs

PIÈCE PGQ-1

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Mes Alexandra Hodder, Valérie Lamarche et Ruth Arless-Frandsen, avocates

Notification par courriel / Harry Dandy c. P.G.Q. et als. / 500-06-001265-236 / Demande du défendeur, Procureur général du Québec, pour suspendre l'instance, Avis présentation, Liste pièces, pièce PGQ-1

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PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

COUR SUPÉRIEURE
(Chambre des actions collectives)

N^{O} : 500-06-001265-236

HARRY DANDY

Demandeur

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PROCUREUR GÉNÉRAL DU QUÉBEC
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DU BAS-SAINT-LAURENT
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DU SAGUENAY-LAC-ST-JEAN
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE LA CAPITALE-NATIONALE
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE LA MAURICIE ET DU CENTRE-DU-QUÉBEC
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE L'ESTRIE - CENTRE HOSPITALIER UNIVERSITAIRE DE SHERBROOKE
-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DE L'OUEST-DE-L'ÎLE-DE-MONTRÉAL

-et-
CENTRE INTÉGRÉ UNIVERSITAIRE DE SANTÉ ET DE SERVICES SOCIAUX DU CENTRE-SUD-DE-L'ÏLE-DE-MONTRÉAL
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE L'OUTAOUAIS
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE L'ABITIBI-TÉMISCAMINGUE
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE LA CÔTE-NORD
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE LA GASPÉSIE ET DES ÎLES-DE-LA-MADELEINE
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE CHAUDIÈRE-APPALACHES
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DES SERVICES SOCIAUX DE LAVAL
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE LANAUDIÈRE
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DES LAURENTIDES
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DE LA MONTÉRÉGIE-EST
-et-
RÉGIE RÉGIONALE DE LA SANTÉ ET DES SERVICES SOCIAUX DU NUNAVIK
-et-
CONSEIL CRI DE LA SANTÉ ET DES SERVICES SOCIAUX DE LA BAIE JAMES

Défendeurs

Notification par courriel
(Articles 133 et 134 C.p.c.)

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Avocats des défendeurs

Lieu et date : **heure d'envoi :**	Montréal, le 21 février 2024 Se référer à l'en-tête de ce courriel
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Justice Québec

COUR SUPÉRIEURE
(Chambre des actions collectives)

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-06-001265-236

HARRY DANDY

Demandeur

c.

PROCUREUR GÉNÉRAL DU QUÉBEC
-et-
CENTRE INTÉGRÉ DE SANTÉ ET DE SERVICES SOCIAUX DU BAS-SAINT-LAURENT ET AL.

Défendeurs

DEMANDE DU DÉFENDEUR, PROCUREUR GÉNÉRAL DU QUÉBEC POUR SUSPENDRE L'INSTANCE
(Articles 2, 25, 49 C.p.c.),
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