C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

No: 500-06-000829-164

MARY-ANN WARD
-and-
MARIO WABANONIK
-and-
CLARA HALLIDAY
-and-
JULIE SINAVE

Plaintiffs

vs.

ATTORNEY GENERAL OF CANADA

-and-

ATTORNEY GENERAL OF QUEBEC

Defendants

APPLICATION FOR PARTICULARS, FOR DISCLOSURE OF DOCUMENTS AND TO STRIKE IMMATERIAL ALLEGATIONS
BY THE ATTORNEY GENERAL OF CANADA
(Art. 99 and 169 of the *Code of Civil Procedure*)

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1. Be advised that the Defendant, the Attorney General of Canada (hereinafter, "Canada"), seeks to strike immaterial allegations, seeks particulars and seeks the disclosure of documents as to the allegations contained in the Amended Originating Application dated December 12, 2023, but notified on February 5, 2024 (hereinafter, the "Application").

I - INTRODUCTION

2. On December 7, 2016, the Plaintiffs filed their original Application for authorization to institute a class action and to appoint a representative plaintiff. This procedure was modified on six occasions before authorization.

3. On February 28, 2023, this Court granted in part the 6th Amended Application for authorization to institute a class action and to appoint a representative applicant thereby authorizing the class action. This decision was rectified on October 10, 2023 (hereinafter, the "Authorization Judgment").

4. This Authorization Judgment grants the applicants Clara Halliday and Julie Sinave the status of representative plaintiffs against Canada for the members of the group as defined below:

> Against Canada:
> *Tous les Indiens non-inscrits et Métis qui ont été, dans leur enfance, retirés de leur foyer par l'application de programmes ou politiques d'assimilation des enfants autochtones par le biais des systèmes de protection de la jeunesse, mis sur pied et opérés par le Procureur général du Canada et/ou le Procureur général du Québec, et qui ont été par la suite placés au Québec en familles d'accueil non autochtones ou donnés en adoption au Québec à des parents non-autochtones ou confiés au Québec à des tuteurs non autochtones, de 1951 jusqu'au 1er janvier 2020.*
>
> (hereinafter the **"Group authorized against Canada"**)

5. The Authorization Judgment also grants the applicants Mary-Ann Ward, Mario Wabanonik, Clara Halliday and Julie Sinave (hereinafter, the "Plaintiffs") the status of representative plaintiffs against the Attorney General of Quebec (hereinafter, "Quebec") for the members of the group as defined below:

> Against Quebec:
> Tous les Indiens, Indiens non-inscrits, Métis et Inuits qui ont été, dans leur enfance, retirés de leur foyer par l'application de programmes ou politiques d'assimilation des enfants autochtones par le biais des systèmes de protection de la jeunesse, mis sur pied et opérés par le Procureur général du Canada et/ou le Procureur général du Québec, et qui ont été par la suite placés au Québec en familles d'accueil non autochtones ou donnés en adoption au Québec à des parents non-autochtones ou confiés au Québec à des tuteurs non autochtones, de 1951 jusqu'au 1er janvier 2020.

6. Indians and Inuit are only part of the group authorized against Quebec, the Court having noted that their claim expressly excludes Canada. The Group authorized against Canada only includes non-status Indians and Métis.

7. The Authorization Judgment highlights the imprecise nature of several of the Plaintiffs' allegations but concludes that they had met their burden of demonstration with respect to the causes of action of extracontractual liability (art. 1457 C.c.Q.) and liability of the principal (art. 1463 of the C.c.Q.).

8. However, the Court did not authorize the Charter claims, nor the claims for violation of treaties, fiduciary duty, honour of the Crown, duty of care, negligence in *common law* or genocide, as the allegations relating to these causes of actions were unsupported, laconic and superficial.

9. The Court reformulated the common issues and the conclusions sought.

10. On June 12, 2023, the Plaintiffs filed the Originating Application, which repeats many of the same general and vague allegations that were contained in the Application for authorization to institute a class action. No additional exhibit have been provided in support of it.

11. Following the rectifications made to the Authorization Judgment of October 10, 2023, the parties agreed that it was necessary that the Plaintiffs amend their Originating Application to take into account the rectifications.

12. On December 19, 2023, Canada also informed the Plaintiffs that it would request that they provide particulars with respect to the Originating Application.

13. On February 5, 2024, the Plaintiffs notified to the Defendants their amended Application.

14. The Plaintiffs failed to properly adapt and particularize their Application based on the Authorization Judgment.

15. Indeed, this Application maintains several references to causes of actions rejected by the Authorization Judgment.

16. Furthermore, throughout the Application, various terms are used to describe the proposed class and their Indigeneity. Included in this language are terms with different and/or overlapping legal and practical meaning and uses. For example, the Application references Aboriginal, Indigenous, Indians, non-status Indians, Inuit and Métis people in various context.

17. While the Application refers to a broad array of alleged faults by the Defendants that would concern different categories of members identified in the Group authorized against Canada, it does not provide sufficiently detailed facts, including in some instances by not specifying which defendant is concerned by the allegations or would have owed an alleged duty. For example, throughout the Application there are several references to assimilative programs or policies, but the names of these programs or policies, the periods, locations and the details regarding which members of the Groups are concerned by such programs or policy are not included.

18. Particularly given the fact that different groups have been authorized against Canada and against Quebec, some allegations contained in the Application require clarifications to allow Canada to prepare its defence.

19. As this Court explained in the Authorization Judgment, while the Plaintiffs did not, at the authorization stage, have to name or provide details regarding these programs

and policies or of the agreements referred to in the Application, these would be questions raised at the merit stage or at the stage of pre-trial examinations and of the disclosure of documents.

20. The particulars requested are relevant to the resolution of the common questions identified in the Authorization Judgment.

II - APPLICATION TO STRIKE IMMATERIAL ALLEGATIONS

21. With respect to paragraph 11, the mention “was required by Treaties” should be struck, as this cause of action was rejected by this Court in the Authorization Judgment at paragraph 142.

22. With respect to paragraphs 23 and 36, the mention of “Defendants” in the plural form should be struck or should be replaced with “Defendant Quebec” as the allegations contained in these paragraphs relate to Plaintiffs Ward and Wabanonik, who are registered Indians excluded from the Group authorized against Canada, as per the Authorization Judgment at paragraph 231.

23. With respect to paragraph 72, the following subparagraphs should be struck in their entirety, as they were rejected by this Court as causes of action:
    a. Subparagraph 72C: as per the Authorization Judgment at paragraph 141;
    b. Subparagraph 72L: as per the Authorization Judgment at paragraph 127.

24. With respect to paragraph 74, the mention of “abduction” should be struck, as the allegation that “[t]he behavior of the Defendants […] constitutes abduction pursuant to *Criminal Code*” was rejected by this Court as a cause of action, as per the Authorization Judgment at paragraph 141.

25. Paragraph 79 should be struck in its entirety, as it relates to a “positive fiduciary duty to protect” which was rejected by this Court as a cause of action in the Authorization Judgment at paragraphs 135 and 138.

26. Paragraph 81 should be struck in its entirety, as the question of whether Canada is “vicariously liable for the actions and negligence of any governmental agency, charitable organization or other organization […]”, is a new cause of action that exceeds the Authorization Judgment at paragraph 114, the Court having accepted the allegations of vicarious liability of Canada only in relation to determining if Canada has been the principal of the Attorney General of Quebec.

III - APPLICATION FOR PARTICULARS AND DISCLOSURE OF DOCUMENTS

27. At paragraph 8 of the Application, the Plaintiffs allege that the “[t]he child welfare agreement and interests of the Defendants are inextricably interwoven, therefore, both Defendants are solidarily liable for the acts and omissions of the other” without:
    a. Specifying:
        i. The name of the child welfare agreement;
        ii. The dates and period concerned by the child welfare agreement;
        iii. The parties to the child welfare agreement;
        iv. The subject and scope of the child welfare agreement;

b. Disclosing the child welfare agreement.

28. Throughout the Application, including at paragraphs 10, 11, 14 and 69, the Plaintiffs refer to “Aboriginal persons” and/or “Aboriginal children”, without specifying which members of the Group authorized against Canada this term is intended to capture for the purposes of this Application;

29. At paragraph 12 of the Application, the Plaintiffs allege that “In the language of the 1960s, Indians were distinguished from half breeds or Métis and each of these groups, Indians and Métis, were distinguished once again from non-status Indians”, without specifying:
    a. The distinction intended by the Plaintiffs between the terms “half breeds” and “Métis”;
    b. The distinction intended by the Plaintiffs between those two terms and “non-status Indians”;
    c. How the term “half breeds” relates to the members of the Group authorized against Canada, if applicable.

30. At paragraph 12 of the Application, the Plaintiffs allege that “Aboriginal children who were not Indians often lived in communities where they maintained Indian culture or Métis culture”, without specifying:
    a. Which “Aboriginal children” are being referred to;
    b. How these “Aboriginal children” relate to the members of the Group authorized against Canada;
    c. Which “communities” are being referred to.

31. Throughout the Application, including at paragraphs 13, 14, 64, 69 and 70, the Plaintiffs allege that “the Defendants were responsible for the development and/or management” of “assimilative program and/or policy through the childcare services”, without:
    a. Specifying:
        i. Which programs and policies are being referred to;
        ii. The application periods of such programs and policies;
        iii. The locations of operation of such programs and policies;
        iv. The scope of these programs and policies;
        v. To which members of the Group authorized against Canada these programs and policies applied;
        vi. Which “childcare services” are referred to;
    b. Identifying Canada’s alleged responsibility and role with regards to the “development and/or management” of each of these programs and policies with respect to the members of the Group authorized against Canada;
    c. Disclosing the assimilative programs and policies developed and/or managed by Canada.

32. At paragraph 14, the Plaintiffs allege that “All Members of the Group have in common the result of all or many of these wrongdoings which were visited upon them as a result of the conduct and the assimilative programs or policy through the childcare services by removing aboriginal children from their families and communities and placing them with non-Indigenous foster families which, in the case of Members of the Group, occurred with the province of Quebec acting as the agent and delegate of Canada” without specifying what “conduct” of Canada is being referred to with respect

to the members of the Group authorized against Canada.

33. Paragraph 40 of the Application states that "The Plaintiff Halliday was taken from her biological family by Manitoba child welfare workers, and at the age of 3 years old, she was adopted out to a non-aboriginal family in Montreal, Quebec", without:
    a. Specifying:
        i. The date she was taken from her biological family by Manitoba child welfare workers;
        ii. Where her biological family lived when she was taken away from them;
    b. Disclosing:
        i. The Manitoba Child and Family Services file relating to Plaintiff Halliday;
        ii. Plaintiff Halliday's adoption judgment.

34. At paragraphs 48, 61 and 66 of the Application, the Plaintiffs allege that Plaintiff Halliday, Plaintiff Sinave and members of the group "were intentionally removed from the care of their biological families and communities, and adopted out to non-Aboriginal families due to the actions of the Defendants", without specifying what actions of Canada are being referred to in each of these paragraphs with respect to Plaintiff Halliday, Plaintiff Sinave and the members of the Group authorized against Canada.

35. Paragraph 53 of the Applications states that "[t]he Plaintiff, Sinave, was taken from her biological family at the age of 2 years old (July 1975) and adopted out to a non-aboriginal family in the Province of Quebec" without disclosing her adoption judgment.

36. Paragraph 57 of the Application states that Plaintiff Sinave "knew from her adoptive parent that her biological father was Indigenous", without specifying whether her father was First Nation, Métis, Inuit or non-status Indian nor how this information was obtained or verified.

37. At paragraph 70 of the Application, the Plaintiffs allege that "[t[he Defendants therefore played a supervisory and oversight role with respect to these assimilative programs or policies", without specifying for each program or policy:
    a. What was Canada's alleged supervisory and oversight role;
    b. Who was being supervised;
    c. What was being overseen;
    d. In what context;
    e. For which periods;
    f. For what purposes.

38. At paragraph 72 of the Application, the Plaintiffs allege that "[t]he Defendants are liable inter alia to the Plaintiff for compensatory damages for:
    […]
    A. Sexual abuse visited upon them;
    B. Physical abuse visited upon them;

    without specifying:
    a. Whether Plaintiffs Halliday and Sinave have suffered sexual and/or physical abuse;
    b. Which member of the class authorized against Canada have suffered sexual and/or physical abuse;

c. For each abuse, when they occurred, who committed them, and in what context.

39. At paragraph 73 of the Application, the Plaintiffs allege that they "and members of the group were not permitted to engage in First Nations cultural or religious activities nor were they permitted to communicate with family members on a regular basis" and that they "were not permitted to speak their traditional languages" without specifying:
    a. How or by what actions Canada would have "not permitted" the Plaintiffs Sinave and Halliday and the members of the Group authorized against Canada to "engage in First Nations cultural or religious activities", "to communicate with family members on a regular basis" and "speak their traditional languages"; nor
    b. When this would have occurred.

40. Paragraph 75 of the Application refers to "other children of First Nation heritage", without specifying whether these children are part of the Group authorized against Canada and whether they are non-status Indians or Métis children.

41. Paragraph 75 of the Application states that "In pursuance of that plan, they were forcible removed from their aboriginal communities and placed in the custody of foster families and later in the custody of adoptive families against the will of their parents", without specifying:
    a. What "plan" is being referred to;
    b. The nature and scope of Canada's alleged role and liability in relation to that "plan";
    c. Which members of the Group authorized against Canada, if applicable, are concerned by this allegation;
    d. What "aboriginal communities" are being referred to.

42. At paragraph 77 of the Application, the Plaintiffs allege that "[a]s a result of the acts by the Defendants, the Plaintiffs and members of the group have lost their traditional ways of living and have lost the traditional parenting skills that they would have acquired had they not been forcibly removed from their families" without specifying what "acts" Canada has taken that have resulted in the Plaintiffs and members of the Group authorized against Canada having lost their traditional ways of living and having lost the traditional parenting skills.

43. Throughout the Application, including at paragraphs 13, 47, 58, 61, 69, 72J, 75, 76, 77 and 78, the Plaintiffs allege that Canada's conduct caused the Plaintiffs and members of the Group various losses, without detailing what must the members of the Group authorized against Canada have had, and then lost, for the following elements:
    a. Culture;
    b. Language;
    c. Religion;
    d. Aboriginal name;
    e. Traditional ways of living;
    f. Traditional parenting skills;
    g. Identity.

44. At paragraph 80 of the Application, the Plaintiffs allege that "[t]he Defendants' agents

were paid to operate foster homes and the Defendants' agents were paid to coordinate the adoption of aboriginal children" without specifying:

a. Who these "agents" of Canada are;
b. Who are the "aboriginal children" being referred to in that paragraph.

45. Paragraph 82 of the Application states that Canada had "knowledge and control" of the "*cause* of the physical and sexual assaults and surrounding the circumstances" (emphasis added), without specifying what was the cause of the alleged physical and sexual assaults.

FOR THESE REASONS, THE DEFENDANT, CANADA, ASKS THE COURT TO:

GRANT this application;

STRIKE out the immaterial allegations contained in the following paragraphs of the Application:

- Paragraph 11: "was required by Treaties";
- Paragraph 23 and 36: "defendants";
- Subparagraph 72C;
- Subparagraph 72L;
- Paragraph 74: "abduction";
- Paragraph 79;
- Paragraph 81;

ORDER the Plaintiffs to provide the particulars in regard to paragraphs 8, 10, 11, 12, 13, 14, 40, 47, 48, 57, 58, 61, 64, 66, 69, 70, 72, 72J, 73, 75, 76, 77, 78, 80 and 82 of the Application, in the form of a Re-Amended Originating Application, within 15 days of the judgment to be rendered;

ORDER the Plaintiffs to disclose the documents referred to at paragraphs 8, 13, 14, 40, 53, 64, 69 and 70 of the Application, within 15 days of the judgment to be rendered;

THE WHOLE without costs unless contested.

Montréal, March 19, 2024

Attorney general of Canada

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Objet :	CM-2016-004350-0002 - NOTIFICATION - 500-06-000829-164 - APPLICATION FOR PARTICULARS, FOR DISCLOSURE OF DOCUMENTS AND TO STRIKE IMMATERIAL ALLEGATIONS - MARY-ANN WARD & ALS vs. ATTORNEY GENERAL OF CANADA & ALS
Date :	20 mars 2024 08:50:11
Pièces jointes :	image001.png 2024-03-19 - 500-06-000829-164 -Ward and al. v. PGQ and PGC - Application for Particulars disclosure of documents and to strike immaterial allegation by the AGC.pdf Outlook-5ktmxrye.png

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SIGNIFICATION PAR COURRIEL
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Intitulé de la cause | Title of the case :	*MARY-ANN WARD, MARIO WABABONIK, CLARA HALLIDAY and JULIE SINAVE vs. ATTORNEY GENERAL OF CANADA and ATTORNEY GENERAL OF QUEBEC*
# de la cour | Court number	**500-06-000829-164**
Cour | Court	**SUPERIOR COURT**
Notre dossier | Our File	LEX-8846745
Nature du document | Nature of the document	**APPLICATION FOR PARTICULARS, FOR THE DISCLOSURE OF DOCUMENTS AND TO STRIKE IMMATERIAL ALLEGATIONS BY THE ATTORNEY GENERAL OF CANADA**
Date :	Le 19 mars 2024
Heure | Time :	Vers 16 :28

Les procédures, pièces, avis et/ou documents transmis par courriel avec le présent bordereau de transmission le sont pour valoir notification selon le paragraphe 11 A. des directives de la Cour fédérale du 18 janvier 2021 et le consentement à la signification électronique est réputé.

Cordialement,

Esther Desforges
Adjointe juridique / Legal assistant

* I may have to send emails outside of my regular hours; I do not expect a response outside of yours*

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Nº 500-06-000829-164

SUPERIOR COURT
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Defendants

APPLICATION FOR PARTICULARS, FOR DISCLOSURE OF DOCUMENTS AND TO STRIKE IMMATERIAL ALLEGATIONS BY THE ATTORNEY GENERAL OF CANADA

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