

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000829-164

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

MARY-ANN WARD, residing and domiciled at
407 Avenue O North, in the city of Saskatoon,
Province of Saskatchewan, S7L 2V2;

Applicant

-vs-

THE ATTORNEY GENERAL OF CANADA,
Quebec Regional Office Department of justice
Canada Guy Favreau Complexe east Tower, 9th
Floor 200 René Lévesque Boulevard West
Montréal Québec H2Z 1X4;

-and-

THE ATTORNEY GENERAL OF QUEBEC,
(representing the Ministry of Social Services)
having a business address at 1 Notre-Dame
Street East 8TH Floor in the city and judicial
district of Montreal, province of Quebec, H2Y
1B6

Defendants

**AMENDED 2 APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO APPOINT A REPRESENTATIVE APPLICANT**
(Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT
STATES THE FOLLOWING:

GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following group, of
which she is a member, namely:



- All Indians and Aboriginal persons who were, as children, placed in the “Adopt Indian Metis” program or any similar program(s) promoted or operated by either of the Defendants, and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians
(referred to herein as “Group Member(s)”, “Group Member(s)”, the “Group”, the “Group”, the “Member(s)”);

- 1a. The group includes a subgroup consisting of all Indian (as defined in the Indian Act) and Inuit persons who were removed from their homes in Canada between January 1, 1951 and December 31, 1991 and placed in the care of non-Indigenous foster or adoptive parents (“Indian and Inuit subclass”).
- 1b. The Indian and Inuit subclass claims only as against the Attorney General of Québec and makes no claim against the Attorney General of Canada in this action.

The Defendants

2. The Defendant, The Attorney General of Canada, represents the Government of Canada, and the Department of Indian and Northern Affairs Canada, pursuant to Section 23 of *The Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50.;
3. The Defendant, The Attorney General of Quebec represents the Quebec Ministry of Social Services; pursuant to the *Act respecting the Ministry of Justice*.
4. The Attorney General of Canada and The Attorney General of Quebec (“**Defendants**”) shared the common purpose of implementing child welfare services on aboriginal people in the province of Quebec;
5. The 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;

General Facts:

6. The Applicant, and Group Members, are either “Indians” as defined by the *Indian Act*, R.S.C. 1985, c. I-5 [*Indian Act*], or “Aboriginal” persons as defined by the *Constitution Act, 1982*, s. 35 being Schedule B to the Canada Act 1982 (U.K.), 1982 c. 11;
7. Beginning in 1962, Canada entered into an arrangement with the Province of Quebec, whereby Canada delegated Indian child welfare services to the Province of Quebec. Canada was required by Treaties and long standing practice to provide child welfare services to Indians. Quebec provided a variety of child welfare services to Indian and Aboriginal persons and Canada agreed to reimburse Quebec for each Indian child in care. The transfer payments made by Canada to Quebec were calculated based on the number of Indian or Aboriginal children for which it had the responsibility of maintenance and supervision;
8. 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. All are Aborigines. Aboriginal children who were not Indians often lived in communities where they maintained Indian culture or Métis culture. When they lived in mainstream Canadian society, they, nonetheless, valued their beliefs and culture;
9. The Province of Quebec treated Indian children in the same way that they treated other Aboriginal children which, whether the children were Indian or not, led to and continued the obliteration of the culture, language, and traditional beliefs of all Members of the Group. The removal and assimilation of aboriginal children, and the AIM Program led to the obliteration of the culture, language, and religion of Members of the group. The forced adoption of Aboriginal children into non-Aboriginal families resulted in the physical, sexual, emotional, and psychological abuse and trauma to members of the group. 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 programs of Quebec which, in the case of Indian Members of the Group, occurred with the province of Quebec acting as the agent and delegate of Canada.

10. At all material times, the Defendants were responsible for the development and management of programs designed to forcibly remove aboriginal children from their families and assimilate them into the mainstream Caucasian population. This was frequently done in an arbitrary and wanton manner without reason or cause;
11. The Defendants therefore played a supervisory and oversight role with respect to these programs.
12. The Defendants breached their duty to the Applicant to protect their right to family life and various other rights elaborated in *The Canadian Bill of Rights*, 1960 c. 44 C-12.3 and the *Charter of Rights and Freedom*;
13. In particular, the arbitrary and wanton manner in which the Defendants treated the Applicant illustrates that the right of the Applicant to equality before the law and protection of the law were breached as per Section 1(b) of *The Canadian Bill of Rights*, 1960 c. 44 C-12.3 and the *Charter of Rights and Freedoms*.
14. The Defendants are liable *inter alia* to the Applicant for:
 - A. Sexual abuse visited upon them;
 - B. Physical abuse visited upon them;
 - C. Cultural abuse and systematic attempts to abduct native children from their natural homes;
 - D. Cutting off group members from their families;
 - E. Destroying group members' sense of self worth;

- F. Reducing group members' capacities to parent and maintain normal marital and family ties;
 - G. Permitting the circumstances which resulted in the physical or sexual abuse to which group members were subject;
 - H. Failing to provide adequate care for group members as children and provide for their needs;
 - I. Holding group members in foster homes and placing them in adoptive families without the prior consent of their parents;
 - J. Depersonalizing and demeaning group members including loss of their culture and Aboriginal name;
 - K. Cutting group members off from family and holding them in foster homes and subjecting him or her to adoption procedures against the will of his or her family and against their own will; and
 - L. Discriminating against him or her on the basis of Aboriginal background.
15. The behavior of the Defendants and their servants constitute a number of criminal offences including, assault, battery, kidnaping, sexual assault, and sexual exploitation. In particular, the forcible removal of aboriginal children from aboriginal communities constitutes abduction pursuant to *Criminal Code*, R.S., 1985, c. C-46, s. 283; 1993, c. 45, s. 5;
16. The Applicant 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. Further, the Applicant and other members of the group were not permitted to speak their traditional languages;

17. The Applicant was further subjected to disparaging comments and innuendo from foster parents, her adoptive family and others who were involved in the abduction and forced adoption of the Applicant
18. The Defendant' actions were in contravention of the treaties between the Defendants and the First Nation and in contravention of the United Nations Genocide Convention, particularly Article (2) (3) thereof to which the Defendant Government of Canada was a signatory, the Applicants and other children of First Nation heritage were to be systemically assimilated into white society through their forced adoption. In pursuance of that plan, they were forcibly 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. Their cultures and their languages were taken from them with sadistic punishment and practices;
19. Through the organized genocide imposed upon them by the Defendants, their programs, and their agents and servants, the Applicant and other members of the group had their Indigenous cultures denigrated and taken away from them. Through the combination of sexual, physical, and psychological abuse members of the group were made to feel meaningless and to believe that their culture and all things "Indian" were worthless;
20. As a result of the acts by the Defendants, The Applicant 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;
21. The Applicant lost her sense of family. She was cut off from her biological family through forced adoptions and through placement in various foster homes;
22. The Defendants were under a positive fiduciary duty to protect the Applicant and group members from injuries to her person, physical or mental health or morals, and the Defendants knew or ought to have known that the Applicant and group members

would suffer damages if the Defendants failed to carry out this duty;

23. The Defendants' agents were paid to operate foster homes and the Defendants' agents were paid to coordinate the adoption of aboriginal children;

24. The Applicant and group claim that the Defendants are vicariously liable for the actions and negligence of any governmental agency, charitable organization or other organization that contracted with the Defendants or to whom the Defendants delegated control over the management of the adoption procedures and foster homes, and are also liable in their position as principal to such organizations, who at all times were acting as their servants, employees or agents.

25. In the alternative, the Applicant claims that the cause of the physical and sexual assaults and surrounding circumstances were within the knowledge and control of the Defendants and the physical and sexual assaults would not have occurred but for the negligence of the Defendants;

25a. The Indian and Inuit subclass expressly waive any and all rights they may possess to recover from any defendant, or any other party, any portion of their loss that may be attributable to the fault or liability of Canada, her servants, agents, officers, and/or employees, for which any defendant or other party might reasonably be entitled to claim from Canada, her servants, agents, officers, and/or employees for contribution, indemnity, or apportionment at common law, in equity, or pursuant to any Federal, Provincial, or Territorial legislation or regulation;

25b. The Indian and Inuit subclass will not seek to recover from any party any portion of their losses, which have been claimed or could have been claimed, against Canada, her servants, agents, officers, and/or employees.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

26. The Applicant, Mary-Ann Ward is now a resident Saskatoon Saskatchewan;

27. The Applicant Mary-Ann Ward Was born in Amos Quebec;
- 27- a) The Applicant is a registered Indian;
28. The Applicant remembers that at about the age of 4 years old she was taken from her home in Amos Quebec and she was moved by the Quebec social services to a group home in Aylmer Quebec;
29. The Applicant has experienced psychological and emotional distress knowing that she was taken from her home and placed in foster care in Aylmer Quebec.;
30. The Applicant was adopted out to a white family when she was 10 years old by an employee of Indian Affairs and therefore has suffered and continues to suffer damages due to the fact she was adopted out to a white family;
31. The Applicant eventually reconnected with family members in Calgary Alberta in 1995 and it was there that she discovered the she was a Cree status Indian from the town of Chibougameau Quebec;
32. The Applicant Ward, and members of the group were adopted out to non-Aboriginal families as a part of the program of Canada and Saskatchewan to 'remove the Indian from the Indian' or make Aboriginal children into Caucasian adults. The color of their skin might, to varying degrees, be darker, but they were to be reprogrammed to be 'white adults'
33. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
34. As a consequence of the foregoing, the Applicant is justified in claiming damages;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

35. Every member of the group of all persons, that have suffered injury, economic loss, and damages as a result of the Defendants' acts, omissions, wrong doings,

and breaches of legal duties and obligations, including but not limited to, sexual abuse, physical abuse, cultural genocide, tortious liability, causing personal injury and harm, breach of duty of care, breach of fiduciary duty and obligations, negligence, and failure to fulfill their statutory and common law duties and obligations.

36. Each Member of the Group is justified in claiming at least one or more of the following:
- a) Damages for loss of identity;
 - b) Damages attributable to sexual abuse;
 - c) Damages attributable to physical abuse;
 - d) Sentimental damages;
 - e) Damages for mental distress;
 - f) Recovery of health care costs;
 - g) And such further and other damages as this Court may be advised.

37. All of these damages to the Group Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:

38. The number of persons included in the Group is estimated to be in the thousands. According to the Statistics Canada, between 1960 and 1990 there are 11,132 known status Indians adoptions. However that is only status Indians adoptions the

number of children will be much higher if we include non-status Indians and Metis children where some of these adoptions were never recorded ;

39. The names and addresses of all persons included in the Group are not known to the Applicant but are known to the Defendants;
40. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Defendants would increase delay and expense to all parties and to the Court system;
41. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Group to obtain mandates and to join them in one action;
42. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Group Members:

43. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
 - a) Did the Defendants permit unqualified individuals to hire servants, agents and employees to administer and operate foster homes?
 - b) Did the Defendants permit unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuses?

- c) Did the Defendants Fail to protect the Applicant and group members from harm?
 - d) Did the Defendants fail in general to take proper and reasonable steps to prevent injury to the Applicant and Group Members physical health and mental well-being and moral safety while the Applicant and Group members were residents at foster homes, and when they were adopted by non-aboriginal families?
 - e) Did the Defendants Having occupied a position analogous to that of a parents, fail to establish and maintain systems to protect the Applicant and Group members as a good parents should have ?
 - f) The cause of the sexual assaults and surrounding circumstances were or ought to have been within the knowledge of the Defendants and the sexual and physical assaults would not have occurred but for the negligence of the Defendants?
 - g) Are the Defendants liable to pay compensatory damages to Group Members stemming from their actions?
 - h) What are the categories of damages for which the Defendants are responsible to pay to Group Members, and in what amount?
 - i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?
44. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

45. The action that the Applicant wishes to institute for the benefit of the members of the Group is an action in damages for liability;

46. The conclusions that the Applicant wishes to introduce by way of a motion to institute proceedings are:

GRANT Applicant's action against Defendants;

ORDER for an aggregate monetary award respecting all or any part of a Defendant's liability to group members including an Order that Group Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Group Members;

ORDER and CONDEMN general and special damages for the Group in amounts to be determined at trial, including:

- (a) on the elections of the Applicant and Group Members, the:
 - (i) the value of damages that can be attributed to loss of identity;
 - (ii) the value of damages attributed to sexual abuse; or
 - (iii) the value of damages that can be attributed to physical abuse
- (b) sentimental damages;
- (c) mental distress;
- (d) recovery of health care costs.

CONDEMN Defendants to reimburse to the Group Members any costs or fees paid in relation to the counselling;

CONDEMN Defendants to pay compensatory damages to the Group Members for the loss of their cultural identity, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles ~~1037 to 1040~~ 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

47. Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Many Group Members are domiciled in the District of Montreal;
- b) The Defendants have a business establishment in the District of Montreal;
- c) Many of the abuses were suffered by Group Members in District of the Montreal;
- d) The Applicant's counsel is domiciled in the District of Montreal;

48. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Applicant:

- a) Was taken and adopted out to a white family and had a loss of culture, and is thus a Member of the Group;
- b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
- c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Group attorneys in this regard;

- d) is ready and available to manage and direct the present action in the interest of the Group Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group;
 - e) does not have interests that are antagonistic to those of other members of the Group;
 - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;
49. The present motion is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Group herein described as:

All Indians and Aboriginal persons who were, as children, placed in the “Adopt Indian Metis” program or any similar program(s) promoted or operated by either of the Defendants, and who were subsequently placed in the care of non-Aboriginal foster or adoptive parents or guardians (referred to herein as “Group Member(s)”, “Group Member(s)”, the “Group”, the “Group”, the “Member(s)”) ”

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendants permit unqualified individuals to hire servants, agents and employees to administer and operate foster homes?
- b) Did the Defendants permit unqualified and otherwise unsuitable individuals to act as adoptive parents without proper screening and investigation as to the risks of abuses?
- c) Did the Defendants Fail to protect the Applicant and group members from harm?
- d) Did the Defendants fail in general to take proper and reasonable steps to prevent injury to the Applicant and Group Members physical health and mental well-being and moral safety while the Applicant and Group members were residents at foster homes, and when they were adopted by non-aboriginal families?
- e) Did the Defendants Having occupied a position analogous to that of a parents, fail to establish and maintain systems to protect the Applicant and Group members as a good parents should have ?
- f) The cause of the sexual assaults and surrounding circumstances were or ought to have been within the knowledge of the Defendants and the sexual and physical assaults would not have occurred but for the negligence of the Defendants?
- g) Are the Defendants liable to pay compensatory damages to Group Members stemming from their actions?
- h) What are the categories of damages for which the Defendants are responsible to pay to Group Members, and in what amount?
- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

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

following:

GRANT Applicant's action against Defendants;

ORDER for an aggregate monetary award respecting all or any part of a Defendant's liability to group members including an Order that Group Members share in the award on an average or proportionate basis, and an award applying any undistributed award for the benefit of Group Members;

ORDER and CONDEMN general and special damages for the Group in amounts to be determined at trial, including:

- (a) on the elections of the Applicant and Group Members, the:
 - (i) the value of damages that can be attributed to loss of identity;
 - (ii) the value of damages attributed to sexual abuse; or
 - (iii) the value of damages that can be attributed to physical abuse
- (b) sentimental damages;
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- (d) recovery of health care costs.

;

CONDEMN Defendants to reimburse to the Group Members any costs or fees paid in relation to the counselling;

CONDEMN Defendants to pay compensatory damages to the Group Members for the loss of their cultural identity, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

GRANT the class action of Applicant on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in

accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

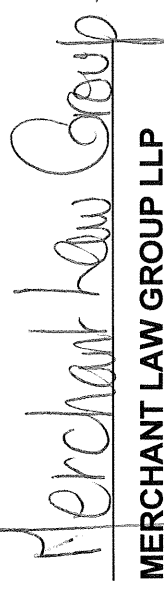
DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, September 11, 2020


MERCHANT LAW GROUP LLP

Attorneys for the Applicant

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ORIGINAL

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