

Federal Court



Cour fédérale

Date: 20220617

Docket: T-620-20

Citation: 2022 FC 913

Ottawa, Ontario, June 17, 2022

PRESENT: The Honourable Mr. Justice Phelan

CLASS PROCEEDING

BETWEEN:

**CHEYENNE PAMA MUKOS STONECHILD,
LORI-LYNN DAVID, AND STEVEN HICKS**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

UPON hearing the oral submissions of the parties made at a hearing online and in-person in Vancouver, British Columbia on April 12 and 13, 2022;

AND UPON the Court reading the materials filed;

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant, Her Majesty the Queen, pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106.

2. The primary class in this proceeding is defined as:

All First Nations (Status and Non-Status Indians), Inuit and Métis persons who were removed from their homes in Canada between January 1, 1992 and December 31, 2019 and placed in the care of individuals who were not members of the Indigenous group, community or people to which they belong, excluding on-reserve class members in the Federal Court action styled as *Moushoom and Meawasige (by his litigation guardian, Beadle) v The Attorney General of Canada* with court file number T-402-19 (the “Primary Class” or “Primary Class Members”).

3. The family class is defined as:

The parents and grandparents of Primary Class Members (the “Family Class”, collectively with the Primary Class, the “Class” or “Class Members”).

4. Cheyenne Pama Mukos Stonechild and Steven Hicks are appointed as Representative Plaintiffs for the Primary Class and Lori-Lynn David is appointed as Representative Plaintiff for the Family Class, pursuant to Rule 334.17(1)(b).

5. This action concerns claims made on behalf of the Class, pursuant to Rule 334.17(1)(c), as follows:

The claims assert systemic negligence, breaches of sections 7 and 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*, and unjust enrichment.

6. The relief claimed by the Class, pursuant to Rule 334.17(1)(d), is as follows:
- a. declarations;
 - b. general damages for the Defendant’s several liability;
 - c. special damages;
 - d. damages under the *Canadian Charter of Rights and Freedoms*;

- e. restitution by the Defendant of its wrongful gains;
 - f. exemplary, aggravated, and punitive damages;
 - g. damages equal to the costs of administering notice, administration, and the plan of distribution;
 - h. recovery of health care costs incurred by provincial and territorial health insurers on behalf of the Plaintiffs and other Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;
 - i. pre-judgment and post-judgment interest; and
 - j. costs.
7. The common questions of law or fact in this proceeding are certified pursuant to Rule 334.17(1)(e) as follows:

Systemic negligence questions

- a. Did the Defendant owe a duty of care to the Class and, if so, what was the scope of that duty?
- b. If the answer to (a) is yes, was the Defendant entitled to delegate its duty or aspects of that duty to the provinces and territories and their child welfare agencies?
- c. If the answer to (b) is no or if aspects of the Defendant's duty were not delegable, what was the standard of care owed by the Defendant to the Class?
- d. Did the Defendant's conduct, acts, and omissions fall below the applicable standard of care?
- e. If the answer to (d) is yes, can causation of any damages incurred by Class Members be determined as a common question?
- f. If the answer to common questions (a), (d) and (e) is yes, can the Court make an aggregate assessment of damages suffered by all or some Class Members and, if so, in what amount?

Charter questions

- g. Did the Defendant breach the Class Members' right to life, liberty, and security of the person in a manner contrary to the interests of fundamental justice under section 7 of the *Canadian Charter of Rights and Freedoms*?
- h. Did the Defendant breach the right of Class Members to equal protection and equal benefit of the law without discrimination based on race, religion, colour, or national or ethnic origin under section 15 of the *Canadian Charter of Rights and Freedoms*?
- i. If the answer to common question (g) or (h) is yes, were the Defendant's actions saved by section 1 of the *Canadian Charter of Rights and Freedoms* and, if so, to what extent and for what time period?
- j. If the answer to common question (g) or (h) is yes, and the answer to common question (i) is no, do those breaches make damages an appropriate and just remedy under section 24 of the *Canadian Charter of Rights and Freedoms* for all or some of the Class?
- k. If the answer to common question (j) is yes, can the Court make an aggregate assessment of damages owed to some or all Class Members under section 24 of the *Canadian Charter of Rights and Freedoms* and, if so, in what amount?

Unjust enrichment questions

- l. Was the Defendant unjustly enriched by Class Members' loss of rights and entitlements arising from Indigeneity?
- m. If the answer to common question (l) is yes, can the Court make an aggregate assessment of the restitution that should be paid to Class Members or some of them on account of the Defendant's wrongful gains and, if so, what amount of restitution should be paid to Class Members?

Punitive damages questions

- n. Does the Defendant's conduct justify an award of punitive damages?
 - o. If the answer to common question (n) is yes, what amount of punitive damages should be awarded against the Defendant?
8. Murphy Battista LLP and Gowling WLG (Canada) LLP are appointed as Class Counsel.

9. The time and manner for Class Members to opt out of the class proceeding is reserved and will be addressed through the case management process.
10. No costs are payable on this motion for certification in accordance with Rule 334.39.

"Michael L. Phelan"
Judge