(SECTION 48)

ID 1

FORM 66 - Rule 66

GENERAL HEADING

PROPOSED CLASS PROCEEDING

COURT FILE NO. T-272-22

FEDERAL COURT

BETWEEN:

NORVENA BREAKER as REPRESENTATIVE PLAINTIFF
Plaintiffs

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by THE ATTORNEY GENERAL OF CANADA
Defendant

STATEMENT OF CLAIM

FORM 171A - Rule 171

PROPOSED CLASS PROCEEDING

STATEMENT OF CLAIM TO THE DEFENDANT

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

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

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

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

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

(Date) February 15, 2022

ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉ L'ORIGINAL

Issued by: _____
(Registry Officer)

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on / and dated.

FEV
FEB 15 2022

KEVIN LEMIEUX / REGISTRY OFFICER

Address of local office:

3rd Floor, Canadian Occidental Tower
635 Eighth Avenue SW
Calgary, Alberta T2P 3M3

TO:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by THE ATTORNEY GENERAL OF CANADA

3rd Floor, Canadian Occidental Tower
635 Eighth Avenue SW
Calgary, Alberta T2P 3M3
CLAIM

I. DEFINITIONS

1. The following terms shall be applicable to this Statement of Claim and so defined as follows:

a. "**1965 Agreement**" means the Memorandum of Agreement Respecting Welfare Programs for Indians of 1965, a cost-sharing agreement between the Crown and the Province of Alberta for the provision of certain services to First Nations in Alberta, including but not limited to child and family services, childcare and social assistance.

b. "**Child, Youth and Family Enhancement Act**" means the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12.

c. "**CHRA**" means *Canadian Human Rights Act*, R.S.C. 1985, c.H-6.

d. "**Class**" means the On-Reserve Class and the Jordan's Principle Class, collectively.

e. "**Class Period**" means the period of time beginning on April 1, 1965 and ending on April 1, 1991.

f. "**Crown**" means Her Majesty in Right of Canada as defined under the *Crown Liability and Proceedings Act*, R.S.C. 1985, c.C-50 and the agents of Her Majesty in Right of Canada, including the various federal departments responsible for the funding formulas, policies and practices at issue in this action relating to First Nations children in Canada during the Class Period as follows: The Department of Indian Affairs and Northern Development using the title Indian and Northern Affairs Canada ("AANDC") from 2011 to 2015; Indigenous and Northern Affairs Canada ("INAC") from 2015 to 2017; and Indigenous Services Canada and

Crown-Indigenous Relations and Northern Affairs Canada, following the 2017 dissolution of INAC.

g. "**EPFA**" MEANS the Enhanced Prevention Focused Approach, which the Crown implemented in 2007 in response to criticisms of Directive 20-1, starting in Alberta and later adding Saskatchewan, Manitoba, Quebec Nova Scotia and Prince Edward Island.

h. "**First Nations**" means Indigenous people in Canada who are neither Inuit nor Metis, including individuals who have Indian status, or are recognized as citizens by their respective First Nations community, including First Nations in the Yukon and the Northwest Territories.

i. "**FNCFS Agencies**" means agencies that provided child and family services, in whole or in part, to the Class Members pursuant to the FNCFS Program and other agreements except where such services were exclusively provided by the province or territory in which the community was located.

j. "**FNCFS**" or "**FNCFS Program**´ means INAC's First Nations Child and Family Services Program which funded, and continues to fund public services, including Prevention Services and Protection Services, to First Nations children and communities.

k. "**Impugned Conduct**" means the totality of the Crown's discriminatory practices, including unlawful underfunding and the breach of Jordan's Principle as pleaded below.

l. "**Indian Act**" means the *Indian Act*, R.S.C., 1985, c. I-5.

m. "**Jordan's Principle**" means a child-first principle intended to ensure that all First Nations children living on Reserve or on off Reserve receive needed services and

products that are substantively equal, taking into account their best interest and cultural rights, free of adverse differentiation.

n. "**Jordan's Principle Class**" means all First Nations individuals who were under the applicable provincial/territorial age of majority and who, during the Class Period, were denied a public service or product, or whose receipt of a public service or product was delayed or disrupted, on the grounds of lack of funding or lack of jurisdiction, or as a result of jurisdictional dispute with another government of governmental department.

o. "**On-Reserve Class**" means all First Nations individuals who:

   i. Were under applicable provincial/territorial age of majority at any time during the Class Period; and

   ii. Were taken into out-of-home are during the Class Period while they, or at least 'one of their parents were ordinarily resident on a reserve.

p. "**Post-Majority Services**" means 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 in the province or territory that they reside.

q. "**Prevention Services**" means three (3) categories of least disruptive services meant to secure the bests interests of the children, while retaining the distinct cultural and linguistic needs of the children without disrupting the bond of the children with their families and their community. Prevention Services include:

   i. Services aimed at the community as a whole. For example, public awareness and initiatives to promote healthy families and to prevent or respond to child mistreatment;

ii. Services responding to child mistreatment situations; and

iii. Services that target specific families where a child has been identified as mistreated or where there is a crisis.

r. "**Protection Services**" means those services that are alerted when the safety and/or well being of a child is reported. These services include receiving and assessing mistreatment reports, developing plans to remediate the situation, and if warranted, removing the children from the families into out-of-home care when necessary.

s. "**Provincial/Territorial Funding Agreements**" means funding agreements signed by the Crown with a province of territory, other than Ontario, or with a non-First Nations operated child and family service entity, for the provision of child and family services in whole, or in part, to First Nations children.

t. "**Reserve**" means an area of land to which the legal title is in the name of the Crown and has been set apart for the use and benefit of an Indian Band as defined under the *Indian Act*.

u. "**Residential Schools**" means schools for First Nations, Metis and Inuit children funded by the Crown from the 19th century until 1996, which had the objective of assimilating children into Christian, Euro-Canadian society by stripping away their First Nations, Metis and Inuit rights, cultures, languages, and identities, a practice subsequently recognized as "cultural genocide".

v. "**Sixties Scoop**" means the decades-long practice in Canada of taking Indigenous children, including First Nations, from their families and communities for placement in non-Indigenous foster homes or for adoption by non-Indigenous parents.

w. "**Tribunal**" means the Canadian Human Rights Tribunal.

II. THE PARTIES

A. The Plaintiff

2. The Plaintiff, Norvena Breaker was born on October 24, 1964, and was at the time a member of the Siksika First Nations Reserve. She has recently transferred her membership to the Pikani First Nation.

3. Breaker first entered the child welfare system in 1981. She was separated from her brothers and sisters and sent to a foster home.

4. Breaker was placed with a white family who had no background in indigenous culture or connection to any indigenous community.

5. Two years later, Breaker was returned to the reserve to live with her grandparents, who were alcoholics. Although Child Welfare knew that there was excessive drinking going on in the home, they did not provide any resources to deal with the resultant issues, which were serious and included sexual abuse of Breaker from the time she was 7 to the time she was 14 or 15 by an uncle who would come over when Breaker's grandparents went to town to drink. All Breaker's Grandparents were told was to "stop drinking."

6. At the age of 14 or 15, Breaker ran away from her grandparents' home, and was returned to the foster system, where she stayed until she was 18 years old.

7. When she was 18 years old, Breaker became pregnant, at which time Child Welfare closed her file and she was provided with no further assistance from them.

B. The Defendant

8. The Defendant, the Attorney General of Canada, represents the Crown, and is liable

and vicariously liable for the Impugned Conduct.

9. In particular, the Crown is liable and vicariously liable for the acts and omissions of its agents, INAC and its predecessors and successors, which funded the services provided to the Class Members by the FNCFS Agencies or the province/territory. In this claim, INAC and its predecessors or successors, are referred to interchangeable as the Crown, unless specifically named.

III. NATURE OF THE ACTION

10. For decades, the Crown has systematically discriminated against First Nations children on the grounds of race and national or ethnic origin. The discrimination has taken two forms.

11. First, the Crown has knowingly underfunded child and family services for First Nations children living on Reserve and in the Yukon. This underfunding has prevented child welfare service agencies from providing adequate Prevention Services to First Nations children. The Crown has known about the severe inadequacies of its funding formulas, policies, and practices for years, but had not adequately addressed them.

12. At the same time that the Crown has underfunded Prevention Services to First Nations children living on Reserve and in the Yukon, it has fully funded the costs of care for First Nations children who are removed from their homes and paced into out-of-home care. This practice has created an incentive on the part of the First Nations child welfare service agencies to remove First Nations children living on Reserve and in the Yukon from their homes and place them in out-of-home care. Because of this funding formulas, policies and practices, a child on Reserve must often be removed from their home in order to receive public services that are available to children off Reserve.

13. The removal of a child from their home causes severe, and in some cases, permanent trauma. It is therefore only used as a last resort for children who do not live on a Reserve. Because of the underfunding of Prevention Services and the full funding of out-of-home care, however, First Nations children on Reserve and in the Yukon have been removed from their homes as a first resort, and not as a last resort. The funding incentive to remove First Nations children from their home accounts for the staggering number of First Nations children in state care. There are approximately three times the number of First Nations children in state care now than there were in Residential Schools at their apex in the 1940's.

14. The incentivized removal of First Nations children from their homes has caused traumatic and enduring consequences to First Nations children. Many of these children already suffer the effects of trauma inflicted by the Crown on their parents, grandparents and ancestors by the Residential Schools and Sixties Scoop. This action seeks individual compensation for on Reserve First Nations children who were victims of this systemic discrimination.

15. Second, the Crown has failed to comply with Jordan's Principle, a legal requirement designed to safeguard First Nations children's substantive equality rights. Jordan's Principle aims to prevent First Nations children from suffering gaps, delays, disruption or denials in receiving necessary services and products while government determine which level (federal, provincial or territorial) or such governmental department will pay for such services or products. Jordan's Principle is admitted by the Crown to be a "legal requirement" on it and thus a duty that carries civil consequences. However, the Crown has essentially ignored Jordan's Principle and thereby denied crucial services and products to tens of thousands of First Nations children in breach of Jordan's Principle. This action seeks compensation for those First Nations who suffered or dies

while awaiting the services or products that the Crown was legally required to provide but did not provide, in breach of Jordan's Principle.

16. Both forms of discrimination were directed at the Class because they were First Nations and because they were children.

17. The Crown's discriminatory policies and practices alleged herein breached section 15 (1) of the Charter, the Crown's fiduciary duties to the First Nations children and constituted negligence. No individual compensation for the victims of the discriminatory practices has resulted or will result from the Tribunal decision. This action seeks compensation for First Nations individuals who were victims of the Crown's systemic discrimination while they were under the age of majority.

IV. THE CROWN'S TREATMENT OF FIRST NATIONS CHILDREN

18. Pursuant to section 91 (24) of the *Constitution Act 1867,* The Crown has jurisdiction over First Nations peoples. Provinces and territories have jurisdiction over child and family welfare generally. Each province and territory has its own child and family services legislation.

19. Child and family services, also referred to as "child welfare", consist of a range of services intended to prevent and respond to child mistreatment and to promote family wellness.

20. Starting in the 19th century, the Crown systemically separated First Nations children from their families and placed them in Residential Schools. Among other things, the Crown used the Residential Schools as child welfare care providers for the First Nations children who allegedly needed child and family services.

21. Following the closure of the Residential Schools, the Crown undertook the provision of child and family services for First Nations children and their families. However,

Parliament did not pass federal legislation regarding First Nations child and family services.

22. Rather, the Crown chose to operate child welfare services in a federal legislative vacuum filled by two statutory provisions:

(a) Section 4 of the *Department of Indian Affairs and Northern Development Act,* R.S.C. 1985, c. I-6, gave the Minister of Indian Affairs and Northern Development authority over all "Indian affairs" and "Yukon", the Northwest Territories and Nunavut and their resources and affairs; and

(b) Section 88 of the *Indian Act* provided for the application of provincial or territorial child welfare legislation to First Nations as provincial or territorial "laws of general application", with funding for those services from the Crown.

23. The Crown, through INAC and its predecessors and successors, required that FNCFS Agencies use provincial/territorial child welfare laws as a condition of funding. The funding itself was provided on the basis of formulas crafted by the Crown.

24. Thus, Parliament did not enact laws to govern the was essential services were to be provided to Class Members and to ensure that they were provided fairly and adequately.

25. The Crown provided funding during the Class Period through 3 channels that worked on the basis of uniform policies, objectives, and short-comings common to the Class:

(a) The 1965 Agreement;

(b) The EPFA; and

(c) The Provincial/Territorial Funding Agreements.

26. The Crown designed its funding channels based on assumptions ill-suited to the

Crown's stated objectives and without regard to the realities of First Nations communities.

27. This approach directly and foreseeably resulted in systemic shortcomings, ultimately assuring the chronic under-provision of essential services on which the Class Members relied. These shortcomings included the following:

(a) Funding models that incentivized the removal of Class Members from their homes and placed them in out-of-home care;

(b) Inflexible funding mechanisms that could not account for the particular needs of diverse First Nations communities on Reserves and in the Yukon, and the operating costs of an agency delivering services therein;

(c) Funding models that ignored the pressing need for Prevention Services, family support and culturally appropriate services;

(d) Inadequate funding for essential programs and services, and in particular inadequate funding to align services with standards set by provincial or territorial legislation;

V. RELIEF SOUGHT

28. The Plaintiff, on behalf of the Class, claims:

(a) An order certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class and any appropriate sub-class thereof;

(b) A declaration that the Crown breached its common law and fiduciary duties to the Plaintiff and the Class;

(c) A declaration that the Crown breached section 15(1) of the Charter of Rights and Freedom ("Charter"), and that such breach was not justified under section 1 of the Charter;

(d) Aggregate damages for breach of fiduciary duty, negligence, and under section 24 (1) of the Charter in the amount of $3,000,000,000, and an order that any undistributed damages be awarded for the benefit of Class members, pursuant to rule 334.28 of the *Federal Court Rules;*

(e) An order pursuant to rule 334.26 of the *Federal Court Rules* for the assessment of the individual damages of Class members;

(f) Punitive and exemplary damages of $50,000,000 or such other sum as this Honourable Court deems just;

(g) The costs of notices and of administering the plan of distribution of the recovery of this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Court Rules.*

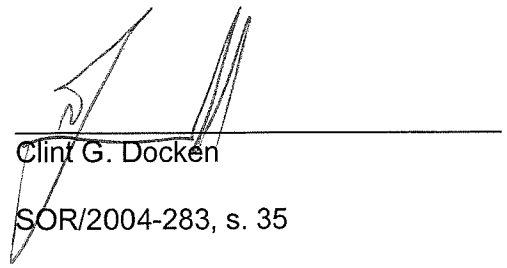
(h) Costs of this action on a substantia indemnity basis or in an amount that provides full indemnity;

(i) Pre-judgment and post-judgment interest pursuant to the *Federal Court Rules*, R.S.C., 1985, c.F-7; and

(j) Such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

The plaintiffs propose that this action be tried at Calgary, Alberta.

February 15, 2022



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