T-143-18

Court File No.:

FEDERAL COURT OF CANADA

PROPOSED CLASS PROCEEDING

B E T W E E N :

ANN CECILE HARDY

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

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: JAN 2 2 2019

Issued by:
(Registry Officer)

SHERRI ALLY
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: 180 Queen Street West, Suite 200
Toronto, Ontario
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TO: **The Attorney General of Canada**
Department of Justice Canada
130 King Street West, Suite 3400, Box 36
Toronto, Ontario M5X 1K6

CLAIM

A. RELIEF SOUGHT BY THE PLAINTIFF AGAINST CANADA

1. The plaintiff claims on behalf of herself and the other members of the proposed class:

(a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class pursuant to rule 334.16 of the *Federal Court Rules*, SOR/98-106 (the "***Federal Court Rules***");

(b) a declaration that Canada owed a fiduciary duty and a duty of care to the plaintiff and all Patient Class members in relation to the funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals;

(c) a declaration that Canada was negligent in the funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals;

(d) a declaration that Canada was in breach of its fiduciary duty to the plaintiff and Patient Class members as a consequence of its funding, operation, supervision, control, maintenance, oversight and support of Indian Hospitals;

(e) a declaration that Canada is liable to the plaintiff and Patient Class members for damages caused by its breach of its fiduciary duty and for negligence in relation to the funding, operation, supervision, control, maintenance, oversight and support of Indian Hospitals;

(f) damages for negligence and breach of fiduciary duty in the amount of $1 billion;

(g) punitive and exemplary damages in the amount of $100 million;

(h) on behalf of the Family Law Class members, damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F-3 and equivalent legislation in other provinces and territories in Canada;

(i) prejudgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;

(j) costs of this action on a substantial indemnity scale or in an amount that provides full indemnity;

(k) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*; and

(l) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

(a) "**Aboriginal**" or "**Aboriginal Person(s)**" means any person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act*, 1982 (U.K.), 1982. c. 11, specifically, Indian, Inuit and Métis peoples of Canada;

(b) "**Agents**" mean the servants, contractors, officers and employees of Canada and the operators, managers, administrators, doctors, nurses, clinicians and all other staff members of Indian Hospitals;

(c) "**Canada**" means the defendant in this proceeding as represented by the Attorney General of Canada;

(d) "**Class**" or "**Class Members**" means Patient Class members and Family Law Class members ;

(e) "**Class Period**" means the period from November 1, 1945 to 1981;

(f) "**Family Law Class member(s)**" means:

(i) spouses, children, grandchildren, parents, grandparents, brothers and sisters of Patient Class members;

(g) "**Indian Hospital(s)**" means any hospital designated by Canada for the care and treatment of Aboriginal Persons under the jurisdiction of the defendant or its constitutive departments, ministries or agencies during the Class Period;

(h) "**Indian Advisory Committee**" means a joint committee of the Canadian Tuberculosis Association comprised of federal and provincial bureaucrats and tuberculosis sanatorium;

(i) "**Indian Health Services**" or "**IHS**" means the department of Canada responsible for the health care of Aboriginal Persons;

(j) "**Patient Class**" means all Aboriginal Persons who were admitted to an Indian Hospital operated by the defendant during the Class Period;

(k) "**Sanatorium/Sanitoria**" means provincially-mandated care facilities predominantly designated for non-Aboriginal Persons with the mandate of curing tuberculosis;

(l) "**Spouse**" is defined as in sections 1 and 29 of the *Family Law Act*, R.S.O. 1990, c F.3 or equivalent legislation in other provinces and territories in Canada;

C. OVERVIEW OF THIS ACTION

3. This action concerns the defendant's conduct in its operation of Indian Hospitals over an approximately 40-year period between 1945 and 1981. During that time, the defendant had sole jurisdiction over the operation of twenty-nine (29) Indian Hospitals.

4. The defendant established, funded, oversaw, operated, supervised, controlled, maintained and supported Indian Hospitals through common national policies and procedures.

5. Indian Hospitals, as operated by the defendant, were substandard facilities intended to segregate Aboriginal Persons from the rest of the Canadian population.

6. The defendant forcibly confined Patient Class members to Indian Hospitals where they were kept in overcrowded, poorly staffed and unsanitary facilities where they suffered consistent physical and sexual abuse.

7. The defendant was negligent and breached its fiduciary duty owed to the Patient Class Members.

8. The defendant's systemic negligence and breach of fiduciary duty resulted in enormous harm to the Class.

D. THE PARTIES

a) The Representative Plaintiff and the Class

9. The representative plaintiff, Ann Cecile Hardy, resides in Edmonton, Alberta and is a member of the Métis Nation. Hardy was admitted as a patient in the Charles Camsell Indian Hospital ("**Charles Camsell**") in 1969 when she was ten (10) years old.

10. The plaintiff brings this action pursuant to the *Federal Court Rules* on her own behalf and on behalf of the following Class:

(a) all Aboriginal Persons who were admitted to an Indian Hospital operated by the defendant during the Class Period (**"Patient Class"**); and

(b) spouses, children, grandchildren, parents, grandparents, brothers and sisters of Patient Class members (**"Family Law Class"**);

b) The Defendant

11. The defendant, Canada, is represented in this proceeding by the Attorney General of Canada pursuant to section 23 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 (**"*Crown Liability and Proceedings Act*"**).

12. At all material times, Canada was responsible for the maintenance, funding, operation, oversight and/or management of Indian Hospitals.

13. Canada employed and/or authorized its Agents to operate, manage, and oversee Indian Hospitals. It also gave instructions to such Agents as to the manner in which Indian Hospitals were to function and operate.

14. Canada's maintenance, funding, operation, oversight and/or management of Indian Hospitals, through its Agents, breached its duty of care owed to Patient Class members. Canada was also in breach of its fiduciary duty owed to Patient Class members who were Aboriginal Persons.

15. By virtue of its responsibility to ensure the safety, care and protection of Patient Class members and its authority and control over its Agents, and in accordance with section 3 of the *Crown Liability and Proceedings Act*, Canada is vicariously liable for the acts and omissions of its Agents in respect of the maintenance, funding, operation, oversight and/or management of Indian Hospitals.

16. Furthermore, as many of the Patient Class members were vulnerable Aboriginal children when they were taken from their homes and families, Canada assumed *loco*

parentis responsibility for the care and supervision of those Patient Class members during the Class Period.

E. THE INDIAN HOSPITAL SYSTEM

a) Background

17. In or around 1928, jurisdiction over the healthcare of Aboriginal Persons in Canada fell under IHS, which initially provided funding, together with provincial governments, to community hospitals. These community hospitals maintained segregated wards meant only for Aboriginal Persons.

18. In or around 1936, IHS became a branch of the federal Department of Mines and Resources.

b) The Tuberculosis Epidemic

19. The tuberculosis disease (**"TB"**) is a communicable disease that attacks the lungs and causes coughing, sneezing, headaches and weakness. It can result in premature death.

20. In or around the 1920s and 1930s, TB began to spread rapidly among Aboriginal Persons at a rate far higher than among non-Aboriginal Persons. In order to develop a vaccine to combat TB, the provinces of Manitoba and Saskatchewan authorized hospitals to carry out TB vaccine trials on Aboriginal children.

21. In 1936, the Province of Saskatchewan established the Fort Qu'Appelle Indian Hospital to test the potential TB vaccine, *bacillus-calmette-guerin*, on Aboriginal children.

22. In 1937, the Indian Advisory Committee recommended that an Indian Hospital program be established under Canada's jurisdiction to isolate Aboriginal patients so that TB would not spread among non-Aboriginal Persons.

23. The Indian Advisory Committee's recommendation to create a separate Indian Hospital system resulted initially in the conversion of an aging infirmary building into the Dynevor Indian Hospital (**"Dynevor"**). Dynevor was an unsanitary facility with crumbling infrastructure in which 29% of its patients died in the first five years after it was established.

c) Department of National Health and Welfare

24. On November 1, 1945, by Order in Council P.C. 6495, IHS was transferred from the Department of Mines and Resources to the Department of National Health and Welfare (**"DNHW"**). Under the DNHW, numerous other Indian Hospitals were created where Aboriginal Persons were forcibly segregated from the rest of the Canadian population. Initially, Indian Hospitals were limited to Aboriginal Persons who had contracted or were suspected to have contracted TB. Subsequently, Aboriginal Persons with other illnesses were also treated. At all material times, admission to Indian Hospitals was exclusively based on Aboriginal status.

25. The DNHW's central aim was to ensure uniform policies and practices were carried out at Indian Hospitals across the country. This is exemplified in its 1964 policy document entitled, *Health Services for Indians*, which states, "[t]he Indian Health Services program is national in scope and relatively uniform across Canada, having regard for the particular requirements in each area. It does not, and is not intended to resemble individual health unit programs which may exist for similarly situated non-Indians."

26. Over the course of the Class Period, Canada operated, *inter alia*, the following Indian Hospitals:

(a) Tobique Indian Hospital (NB);

(b) Manitowaning Indian Hospital (ON);

(c) Lady Willington Indian Hospital (ON);

(d) Squaw Bay Indian Hospital (ON);

(e) Moose Factory Indian Hospital (ON);

(f) Sioux Lookout Indian Hospital (ON);

(g) Brandon Indian Hospital (MB);

(h) Dynevor Indian Hospital (MB);

(i) Fisher River Indian Hospital (MB);

(j) Fort Alexander Indian Hospital (MB);

(k) Clearwater Lake Indian Hospital (MB);

(l) Norway House Indian Hospital (MB);

(m) Fort Qu'Appelle Indian Hospital (SK);

(n) North Battleford Indian Hospital (SK);

(o) Peigan Indian Hospital (AB);

(p) Sarcee Indian Hospital (AB);

(q) Blood Indian Hospital (AB);

(r) Morley / Stoney Indian Hospital (AB);

(s) Hobbema Indian Hospital (AB);

(t) Blackfoot Indian Hospital (AB);

(u) Charles Camsell Indian Hospital (AB);

(v) Coqualeetza Indian Hospital (BC);

(w) Miller Bay Indian Hospital (BC);

(x) Nanaimo Indian Hospital (BC);

(y) Fort Simpson Hospital (NWT);

(z) Fort Norman Indian Hospital (NWT);

(aa) Frobisher Bay Hospital (NWT);

(bb) Inuvik Hospital (NWT); and

(cc) Whitehorse Hospital (YK).

27. Under the DNHW and any other similarly-situated federal department, as may be applicable, all of the above Indian Hospitals operated under the same or substantially similar policies and procedures in providing health care to Aboriginal Persons.

28. The policies and procedures promulgated by the DNHW or other departments through the IHS were carried out as part of their mandate as Agents of the Government of Canada.

29. Canada owned and operated Indian Hospitals until they were closed or, otherwise, transferred to the jurisdiction of the provinces. The last Indian Hospital was closed or transferred to provincial jurisdiction in 1981.

d) The *Indian Act* and its *Regulations*

30. In 1953, Canada enacted the *Indian Health Regulations* (**the "*Regulations*"**) to the *Indian Act*, S.C. 1951, c. 29 outlining common policies to be undertaken at Indian Hospitals across the country. The *Regulations* were administered through the centralized office of the Indian Superintendent with Indian agents and medical officers present at each Indian Hospital.

31. The *Regulations* required reporting to Indian Hospitals if the Indian Superintendent or the individual had reason to believe that he or she had contracted an infectious disease. There were no comparable obligations placed upon non-Aboriginal Persons requiring them to be admitted into non-Indian Hospitals.

32. Aboriginal Persons admitted to an Indian Hospital were required to remain in the hospital until being discharged. If an Aboriginal Person tried to leave an Indian Hospital without the express permission of the Indian Superintendent or a medical officer, that person would be arrested, returned to the Indian Hospital and held in isolation. There were no comparable provisions of detention and return for non-Aboriginal Persons utilizing non-Indian Hospitals.

33. Those found to have contravened any provision of the *Regulations* were subject to imprisonment and/or a fine. Non-Aboriginal Persons were not subject to comparable penalties.

e) Conditions and Practices in Indian Hospitals

34. Indian Hospitals were facilities that were substandard, ill equipped, overcrowded and inadequately staffed. According to the Royal Commission on Government Organization in 1962, "the quality of care of Indian and Northern Health Services hospitals is not comparable with that provided in community hospitals in the same area … moreover, it is evident that the Department [DNHW] finds it hard to get suitable personnel, particularly in the lower ranks."

35. As discussed below, during the Class Period, Canada segregated Aboriginal Persons in substandard hospital facilities where they were repeatedly physically and sexually abused. Aboriginal Persons were unable to leave Indian Hospitals on their own accord and were forcibly detained, isolated and, at times, restrained to their beds.

36. Canada negligently operated Indian Hospitals in a manner that resulted in harm to Patient Class members. The following are examples of common and systemic sub-standard conditions and inappropriate practices in Indian Hospitals during the Class Period.

i) Physical and Sexual Abuse

37. Throughout the Class Period, due to the defendant's systemic failures, the Patient Class members were subjected by Canada and its Agents to widespread, common and systemic physical and sexual abuse.

38. Common incidents of physical abuse incurred by Patient Class members include, but are not limited to:

(a) beating with rods and sticks;

(b) isolation in hospital rooms for prolonged periods of time;

(c) food and drink deprivation without any medical reason;

(d) physical restraint to hospital beds; and

(e) forced feeding and forcibly requiring Class Members to eat their own vomit;

39. In addition to physical abuse suffered by Patient Class members, there was widespread and common sexual abuse carried out by hospital staff members who were Agents of the defendant. The defendant failed to implement appropriate policies and procedures to prevent such harm and, to the contrary, permitted it to occur.

40. The defendant also failed to establish and implement mechanisms through which Patient Class members could complain and seek redress against hospital staff members, who were Agents of the defendant.

41. The defendant failed to establish and implement adequate policies and procedures to oversee the actions of hospital staff towards vulnerable Patient Class members, which could have prevented the widespread physical and sexual abuse that took place in Indian Hospitals.

42. The defendant's failure to establish and implement adequate policies and procedures resulted in Patient Class members being physically harmed and emotionally and psychologically traumatized.

43. The defendant's systemic failures created a toxic environment in which physical and sexual abuse was rampant.

ii) Forced Confinement and Restraints

44. In addition to being forcibly detained in Indian Hospitals, many Patient Class members were inappropriately restrained to their hospital beds without any medical reason. Patient Class members were, at times, tied down by Indian Hospital staff to their beds for days, weeks or even months at a time and only untied for mandatory meals and washroom breaks. In some cases, Patient Class members were fitted with body casts that prevented movement for months or years.

45. As a result of being tied to their beds or from body casting for a prolonged period of time, Patient Class members were unable to sit up in their beds, leave their rooms, interact with others or even take care of their basic hygienic needs.

46. Patient Class members were restrained to their hospital beds against their will without medical justification for doing so. Forced bed confinement continued in Indian Hospitals for Aboriginal patients long after the practice had been abandoned by medical practitioners treating non-Aboriginal patients for TB.

47. Starting in the 1940s, antibiotic drug treatment for TB was used in Canada for non-Aboriginal patients who could be treated at home without the need to be confined to a bed.

iii) Unsanitary and Dangerous Facilities

48. Many buildings in which Indian Hospitals operated during the Class Period were converted military barracks owned and/or operated by the Canadian or United States governments during the Second World War.

49. Indian Hospitals were old and crumbling buildings that lacked the proper sanitation to be operated as hospitals. They also often lacked proper plumbing, electricity and infrastructure. As a result, Patient Class members suffered harm to their health and well-being.

iv) Poorly Trained Staff

50. The defendant employed staff in Indian Hospitals who were not adequately trained to provide the necessary health care services to Patient Class members.

51. According to the Royal Commission on Government Organization, from 1957-1962, of the 117 physicians who joined the DNHW, 47% were graduates of foreign medical schools with the majority of those individuals not having passed the requisite Canadian licensing examinations. Therefore, those physicians were not qualified to practice medicine in Canada yet were allowed to do so in Indian Hospitals.

52. In addition, during the Class Period, most medical and administrative staff in Indian Hospitals did not speak any Aboriginal languages and did not have an adequate understanding of Aboriginal cultures, beliefs, understandings, protocols and/or practices. As a result, Indian Hospital staff members were unable to properly communicate with Patient Class members and their families, receive instructions on medical care and carry out their responsibilities with the requisite standard required of medical and/or administrative hospital staff in the circumstances.

F. THE PLAINTIFF'S EXPERIENCE

53. The representative plaintiff, Ann Cecile Hardy, was a patient in Charles Camsell from January to May 1969 when she was 10 years old. She was admitted after contracting TB.

54. While admitted as a patient in Charles Camsell, Ann was repeatedly sexually abused by medical technicians at the hospital. She also witnessed other patients being sexually abused.

55. After witnessing her roommate undergo repeated sexual abuse by a hospital staff member, Ann was physically threatened by that staff member to not report, or otherwise seek redress.

56. Ann was released from Charles Camsell in May 1969. As a result of her experiences as a patient in the hospital, Ann was left physically, emotionally and psychologically battered. She underwent therapy and counselling for several years after her release from Charles Camsell and continues to suffer flashbacks and psychological harm.

G. CANADA'S BREACHES OF DUTIES TO THE CLASS MEMBERS

a) Negligence

57. The defendant owed a duty of care to Patient Class members through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals. Patient Class members were, in effect, wards of Canada and therefore under its reasonable care.

58. Through itself or its Agents, the defendant was in a relationship of proximity with Patient Class members as a result of its operation of Indian Hospitals during the Class Period.

59. During the Class Period, Patient Class members were in the care and control of the defendant's Agents during their time as patients in Indian Hospitals and expected that they would not be treated by the defendant in a manner that would cause them physical or emotional harm.

60. The defendant knew or ought to have known that in its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals, its negligence would result in compensable physical and emotional harm to Patient Class members.

61. Canada knew or ought to have known that its failure to take reasonable care in ensuring that Indian Hospitals were established, funded and operated with standards

substantially similar to non-Indian Hospitals operated by the provinces during the Class Period would result in harm to Patient Class members.

62. Patient Class members had the reasonable expectation that Canada would operate Indian Hospitals in a manner that was substantially similar to the care, control and supervision provided to patients of non-Indian Hospitals during the Class Period.

63. Canada was obliged to establish, fund and operate Indian Hospitals with a reasonable standard of care, which includes, but is not limited to:

(a) ensuring the safety and well-being of Patient Class members;

(b) providing an environment free from sexual, physical, emotional and psychological abuse;

(c) establishing, implementing and enforcing appropriate policies and procedures to ensure that Patient Class members would be free from sexual, physical, emotional and psychological abuse;

(d) establishing, implementing and enforcing appropriate policies and procedures to ensure that Patient Class members would not be unnecessarily or inappropriately confined, isolated or restrained during their time as patients in Indian Hospitals;

(e) ensuring that Indian Hospital buildings were adequately built and maintained in a manner that would not cause Patient Class members physical, emotional or psychological harm;

(f) ensuring that Indian Hospital buildings were clean, sanitary and functioning facilities, which were free from substantial engineering and/or design defects that could cause Patient Class members physical, emotional or psychological harm;

(g) ensuring that Indian Hospital staff members, who were Agents of the defendant, were adequately educated, licensed and trained in order to fulfill their employment obligations in a manner that would not cause physical, emotional or psychological harm to Patient Class members;

(h) investigating, adjudicating and, if necessary, reporting to the appropriate law enforcement authorities complaints by Patient Class members of physical, sexual or emotional abuse;

(i) acting in a timely and concerted fashion by, among other things, establishing and implementing policies and procedures to ensure that incidents of physical and sexual abuse would not re-occur; and

(j) such other and further obligations of the defendant as the plaintiff may advise and this Honourable Court may consider.

64. Particulars of the defendant's systemic breaches of its duty of care and fiduciary duty owed to Patient Class members include, but are not limited to:

(a) failure to adequately, properly and effectively care for patients;

(b) failure to adequately construct, maintain and operate Indian Hospitals to the detriment of the emotional, psychological and physical health of Patient Class members;

(c) failure to implement appropriate policies and procedures to ensure the hospitals were a safe environment free from physical, sexual, emotional, psychological and verbal abuse;

(d) failure to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures in Indian Hospitals during the Class period;

(e) failure to protect Patient Class members who were subjected to sexual abuse;

(f) failure to establish or implement standards of conduct for patients to ensure that no employee or patient would endanger the health or well-being of any patient;

(g) failure to provide any or an adequate program or system through which abuse could be recognized, reported, investigated or addressed;

(h) failure to establish and implement practices, standards and systems that would allow patients to maintain their Aboriginal heritage and culture;

(i) failure to establish or implement practices and procedures that would allow patients to have visitors during their stay in an Indian Hospital;

(j) failure to ensure that medical and administrative staff members working in Indian Hospitals were properly trained and had the appropriate certification to provide health care services to Patient Class members;

(k) failure to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;

(l) failure to ensure that Patient Class members would not be unnecessarily restrained to their beds by being tied down or as a result of body casting;

(m) failure to properly maintain medical and administrative records; and

(n) such other and further grounds as the plaintiff may advise and this Honourable Court may consider.

65. Canada and its Agents compelled Patient Class members to leave their homes, families and communities, and forced them to be confined in Indian Hospitals against their will or desire. Such confinement was wrongful, arbitrary and for improper purposes.

66. Patient Class members were systemically subjected to sub-standard and inappropriate institutional conditions in Indian Hospitals, described above, and, as a result, suffered physical, emotional and psychological harm for which they have yet to be compensated.

b) Breach of Fiduciary Duty

67. At all material times, the defendant was in a fiduciary relationship with Patient Class members by virtue of its relationship with Patient Class members being one of trust, reliance and dependence. Canada established, funded, oversaw, operated, supervised, controlled, maintained and supported Indian Hospitals during the Class Period through its Agents.

68. At all material times, Patient Class members were within the knowledge, contemplation, power or control of Canada and were subject to the unilateral exercise of it or its Agents' power or discretion.

69. Through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals, Canada undertook the express and implied responsibility to act in the best interests of Patient Class members at all times.

70. Patient Class members, many of whom were vulnerable children, had the reasonable expectation that they would receive reasonable health care services in Indian Hospitals without being subjected to physical, verbal, emotional or sexual harm or,

otherwise, the sub-standard conditions described above. Patient Class members relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

71. Additionally, Canada had a fiduciary duty to act in the best interests of Patient Class members pursuant to its exclusive jurisdiction in respect of Aboriginal Persons pursuant to section 91 (24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

72. By virtue of its constitutional obligations in conjunction with its quasi-constitutional obligations under the *Indian Act* and its *Regulations*, the defendant had discretionary control over Patient Class members and was required to act in their best interests at all material times. In particular, the defendant was obliged to protect the physical, emotional, social, spiritual and cultural well-being of Patient Class members as a result of their rightful status as Aboriginal Persons under the *Constitution Act, 1867*.

73. The defendant's fiduciary duty in respect of Aboriginal Persons in Canada is non-delegable in nature in light of the *sui generis* relationship with Aboriginal Persons.

74. Particulars of the defendant's breach of its fiduciary duty owed to Patient Class members are set out at paragraph 64, above.

75. Furthermore, in failing to ensure that Indian Hospitals were free from physical and sexual abuse, substandard conditions and forced confinement and restraints, Canada put its own interests ahead of the interests of the plaintiff and the Patient Class. Canada ignored, remained wilfully blind and permitted harm to Patient Class members in order to avoid scrutiny and unwanted publicity about its inappropriate, common practices and procedures concerning Indian Hospitals.

76. In breach of its fiduciary duty to Patient Class members, Canada failed and continues to fail to adequately remedy the damage caused by its failures and omissions set out herein. In particular, Canada has failed to compensate Patient Class members for the physical, emotional, psychological and sexual abuse they suffered in Indian Hospitals during the Class Period.

77. In light of the practices and procedures promulgated in Indian Hospitals during the Class Period, Canada breached its fiduciary duty owed to Patient Class members thereby affecting their legal or substantial practical interests.

H. DAMAGES SUFFERED BY THE CLASS MEMBERS

78. The defendant knew or ought to have known that as a consequence of its negligence and breach of fiduciary duty, the plaintiff and Patient Class members would suffer injury and damages including, but not limited to:

(a) assault and battery;

(b) forced confinement;

(c) sexual abuse;

(d) emotional abuse;

(e) psychological abuse;

(f) psychological illness;

(g) an impairment of mental and emotional health amounting to a severe and permanent disability;

(h) emotional and psychological pain and suffering;

(i) a propensity to addiction;

(j) an impaired ability to participate in normal family life;

(k) isolation from family and community;

(l) alienation from family, spouses and children;

(m) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;

(n) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the hospital experience;

(o) depression, anxiety and emotional dysfunction;

(p) suicidal ideation;

(q) pain and suffering;

(r) loss of self-esteem and feelings of degradation;

(s) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;

(t) loss of ability to fulfill cultural duties;

(u) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;

(v) loss of ability to live in community;

(w) loss of income;

(x) loss of enjoyment of life; and

(y) such other and further damages as the plaintiff may advise and this Honourable Court may consider.

79. As a result of the conduct alleged herein, the Family Law Class members have suffered and will continue to suffer damages, including, but not limited to, the following, which were reasonably foreseeable to the defendant:

(a) actual expenses reasonably incurred for the benefit of the Patient Class members;

(b) travel expenses incurred on the rare occasions Family Law Class members were allowed to visit Patient Class members in Indian Hospitals;

(c) loss of income or the value of services provided to Patient Class members, including nursing and housekeeping; and

(d) loss of support, guidance, care and companionship that they might reasonably have expected to receive from Patient Class members.

80. Canada and its Agents knew or ought to have known that as a consequence of its negligence and breach of its fiduciary duty Class Members would suffer the damages described above.

I. PUNITIVE AND EXEMPLARY DAMAGES

81. Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses incurred by Patient Class members which were occurring at Indian Hospitals during the Class Period. Despite this knowledge, Canada continued to operate Indian Hospitals and permit the perpetration of grievous harm to the Patient Class members throughout the Class Period.

82. In establishing and operating Indian Hospitals during the Class Period, Canada acted in a high-handed and callous manner towards Class Members warranting a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. Canada conducted its affairs with wanton disregard for Class Members' interests, safety and well-being.

J. QUEBEC LAW

83. Where the actions of the defendant and its Agents took place in Québec, they constitute:

(a) fault giving rise to the extra-contractual liability of the defendant, its employees, servants and agents to the Patient Class members pursuant to the *Civil Code of Québec,* S.Q. 1991, c. 64, Art. 1457 (**"*Civil Code of Quebec*"**), and the *Charter of Human Rights and Freedoms,* R.S.Q., c. C-12 (the **"*Québec Charter*"**), ss. 1, 4, 10, 10.1 and 16 and its predecessors;

(b) fault giving rise to the extra-contractual liability of the defendant pursuant to the *Crown Liability and Proceedings Act,* s. 3, and the *Interpretation Act,* R.S.C. 1985, c. 1-16, s. 8.1; and

(c) unlawful and intentional interference with the rights of the plaintiff and Patient Class members under the *Québec Charter,* ss. 1, 4, 10, 10.1 and 16, giving rise to the liability of the defendant to pay punitive damages to the plaintiff and Class Members, pursuant to the *Québec Charter,* s. 49 and the *Civil Code of Québec,* Art. 1621.

84. The plaintiff pleads and relies upon the following:

(a) *Federal Courts Act*, R.S.C. 1985, c. F-7;

(b) *Federal Courts Rules*, SOR/98-106;

(c) *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.);

(d) *Constitution Act, 1982*, s.35(1), being Schedule "B" to the *Canada Act, 1982* (U.K.), c. 11;

(e) *Crown Liability Act*, S.C. 1952-53, c. 30;

(f) *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50;

(g) *Civil Code of Québec,* S.Q. 1991, c. 64;

(h) *Charter of Human Rights and Freedoms,* R.S.Q., c. C-12; and

(i) *Family Law Act*, R.S.O., 1985, c. F-7 and equivalent legislation in other provinces and territories in Canada, including the *Tort-feasors Act*, R.S.A. 2000 c. T-5 and the *Civil Code of Quebec*.

85. The plaintiff proposes this action be tried in Toronto, Ontario.

January 25, 2018

Koskie Minsky LLP
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and

THE ATTORNEY GENERAL OF CANADA
Defendant

Court File No.:

FEDERAL COURT OF CANADA

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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