

DEC 12 2022

NO. S-229843
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CATHERINE STUBBINGTON AND RENA KNIGHT

PLAINTIFFS

AND:

THE PROVINCIAL DIRECTOR OF CHILD WELFARE, HIS MAJESTY THE KING IN
RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (MINISTRY OF CHILDREN AND
FAMILY DEVELOPMENT)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiffs,

- (a) if you reside in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview of the Claim

1. Children under the age of 19 (“Infant” or “Infants”) in need of protection, have come into the physical care and control of the defendants (“Care”) through multiple lawful means pursuant to the *Child, Family and Community Service Act*, RSBC 1996, c. 46 (the “Act”) and predecessor legislation. Infants who come into the Care of the defendants have rights that are intended to protect the Infants from harm and neglect and to foster an environment conducive to their growth and development. The most basic right afforded to Infants in Care, is the requirement that they be fed, clothed and nurtured according to community standards (the “Basic Rights of Childhood”). The defendants had a legal obligation to ensure that Infants in Care were afforded the Basic Rights of Childhood. Generations of Infants in Care have been deprived of the Basic Rights of Childhood by the defendants through systemic negligence, indifference and isolated acts

of corruption. The impact on the Infants in Care has been to expose them to adverse childhood experiences which has resulted in physical, sexual, social, emotional, psychological and psychiatric harm.

2. The class proceeding seeks recovery for the Infants in Care who have been exposed to adverse childhood experiences as a result of the defendants' breaches of their legal obligations to ensure that Infants in Care were afforded the Basic Rights of Childhood.

The Parties

3. The plaintiff, Catherine Stubbington ("Stubbington") is a resident of British Columbia and, for the purposes of this action, has an address for delivery of 2020-650 West Georgia Street, Vancouver, British Columbia.

4. The plaintiff, Rena Knight ("Knight") is a resident of British Columbia and, for the purposes of this action, has an address for delivery of 2020-650 West Georgia Street, Vancouver, British Columbia.

5. Stubbington and Knight are the proposed representative plaintiffs.

6. The defendant, the Provincial Director of Child Welfare, is located in Victoria, British Columbia, and is designated by the Minister of Children and Family Development pursuant to section 91 of the Act and charged with a statutory authority to carry out the duties and objectives of the Act (the "Director").

7. The defendant, His Majesty the King in Right of the Province of British Columbia, (Ministry of Children and Family Development), carries on business in the City of Victoria, in the Province of British Columbia, and is responsible for the administration of justice in the Province of British Columbia, child protection in the Province of British Columbia, and the appointment of and supervision of the Director (the "HMTK").

8. The Director, appointed by HMTK, and acting pursuant to its authority and duties and obligations under the Act, employs, hires, contracts with or otherwise engages social workers, case managers, child protection workers, placement workers, foster parents and other agents to carry out the Director's authority, duties and obligations under the Act.

Defendants' Obligations to Infants in Care

9. The defendants have always been lawfully required to provide Infants in Care with the Basic Rights of Childhood pursuant to a fiduciary duty and a common law duty of care which are owed to Infants in Care. The Act came into force in 1996 and since that time section 70 of the Act has codified the Basic Rights of Childhood owed to Infants in Care.

10. The Basic Rights of Childhood required the defendants to provide Infants in Care with a home or placement where:

- a) They had a safe and stable living environment;
- b) They were not exposed to physical abuse directly or indirectly;
- c) They were not subjected to corporal punishment;
- d) They were not exposed to sexual abuse or misconduct directly or indirectly;

- e) They were not exposed to psychological, mental or emotional abuse directly or indirectly;
- f) They were not exposed to drug use directly or indirectly;
- g) They were not exposed to criminal activity directly or indirectly;
- h) They were provided with adequate food/nourishment, clothing and shelter;
- i) They were provided with adequate medical resources, quasi medical resources and other supports for physical, medical, behavioral and emotional issues; and
- j) They received sufficient support to be able to pursue a fulltime education to the equivalent of Grade 12.

11. The defendants were also lawfully required to provide Indigenous Infants in Care with rights that would sustain and promote their cultural heritage and identity as Indigenous persons which are currently set out at section 70(1.1) of the Act, and which include the right to receive guidance, encouragement and support to learn about and practice their Indigenous traditions, customs and languages and to belong to their Indigenous communities (the "Indigenous Rights"). This proceeding does not seek any relief from the defendants as a consequence of failing to provide Indigenous Rights to Infants in Care.

12. At all material times, the defendants owed Infants in Care a fiduciary duty which included an obligation to provide the Basic Rights of Childhood as articulated in paragraph 10 above.

13. At all material times, the defendants owed Infants in Care a common law duty of care to take reasonable steps to protect them from harm and neglect and to foster an environment conducive to their growth and development. The standard of care associated with this duty was to provide the Basic Rights of Childhood as articulated in paragraph 10 above.

14. At all material times, the defendants knew that a failure to provide the Basic Rights of Childhood to Infants in Care as articulated in paragraph 10 may negatively impact them, resulting in physical, sexual, social, emotional, psychological and psychiatric harm. At all material times, it was foreseeable to the defendants that a failure to provide the Basic Rights of Childhood may result in harm to Infants in Care.

15. At all material times, the Basic Rights of Childhood to be afforded to Infants in Care, as articulated in paragraph 10 above, were essential to their right to life, liberty and security of the person pursuant to section 7 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 ("Charter").

The Proposed Class

16. The plaintiffs bring this action on their own behalf, and on behalf of a proposed class of individuals, consisting of:

All residents of British Columbia who were under the age of 19 and in the care of the defendants as defined by the *Child, Family and Community Service Act*, RSBC 1996, c. 46, or predecessor legislation, and whose Basic Rights of Childhood as articulated in paragraph 10 above, were not met by the defendants, and who have sustained physical, sexual, social, emotional, psychological and psychiatric harm as a result of their Basic Rights of Childhood not being met, from August 1, 1974 to the date of certification (the "Class" or the "Class Members").

Background

17. For decades, the defendants have failed to provide all Infants in Care with the Basic Rights of Childhood that were owed to them:

- a) contrary to the fiduciary duty owed to the Infants in Care;
- b) as a result of systemic negligence and in breach of the common law duty of care owed to the Infants in Care; and
- c) in breach of section 7 of the Charter and which was not demonstrably justifiable under section 1 of the Charter.

18. The defendants knew or ought to have known that the breaches set out in paragraph 17 were occurring as the result of public inquiries, media reports, public complaints and internal reviews/audits by the defendants and their agents.

19. The breaches referred to in paragraph 17 occurred as the result of the following by the defendants:

- a) creating and allowing a culture to exist that accepted and normalized the failure to meet minimum expectations in providing the Basic Rights of Childhood to Infants in Care;
- b) creating and allowing a culture to exist that fostered indifference to the need in providing the Basic Rights of Childhood to Infants in Care;
- c) failing to adequately train, support and supervise social workers and other employee or agents in providing the Basic Rights of Childhood to Infants in Care;
- d) failing to adequately select, screen, educate, train, monitor, review and audit foster parents to see that they were providing the Basic Rights of Childhood to Infants in Care;
- e) failing to adequately arrange placements for Infants in Care to see that they were receiving the Basic Rights of Childhood;
- f) failing to adequately review and audit social workers and other employees or agents who were able to engage in isolated acts of corruption and

misappropriate monies and goods intended to provide the Basic Rights of Childhood to Infants in Care;

- g) failing to respond appropriately to public inquiries, media reports, public complaints and internal audits indicating the Basic Rights of Childhood of Infants in Care were not being met;
- h) failing to discharge their duties and responsibilities under the Act and predecessor legislation;
- i) failing to act in the best interest of Infants in Care; and
- j) such further and other particulars as counsel may advise.

20. At all material times, the defendants were vicariously liable for the actions of their employees and agents.

21. As a result of the breaches in paragraph 17, Infants in Care were exposed to adverse childhood experiences which included, but were not limited to:

- a) unsafe and unstable living environments;
- b) physical abuse directly and/or indirectly;
- c) corporal punishment;
- d) sexual abuse or misconduct directly and/or indirectly;
- e) psychological, mental and emotional abuse directly and/or indirectly;

- f) drug use directly and/or indirectly;
- g) criminal activity directly and/or indirectly;
- h) inadequate food/nourishment, clothing and shelter;
- i) inadequate provision of medical resources, quasi medical resources and other supports for physical, medical, behavioral and emotional issues; and
- j) inadequate support to enable them to pursue a fulltime education to the equivalent of Grade 12.

22. As a result of the adverse childhood experiences set out in paragraph 21, the Infants in Care have experienced physical, sexual, social, emotional, psychological and psychiatric harm for which the Infants in Care are entitled to general damages, special damages, past wage loss, future wage loss, future care, in trust claims, tax gross up, management fees and costs ("Damages").

23. As a result of the breach of section 7 of the Charter, the Infants in Care are entitled to damages pursuant to section 24(1) of the Charter.

24. The Infants in Care are beneficiaries as defined in Section 1 of the *Health Care Costs Recovery Act*, SBC 2008, c. 27 who have received health care services as defined in section 2(1) of the said act and who claim in this act for the past cost and future cost of health care services required as a result of the actions of the defendants pursuant to section 3 of the said Act.

Limitation and Discoverability

25. The harm visited on Class Members occurred when they were infants and under a legal disability.

26. The harm visited on Class Members occurred at a time when they were emotionally and psychologically vulnerable such that when they reached the age of majority, they were unable to know, or reasonably know, the factors set out in section 8 of the *Limitation Act*, SBC 2012, c. 13, in part because of the harm and trauma caused to them by the defendants' breaches set out in paragraph 17.

27. Many Class Members have been under a continuous disability since reaching the age of majority, as contemplated by section 25 of the *Limitation Act*, SBC 2012, c. 13.

28. Many Class Members were exposed to sexual misconduct, sexual assault, physical assault and physical battery while minors, as contemplated by Section 3 of the *Limitation Act*, SBC 2012, c. 13.

Stubbington's Circumstances

29. Stubbington was born on September 9, 1970. At age 14, Stubbington was removed from her biological parents by the defendants and became an Infant in Care.

30. Stubbington was initially placed in a foster home with a foster parent and her foster parent's three biological children. In this placement Stubbington was:

- a) sexually assaulted by the biological son of the foster parent;
- b) physically assaulted by the biological son of the foster parent;

- c) emotionally abused by the biological son of the foster parent;
- d) witnessed physical abuse towards other members of the home;
- e) exposed to substance abuse by other members in the home; and
- f) exposed to criminal activity by other members in the home.

31. Stubbington was next placed in a foster home with an elderly and ill foster parent.

In this placement Stubbington was:

- a) provided with insufficient clothing; and
- b) emotionally abused by the foster parent.

32. At age 17, the defendants arranged for Stubbington to live independently in the community with monthly support of \$350 per month. From this time and until she reached the age 19, Stubbington was:

- a) required to rent and stay in accommodations that were undesirable and unsafe because she had insufficient funds to stay elsewhere and where she was exposed to substance abuse and criminal activity by others;
- b) unable to afford proper amounts of food after paying rent and other expenses and which resulted in her experiencing a grossly unhealthy weight loss and the development of anorexia; and
- c) forced to drop out of high school and not complete Grade 12 so she could find work to support herself.

33. As an Infant in Care, Stubbington was entitled to the Basic Rights of Childhood which the defendants failed to provide. As a result of the defendants' failure to provide her with the Basic Rights of Childhood, Stubbington has suffered, and continues to suffer, harm and loss, which includes, but is not limited to, physical, sexual, emotional, psychological and psychiatric distress.

Knight's Circumstances

34. Knight was born on October 26, 2003. At age 3, Knight was removed from her biological parents by the defendants and became an Infant in Care.

35. Knight was placed in a foster home with two foster parents that was grossly over capacity for Infants in Care. In this placement, Knight was:

- a) sexually assaulted, starting at age 5 by another Infant in Care who was 11 years old, and whom she was forced to share a room with, and whom the defendants knew had previously displayed sexualized behavior towards other children;
- b) emotionally abused by the foster parents;
- c) provided with insufficient clothing; and
- d) provided with inadequate food.

36. As an Infant in Care, Knight was entitled to the Basic Rights of Childhood which the defendants failed to provide. As a result of the defendants' failure to provide the Basic Rights of Childhood, Knight has suffered, and continues to suffer, harm and loss, which includes, but is not limited to, emotional, psychological and psychiatric distress.

Part 2: RELIEF SOUGHT

37. The plaintiffs, on their own behalf and on behalf of the Class, claim against the defendants as follows:

- (a) an order pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 certifying this action as a class proceeding and appointing the plaintiffs as the named representatives for the Class;
- (b) a declaration that the defendants owed the Class Members a fiduciary duty to provide the Basic Rights of Childhood, and breached this fiduciary duty;
- (c) a declaration that the defendants owed the Class Members a duty of care to take reasonable steps to protect them from harm and neglect and to foster an environment conducive to their growth and development and the standard of care associated with this duty was to provide the Basic Rights of Childhood, and breached this duty;
- (d) a declaration that the Basic Rights of Childhood to be afforded to Class Members were essential to their right to life, liberty and security of the person pursuant to section 7 of Charter, and the defendants breached the Charter rights of the Class Members by failing to provide the Basic Rights of Childhood and that such breach was not demonstrably justifiable under section 1 of the Charter;
- (e) damages for breach of the plaintiffs' and Class Members' Charter rights pursuant to section 24(1) of the Charter;
- (f) damages for the plaintiffs and the Class Members as a result of a breach of fiduciary duty and the Tort of Negligence;

- (g) an order pursuant to section 29 of the *Class Proceedings Act*, RSBC 1996, c. 50, directing an aggregate assessment of damages;
- (h) the costs of administering and distributing an aggregate damage award;
- (i) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- (j) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Breach of Fiduciary Duty

38. The defendants committed a breach of fiduciary duty by failing to provide Class Members with the Basic Rights of Childhood.

Tort of Negligence

39. The defendants owed every Class Member a duty of care to take reasonable steps to protect them from harm and neglect and to foster an environment conducive to their growth and development and the standard of care associated with this duty was to provide the Basic Rights of Childhood.

40. The defendants committed the Tort of Negligence by failing to provide Class Members with the Basic Rights of Childhood.

Breach of Charter Rights

41. The Basic Rights of Childhood to be afforded to Class Members were essential to their right to life, liberty and security of the person pursuant to section 7 of the Charter

and the defendants breached the Charter rights of the Class Members and such breach was not demonstrably justifiable under section 1 of the Charter.

Plaintiffs' address for service: **Murphy Battista LLP**
#2020 – 650 West Georgia Street
Vancouver, BC V6B 4N7

Fax number for service (604) 683-5084
Place of trial: Vancouver, British Columbia
The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z 2E1

Dated: December 12, 2022



Signature of the lawyer for the plaintiffs
J. Scott Stanley

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) Prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) service the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The defendants failed to provide Class Members with the Basic Rights of Childhood which constituted a breach of fiduciary duty, the tort of negligence and a breach of the Charter. As a result of these breaches, Class Members sustained injury and loss and claim damages.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Class Proceedings Act*, RSBC 1996, c. 50;
2. *Child, Family and Community Service Act*, RSBC 1996, c. 46; and
3. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*.