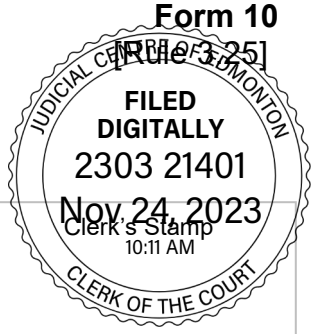
Form 10
[Rule 3.25]



COURT FILE NUMBER	
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF(S)	KELLY GOSAL, as litigation guardian to the minor A.G-L.; SIERRA ELISE CLARKE and OCTAVIAN ELIAS PAPA LABOUCAN
DEFENDANT(S)	THE ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ALBERTA
DOCUMENT	**STATEMENT OF CLAIM** This action is brought pursuant to the *Class Proceedings Act,* SA 2003, chapter c-16.5.

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(Hereinafter referred to as "the Counsel Consortium")

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. **Defined Terms**

I. **Alberta** means the Defendant His Majesty the King in right of Alberta and all of his agents, pursuant to section 12 of the *Proceedings Against the Crown Act*, RSA 2000, c P-25, including but not limited to: the former Ministry of Children and Youth Services; the former Ministry of Community and Social Services; the Former Ministry of Family and Social Services; the Ministry of Children and Family Services; all Children and Family Services offices connected to one of those Ministries or any Child and Family Services Authorities; and, all directors as defined in section 1(1)(j) of the *CYFE Act*.

II. **Alberta's CSA Policy** means the practice of the government of Alberta, through its departments and the government Agencies it controls, of treating CSA Benefits as a federal transfer and therefore denying CSA Benefits to Indigenous and non-Indigenous children in care and using those CSA Benefits to reduce its child welfare funding obligations. Alberta does not use the CSA Benefits it applies for and receives exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid. Rather Alberta deposits and aggregates the CSA Benefits into its general revenue fund and uses the money for its own purposes. Alberta does not account for the CSA Benefit paid for each child in its care and it does not make any outlays or expenditures for the specific child using the CSA Benefits (or a CSA Benefit substitute); therefore, it does not record or account for the use of CSA Benefits, all in breach of the *CSA Act* and its duties at law. The result is the denial of benefits to a vulnerable group in society.

III. **Canada** means the Defendant, His Majesty the King in Right of Canada who, at all relevant times, is a fiduciary and responsible for the promotion of the health, safety and the well-being of Indigenous peoples in Canada

and for the administration of the *Indian Act*, RSC 1985, c I-5 and its predecessor statutes. Canada has historically undertaken exclusive jurisdiction in respect of Indigenous persons, their Bands and Reserve lands pursuant to section 91(24) of the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK) and the common law. Canada is liable for the conduct, negligence and malfeasance of individuals who were at all material times Crown employees, agents, and servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, including but not limited to:

a. The former Department of Indian Affairs and Northern Development ("DIAND");

b. The former Indian and Northern Affairs Canada;

c. The former Aboriginal Affairs and Northern Development Canada;

d. The former Indigenous and Northern Affairs Canada;

e. Indigenous Services Canada; and

f. Crown-Indigenous Relations and Northern Affairs Canada;

IV. **Canada Child Benefit** means the tax-free monthly payment made to eligible families pursuant to sections 122.6 to 122.63 of the *Income Tax Act*. The Canada Child Benefit was at times provided under its predecessor names and statutory authorities, those being the Canada Child Tax Benefit, the National Child Benefit, the Universal Child Care Benefit, and the family allowance pursuant to *Family Allowances Act, 1973*, SC 1973, c 44, s 1. All references to the Canada Child Benefit herein implicitly include a reference to its predecessor names and programs as they existed from time to time.

V. ***The CYFE Act*** means *The Child, Youth and Family Enhancement Act*, C-12 of the Statutes of Alberta RSA 2000.

VI. ***The CFSA*** means *The Child and Family Services Authority Act*, R.S.A. 2000, c. C-11.

VII. **CFS Agency** means a child and family services agency as defined in the *CYFE Act.*

VIII. ***Constitution Act, 1867*** means the *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK).

IX. ***CSA Act*** means the *Children's Special Allowances Act*, S.C. 1992, C.48 and amendments thereto.

X. **CSA Benefit** means the children's special allowances paid pursuant to the *CSA Act*.

XI. **Federal Child (or Federal Children)** means a child who:

a. has, or is eligible for Indian status pursuant to the *Indian Act*; and

b. at least one of whose parents or guardians are normally resident on-Reserve at the time the child enters care.

XII. **First Nation** has the same definition as the term "band" pursuant to the *Indian Act*, section 2(1).

XIII. ***First Nation Agency, DFNA,* and *Indigenous CFS Agency*** all mean Indigenous Agencies in Alberta funded by Canada and delegated by Alberta to provide child intervention services to children and families on most reserves in Alberta. First Nations Agencies are directed by Tribal Councils and community members and receive case management support from the Ministry of Children's Services. First Nations people living off reserves receive intervention services through the Child and Family Service Authority in their region. The majority of on-Reserve child intervention services are delivered by Delegated First Nation Agencies (DFNAs). DFNAs are federally or provincially incorporated legal entities and independent

contractors. They are not Crown corporations or part of Alberta's Ministry of Children and Family Services. Child intervention services are delivered on Reserves by Delegated First Nation Agencies through Agreements with 37 of the 48 First Nations in Alberta. DFNAs are responsible for the provision of child intervention services to all persons situated within the geographical boundaries of the First Nation they serve.

XIV. ***Income Tax Act*** means the *Income Tax Act*, RSC 1985, c 1 (5th Supp).

XV. ***Indian Act*** means the *Indian Act*, RSC 1985, c I-5.

XVI. **Indigenous** means Indian (i.e., First Nation), Metis and Inuit and is used interchangeably with the term "Aboriginal".

XVII. **Government CFS Agency** means a CFS Agency integrated into an Alberta government department or an Agency that is not arm's length from the Government of Alberta.

XVIII. **Maintenance costs** refers to the eligible costs and payments pursuant to the Ministry of Children and Family Services' Policy Manual for Child Maintenance required for the care of a ward, including housing, food, clothing, education, training, extra-curricular activities, and special needs.

XIX. **Ministry of Children and Family Services ("MCFS")** means the department within the Government of Alberta that oversees the quality and delivery of child intervention services provided by 10 regional Child and Family Service Authorities, which are staffed by provincial caseworkers and directed by community-based boards of directors. Each Authority is mandated to provide a range of specialized services to ensure the safety and well-being of children. In addition to overseeing service delivery and developing standards, policies and practices, the Ministry funds, monitors and assesses the Authorities and provides administrative, financial management, legal, and information technology services. Each Authority can develop more detailed directives for uniquely regional practices,

providing that they complement provincial policy. Children's Services ("CS") is used interchangeably with MCFS.

XX. **Off-Reserve Indigenous child in care** means a provincially funded child in care or a "Provincial Child" as later defined herein, who is "Indigenous" as defined herein.

XXI. **On-Reserve Indigenous chid in care** means a "Federal Child" as defined herein, who is "Indigenous" as defined herein.

XXII. **Operational Funding** refers to Alberta's funding for the general operating costs incurred operating a CFS Agency, primarily for salaries, commercial leases, and training, and does not include payments to agencies and other persons and entities payable for the maintenance of a child usually through Rates for Service set by Alberta.

XXIII. **Provincial Child (or Provincial Children)** means a child, except a Federal Child, in care.

XXIV. **Reserve** has the same definition as the term "Reserve" pursuant to section 2(1) of the *Indian Act*.

XXV. **Wards or Children in Care** mean children who are or were the subject of a temporary or permanent order of guardianship, or a voluntary surrender of guardianship, in favour of a CFS Agency or the Minister of Children and Family Services and or his/her delegate.

The Parties

2. The proposed Plaintiffs' Representative, Sierra Elise Clarke ("Sierra"), resides in Red Deer, Alberta and is a former off-Reserve Indigenous child in the care of the Ministry of Children and Family Services ("MCFS") and is a member of the Class. Sierra is non-binary and uses the pronouns they/them. Sierra is an "Indian" within the meaning of

section 91(24) of the *Constitution Act, 1867* and is in the process of obtaining treaty status. Sierra's home community is Tall Cree Nation.

3. Sierra was born on January 31, 2002, and has eight siblings. Sierra is currently a student at Red Deer Polytechnic. During Sierra's time in care, Sierra had approximately fourteen placements. Sierra was not able to develop meaningful relationships with their siblings because of these placements and time in care. Sierra's last placement lasted seven years. Sierra was forced to leave the home just before turning eighteen years old because their foster family could no longer afford their care.

4. When Sierra was in care, Sierra wanted the opportunity to travel to visit extended family and to participate in sports and take singing lessons, but there was no money available for these extraordinary expenses because Sierra was denied access to their CSA Benefits by Alberta.

5. The proposed Plaintiffs' Representative, Octavian Elias Papa Laboucan ("Octavian"), resides in Edmonton, Alberta and is a former off-Reserve Indigenous child in the care of MCFS and is a member of the Class. He is an "Indian" within the meaning of section 91(24) of the *Constitution Act, 1867* and is in the process of obtaining his Treaty card. His home community is Whitefish Lake First Nation.

6. Octavian was born on June 1, 2003. He has seven siblings; however, his family connections and relationships were significantly diminished when he was removed from his home at approximately ten years old and placed in care by the MCFS. He was placed in a group home in Athabasca, north of Edmonton, Alberta. He was not permitted to

participate in extra-curricular activities while in care as there was limited funding and he was not provided with access to his CSA Benefits during the entire period he was in care.

7. The Plaintiff Kelly Gosal ("Kelly") is from Whitefish Lake First Nation. She currently resides in Edmonton, Alberta and is a foster parent for the MCFS.

8. A.G-L. was born January 21, 2010. He was approximately two years old when he was first brought into care by the MCFS. A.G-L. is a permanent ward of MCFS and has been placed with his Aunt Kelly.

9. Without an adult representative Plaintiff, no action may be brought by those members of the Class who are not of the age of majority, resulting in a substantial injustice to the Class. As a result, Kelly has consented to act as litigation guardian in this proceeding for her nephew. A.G.-L has not received the CSA Benefit during his time in care whether directly or indirectly. Kelly has inquired about receiving the CSA for A.G-L. but was told that because she received maintenance payments for A.G-L., Alberta's policy was to retain the CSA as an offset to Maintenance payments. Kelly used her own children's Canada Child Benefit to support A.G.-L.

The Defendants

10. The Defendant, the Attorney General of Canada ("Canada"), is the representative of His Majesty the King in Right of Canada pursuant to section 23(1) of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

11. Canada asserts jurisdiction over "Indians and lands reserved for the Indians" pursuant to section 91(24) of the *Constitution Act, 1867*. Canada's jurisdiction under

section 91(24) includes legislative authority respecting all Indigenous peoples, including status and non-status Indian, Inuit, and Métis persons.

12. The Defendant, His Majesty the King in right of Alberta and all of his agents ("Alberta"), asserts general jurisdiction in relation to the delivery of child and family services in Alberta pursuant to section 92(13) of the *Constitution Act, 1867* and the common law doctrine of *parens patriae.*

13. The MCFS of Alberta leads child welfare intervention, foster and kinship care, adoption, and improvements for children and youth for Alberta.

14. Alberta is being sued herein for its CSA Policy pursuant to section 3 of *The Proceedings Against the Crown Act*, RSA 2000, c P.25.

15. Wherever appropriate, a singular term shall be construed to mean the plural where necessary, and a plural term the singular.

Nature of the Action

16. The primary objective of this Action is the repayment of CSA Benefits improperly and unlawfully misappropriated and/or withheld by Alberta. The Plaintiffs assert that Canada had a duty to prevent provincial governments such as Alberta from misappropriating the CSA Benefits to offset child welfare funding, but it failed in such duty to Provincial Children in care.

The Class

17. The Class is all children and the estates of those children who are or were wards of CFS Agencies funded by the Defendant Alberta and whose CSA Benefits were payable under the provisions of section 3(2) of the *CSA Act* but which payments, beginning in or about 1993, were misappropriated by Alberta and were aggregated and deposited into Alberta's "general revenue fund" instead of being applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid, and who:

a. are under eighteen years of age; or,

b. are eighteen years of age or more and are no longer wards of a CFS Agency.

Overrepresentation of First Nations Children in Care – a Uniquely Vulnerable Group

18. Indigenous people have inherent rights with respect to their children, including the rights to self-determination and jurisdiction with respect to child welfare services provided to Indigenous children both on and off-Reserve, which are recognized and affirmed by section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1892* (UK), 1982, c 11.

19. First Nation people have suffered historic injustice. First Nation people have been subject to systemic racism and discrimination. The historic disadvantage and vulnerability of Indigenous Peoples has resulted in First Nation Children being vastly overrepresented in the child welfare system.

20. In Alberta, in or around 2014, 9% of the child population identified as Aboriginal but approximately 69% of children in care were Aboriginal. This shocking overrepresentation of Indigenous children in care in Alberta was acknowledged in a Report to Canada's Premiers in 2014.

21. The overrepresentation of Aboriginal children within the child welfare systems is an extension of the historic pattern of removal of children from their homes. The residential school system removed and isolated children from the influence of their homes, families, traditions, and cultures. Residential schools and the systemic adoption of Aboriginal children by non-Aboriginal families disrupted families and communities.

22. Residential schools, along with other policies which impacted Indigenous people have had an enduring impact on perpetuating cycles of intergenerational social crises and poverty. Aboriginal children and their families in Canada are more likely to live in poverty, and their poverty is more likely to be entrenched and intergenerational in nature. Aboriginal families are more likely to live in sub-standard housing; struggle with addictions; experience food insecurity; be single parent led; experience a lack of family and other supports; and lack the skills, education and economic development opportunities required to become self-sufficient. More than half of Aboriginal Canadians now live in urban areas.

23. Children in care are vulnerable. Because of apprehension from their family and communities they do not fare well in life compared to children who were never wards of the state. Many studies show that children in care are more likely to live in poverty, be

under-educated, addicted to drugs, under-employed and have mental health and criminal law issues in their adulthood.

Funding of Child Welfare

24. Canada provides funding for operational costs and maintenance costs directly to Indigenous CFS Agencies who provide services to Federal Children as defined herein. That funding is widely referred to by CFS Agencies as “on-Reserve funding” because generally Federal Children are admitted into care from an on-Reserve residence. The funding from Canada is provided directly to the Indigenous CFS Agencies.

25. Alberta provides limited funding to Indigenous CFS Agencies, for example when a child apprehended off-Reserve is placed on-Reserve (“Provincial Funding”).

26. First Nations Agencies are directed by Tribal Councils and community members and receive case management support from the MCFS. First Nations people living off reserves receive intervention services through the Child and Family Service Authority in their region (“Provincial Children”).

27. The majority of on-Reserve child intervention services are delivered by Delegated First Nation Agencies (“DFNAs”). DFNAs are federally or provincially incorporated legal entities and independent contractors. They are not Crown corporations or part of Alberta’s Ministry of Children and Family Services. Child intervention services are delivered on Reserves by DFNAs through Agreements with 37 of the 48 First Nations in Alberta. DFNAs are responsible for the provision of child intervention services to all persons situated within the geographical boundaries of the First Nation they serve.

28. Alberta does not provide financial contributions to Indigenous CFS Agencies for maintenance costs for Aboriginal children, who are eligible for federal funding. Alberta only provides financial contributions to Agencies for Aboriginal children who came into MCFS care, and who are not eligible for federal funding.

Children's Special Allowances Act S.C. 1992, c.48, Sch. ("*CSA Act*")

Purposes of the *CSA Act*

1) To ensure fairness and prevent discrimination.

29. The *CSA Act* provisions were previously contained in the *Family Allowances Act*, 1973, SC 1973, c44 (the "*Family Allowances Act*"). The purpose of the *Family Allowance Act* was to help ease the financial burden of raising children, in such a way that families with the greatest need will receive the greatest benefit for the care of their children, and to avoid discrimination against children under care of CFS Agencies, by sending a Children's Special Allowances ("CSA") cheque directly to a foster parent or to a CFS Agency, in the same way a family allowance cheque is sent to a natural parent. In 1992, the CSA provisions in the *CSA Act* were extracted from the *Family Allowances Act*, which was repealed.

30. In 1992, under the powers of Parliament accorded by section 91(1A) of the *Constitution Act*, 1867, Canada passed the *CSA Act* which contained the same or similar provisions as had been previously found in the *Family Allowances Act*. Its preamble is

entitled “An Act to provide for the payment of special allowances for the care and maintenance of certain children”. Section 3(1) of the *CSA Act* reads as follows:

> **3 (1)** Subject to this Act, there shall be paid out of the Consolidated Revenue Fund, for each month, a special allowance in the amount determined for that month by or pursuant to section 8 in respect of each child who
>
> **(a)** is maintained
>
> **(i)** by a department or agency of the government of Canada or a province, or
>
> **(ii)** by an agency appointed by a province, including an authority established under the laws of a province, or by an Agency appointed by such an authority, for the purpose of administering any law of the province for the protection and care of children,
>
> and who resides in an institution, a group foster home, the private home of foster parents or in the private home of a guardian, tutor or other individual occupying a similar role for the month, under a decree, order or judgment of a competent tribunal; or
>
> **(b)** is maintained by an institution licensed or otherwise authorized under the law of the province to have the custody or care of children.

31. Consequently, one of the purposes of the *CSA Act*, as a whole, is to ensure that children who have come into care are not discriminated against because of the fact they are in care and that they still receive benefits equivalent to the Canada Child Benefits available to other children in Canada, pursuant to the *Family Allowances Act* and subsequently in 2016 under section 122.6 of the *Income Tax Act*.

32. When the *CSA Act* was being passed the government minister said the CSA Benefit is about <u>avoiding discrimination.</u>[1]

[1] Canada Parliament, House of Commons Debates, 29th Parl, 1st Sess, Vol 7 (15 October 1973) at 6867.

> *The principle underlying the new family allowance program is that the allowance represents a supplement to family income. Logically-speaking, therefore, we should not be paying an allowance in respect of children maintained by provincial governments in foster homes or institutions or maintained in private voluntary institutions. There are other provisions to cover the costs for such care, such as the Canada Assistance Plan. However, I have received strong representations to the effect that we would be discriminating against already disadvantaged children in institutional care if we were to eliminate the allowances now paid….*
>
> *Moreover, we propose to include children in the care of those private voluntary institutions that have been approved by a provincial government. This will mean that allowances now will be paid in respect of an estimated 9,000 children maintained in private voluntary institutions and for whom payments are not made under existing legislation.*
>
> *In order to avoid discriminating against children residing with foster parents, we propose that the special allowance cheque be sent directly to the foster parent in the same way that a family allowance cheque is sent to a regular parent." [emphasis added]*

33. Sections 3(2) and 4(1) of the *CSA Act* reads as follows:

> **Use of special allowance**
>
> **(2)** A special allowance shall be applied **exclusively toward** the care, maintenance, education, training or advancement of the child in respect of whom it is paid" [emphasis added]
>
> **Application for special allowance**
>
> **4 (1)** A special allowance is not payable in respect of a child for any month unless
>
> **(a)** an application therefor has been made in the prescribed manner by the department, agency or institution referred to in section 3 that maintains the child; and
>
> **(b)** payment of the special allowance has been approved under this Act.

34. The CSA is to supplement, not replace, maintenance contributions. Section 9(a) of the *Children's Special Allowances Regulations*, SOR/93-12 (the "*CSA Regulations*"), reads as follows:

> **9** For the purposes of the Act, a child is considered to be maintained by an applicant in a month if:

> **(a)** the applicant, at the end of the month, provides for the child's care, maintenance, education, training and advancement to a greater extent than any other department, agency or institution or any person;

2) <u>To prevent provinces from misappropriating CSA Benefits</u>

35. Canada's intention to create a trust is unmistakably construed from the expression "shall be applied exclusively toward", which is found at section 3(2) of the *CSA Act*.

36. The purpose of the *CSA Act* and *CSA Regulations* is to preclude the CSA Benefits from being taken or appropriated by the provinces of Canada, including Alberta:

(a) To ensure that children in care receive the CSA benefits; and

(b) To preclude the CSA Benefits from being taken or appropriated by the provincial authorities, including the Alberta provincial authorities.

37. When the predecessor of the *CSA Act* was proceeding through the Senate in 1973, there were concerns raised that the Provinces may claim the CSA Benefit as revenue to offset funding obligations for Child Welfare. An amendment to specifically preclude Provinces taking the CSA Benefit was rejected by the majority based on their view that the existing language in the *CSA Act* already precluded such taking. The amendment and comments for rejecting it are set out below.

> *(2) A special allowance shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid,* ***<u>and shall not be used to reduce payments otherwise paid</u>*** *by any agency of the Government of Canada or of any province.*
>
> *The addition of the words, "and shall not be used. . ." et cetera, would preclude any chiseling, but the way it is now, without that being in the law, they can and will chisel.*

> *Hon. Mr. Langlois: I submit that the bill goes far enough as it is, because it gives the right of control to the Minister of National Health and Welfare. The bill is quite specific. The clause you have referred to, clause 9, is quite specific and is clear enough to establish sufficient protection for the children to ensure that the money will not be used for some other purpose.*
>
> *Hon. Mr. Argue: In the case of the old age pensioners, the federal government extended exactly the same protection to the old age pensioners in Saskatchewan, but the Government of Saskatchewan gobbled up the money while those people had to live in provincial homes on a mere pittance.*
>
> *Hon. Mr. Langlois: I am sorry. I cannot comment on this last remark of my learned friend. I have not studied the case of Saskatchewan to which he is referring. Neither have I had the time to compare the provisions of the present legislation with the old age security legislation. He may be right on that score, but I think in this piece of legislation the minister has the right to intervene and to see that the money goes to the children for whom it is intended.* (Canada Parliament, Debates of the Senate, 29th Parl, 1st Sess, Vol 2 (10 December 1973) at 1306 – 1308, Tab 72)
>
> *….*
>
> *"The main reason for that provision of course, Mr. Chairman, is to make it perfectly clear to the province or the provincial child welfare agency which might be receiving this cheque on behalf of a child without parents, that that money is to be used for the benefit of that child and not for some other provincial purpose. It was not specifically aimed at foster parents as such though, of course, they would also be covered.*
>
> *As Mr. Cafik [Parliamentary Secretary to Minister of National Health and Welfare] indicated, there is, of course, a difference between the special allowance and the regular family allowance in that the special allowance is not taxable and is* ***not variable by provincial law****.* [emphasis added]

38. The purpose of sections 3, 4, 7(a) and 9 of the *CSA Act* and section 9 of the *CSA Regulations* is to preclude the CSA Benefits from being misappropriated by the provinces of Canada, including Alberta.

39. The CSA Benefit is a statutory, tax-free monthly payment that can be provided by the Canada Revenue Agency ("CRA") to successful applicants who are responsible for the maintenance of a child who is:

(a) under the age of 18;
(b) physically resides in Canada; and
(c) is maintained by a registered Agency.

40. The purpose of the *CSA Act* is to ensure that children in care receive benefits that are equivalent to the Canada Child Benefit which is provided to parents of children who are not in care. The CSA Benefit is equal to the maximum monthly amount of the Canada Child Benefit (including the Child Disability Benefit if applicable).

41. Like the Canada Child Benefit, the CSA Benefit is paid in respect of all eligible children in Canada, whether they are Provincial Children or Federal Children.

42. All children in care are entitled to the CSA Benefit and CFS Agencies have a legal right to receive the CSA Benefit just as parents of children not in care are entitled to receive the Canada Child Benefit.

43. The *CSA Act* is administered by the CRA and the CSA Benefits, payable pursuant to the *CSA Act*, are payable in respect of each child who is maintained in accordance with the provisions of section 3(1) of the *CSA Act*. Applications for the CSA Benefit are made to and approved by the Minister of National Revenue.

44. Applications for the CSA Benefit can only be approved if the applicant is eligible to receive the CSA Benefit. Under the *CSA Act*, the applicant is the department, agency or institution that ‘maintains’ the child in respect of whom the application is made.

45. A child is considered by the *CSA Act* to be ‘maintained’ by an applicant if, at the end of a given month, the child is dependent on the applicant for his or her care,

maintenance, education, training, and advancement to a greater extent than any other department, agency or institution or any person.

46. In order to approve an application for CSA Benefits, the CRA must determine and decide that the applicant maintains the specific child with respect to whom the application is made "to a greater extent than any other department, agency or institution or any person" in accordance with section 3(1) of the *CSA Act* and section 9 of the *CSA Regulations*.

47. Pursuant to sections 3(2) and 7 of the *CSA Act*, CSA Benefits "shall be applied exclusively toward" the care, maintenance, education, training or advancement of the specific child in respect of whom they were granted, and the CSA Benefits cannot be assigned, charged, attached, anticipated or given as security, and they are granted subject to those conditions.

48. The MCFS Enhancement Policy Manual, revised October 23, 2023 provides:

> *CS has a responsibility to apply for and obtain funding for children and youth in*
>
> *the care of the director, who meet the eligibility criteria for Children's Special Allowance (CSA) and/or any pension and benefit plans.*
>
> *…*
>
> *An application is automatically generated by the electronic information system*
>
> *when:*
>
> - *the CS file is open,*
> - *the child or youth is placed with a caregiver (excludes a young offender facility),*
> - *there is a legal authority of:*
>   - *CAG/CAY,*
>   - *Interim CO/CO,*

- *TGO,*
- *PGO,*
- *PGA, or*
- *EAY if the placement type is supported independent living or independent living,*

• the child or youth is not yet 18 years, and

• the child or youth's province of birth is entered into the electronic information system.

49. Once Alberta receives the CSA Benefits it applies for, it aggregates the CSA Benefits and deposits them into general revenue. Alberta's CSA Policy is to use CSA Benefits to reduce its child welfare funding obligations. Alberta does not use the CSA Benefits it applies for and receives exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid. Rather, Alberta deposits and aggregates the CSA Benefits into its general revenue fund and uses the money for its own purposes. Alberta does not account for the CSA Benefit paid for each child in its care and it does not make any outlays or expenditures for the specific child using the CSA Benefits (or a CSA Benefit substitute); therefore, it does not record or account for the use of CSA Benefits, all in breach of the *CSA Act* and its duties at law. The result is the denial of benefits to a particularly vulnerable group in society: children in care, 69% of whom are Indigenous.

50. Contrary to Alberta, Canada has a policy that specifically prohibits CSA Benefits from being utilized as a source of revenue or to reduce or offset child welfare funding obligations. Children in care who were living on-Reserve with a parent at the time of apprehension receive their CSA Benefits in addition to the maintenance paid by Canada to the Indigenous CFS Agency and foster parents caring for the child.

51. Child and Family Services Agencies shall provide services in a manner that is at least reasonably equivalent for both on-Reserve and off-Reserve children in care. However, at present, Indigenous children in care in Alberta who fall outside the jurisdiction of Indigenous CFS Agencies, i.e., Provincial Children, do not receive CSA Benefits; therefore, the child welfare services available to off-Reserve Indigenous children in care are not reasonably equivalent to on-Reserve Indigenous children in care in relation to the use of CSA Benefits. On-Reserve Indigenous children in care receive CSA Benefits while off-Reserve Indigenous children in care do not.

Discrimination – Section 15 Equality Rights under the *Charter*

52. The Alberta CSA Policy leads to adverse impact discrimination against off-Reserve Indigenous children in care by denying them a benefit that children out of care receive. Adverse impact discrimination occurs when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground.

53. The disproportionate number of Indigenous children in care means that the Alberta CSA Policy disproportionately impacts Indigenous children. This perpetuates historical disadvantage.

54. The Alberta CSA Policy also leads to adverse impact discrimination against non-Indigenous children in care by denying them a benefit that children out of care receive.

55. Pursuant to section 52 of the *Constitution Act, 1982*, the *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982* (the "*Charter*"), including

sections 15 and 24(1) are prima facie valid. Consequently, the denial of the *Charter* rights of the Class is prohibited.

Alberta received CSA Benefits but did not provide same to its Wards

56. The only conceivable justification for taking CSA Benefits (and denying them to the child for whom they were paid) is if the taker replaced it with something equivalent. There is no evidence to establish that Alberta has replaced the CSA Benefit with something equivalent. In fact, the evidence is to the contrary.

57. The Alberta CSA Policy amounts to a breach of section 15 of the *Charter* and constitutes discrimination against the Class on the basis of the enumerated grounds of "race" or "ethnic origin" or "nationality" or the analogous grounds of "family status" or "residence of a parent and/or lack of Indian or Treaty status or eligibility for Indian or Treaty status under the *Indian Act"* or "children in care" or "Aboriginal children in care" specifically in that:

(a) Indigenous children in care are denied all CSA Benefits, as opposed to Indigenous children in care under Canada's funding responsibilities based solely and arbitrarily on the Indian (Treaty) status of the child and the residency of a parent at the time the child is apprehended;

(b) Given that approximately 69% of children in care in Alberta are Aboriginal, there is a disparate, disproportionate, and substantial hardship being inflicted on Aboriginal children in care;

(c) There is discrimination against a most vulnerable group in society; namely, Indigenous children in care and non-Indigenous children in care, in that families who receive Canada Child Benefits under section 122.6 of the *Income Tax Act* for their children, who are not in care, do not have these benefits offset, deducted or otherwise appropriated by Alberta; whereas, Aboriginal children in care under Alberta's responsibility are denied the equivalent Canada Child Benefits in the form of CSA Benefits; and

(d) The CSA Benefits are denied to Indigenous children in care who are deemed to be a provincial funding responsibility. The key discrimination determinants are the residence of parents off-Reserve at the time of apprehension of the child and/or the lack of Indian or Treaty status or the eligibility for Indian or Treaty status of the child under the *Indian Act*.

58. Section 2(1) of the *CYFE Act* provides that any person who exercises authority under the legislation (which in this case would include the Defendant, Alberta) must do so in the best interest of the child (in this case, those members of the prospective class). The denial of the CSA Benefit for off-Reserve Indigenous and non-Indigenous children in care, which has a deleterious impact on the provision of services to them and deprives them of various fundamental needs, is not in the best interests of those children.

59. The CSA Benefits are of particular importance in the lives of the members of the Class. Alberta's decision to thwart the laudatory objectives of the *CYFE Act* by using the CSA Benefits for general revenues is in complete violation of the objectives of the *CYFE Act*.

60. The effect of the Alberta CSA Policy is to perpetuate hardships suffered by a vulnerable, poor and disadvantaged group resulting in a breach of section 15(1) of the *Charter*. The discriminatory distinction is the denial of CSA benefits to Class members in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage, including historical disadvantage. Alberta breached the Class Members' right to equal protection and benefit of the law without discrimination based on race, national or ethnic origin, mental or physical disability and/or the analogous ground of family status under section 15 of the *Charter*.

61. But for Alberta's CSA Policy, to the extent that any CSA Benefits for a child in care are not used to the exclusive benefit of that child, upon turning eighteen years of age, this Claim asserts that a child is entitled to a lump sum payment for the balance of unspent benefits from the CSA Benefits applicant.

Cause of Action Against Canada

62. Alberta has engaged in the very abuse that the *CSA Act* was crafted to prevent, namely the misappropriation of the CSA Benefits by a recipient province, causing children in care to be treated differentially than children who are not in care.

63. Canada stood in a trust-like relationship with Class Members, who were the beneficiaries of the CSA Benefits. Given this special relationship, Canada and its servants were in a relationship of proximity with Class Members, such that failure on the part of Canada and its servants to take reasonable care in the implementation of the *CSA Act*

might foreseeably cause loss or harm to Class Members. Canada owed a duty of care to Class Members, and there are no policy reasons that negate that duty.

64. Canada's legal obligation is that of a prudent administrator. Canada's duty included the requirement to protect Class Members' interests – as the beneficiaries of the CSA Benefits – and the requirement to ensure that the *CSA Act* was implemented in accordance with its provisions and intent. And Canada owes an ongoing duty to ensure that the *CSA Act* is applied consistently throughout Canada, from province to province. This is particularly true given the case of *Flette et al v. the Government of Manitoba*, 2022 MBQB 104 ("*Flette*"), in which the Manitoba Court of King's Bench found that Manitoba's CSA Policy between 2005 and 2019 – which policy was that same as Alberta's current CSA Policy – breached section 15 of the *Charter*. Canada was under a duty to respond to the *Flette* decision and to implement it.

65. Canada was required to intervene and take all necessary action to cause Alberta to change its CSA Policy and to stop Alberta from purloining CSA Benefits and using same to reduce its funding obligations for Child Welfare in Alberta. Canada's duty included an obligation under section 9 of the *CSA Act* to recover the purloined CSA Benefits from Alberta and to then reissue those benefits in accordance with the *CSA Act*.

66. At all material times, Canada was or ought to have been aware of Alberta's misappropriation of the CSA Benefits but stood silent. Canada's conduct fell below the requisite standard of care (the scope of which is evidenced by the provisions of the *CSA Act*), to the detriment of Class Members. Canada's conduct is also akin to the negligent

failure to implement a judicial decree; Canada failed to respond to – and implement – the *Flette* decision, to the detriment of Class Members.

67. Canada's acts and omissions – and the acts and omissions of its agents and servants – resulted in Alberta's CSA Policy continuing, causing harm to Class Members. As a result of Canada's nonfeasance in addressing Alberta's use of the CSA Benefits, the Class does not receive the CSA Benefits that they are entitled to receive. Children in care in Alberta are treated differently than other children in care in Canada (in Manitoba, for example, all children in care have received CSA Benefits since 2019), and they are treated differently than children in Canada who are not in care.

Section 24(1) *Charter* Damages

68. The denial of CSA benefits to the Class members has no social value and is fundamentally unfair to a group most in need of governmental protection and assistance.

69. The breaches of the *Charter*, as set out above, are not saved by section 1 of the *Charter*. The impugned conduct is related solely to Alberta appropriating money into its general revenue fund to be used for other purposes without any justification. Alberta's actions represent a prolonged practice on the part of Alberta to perpetrate practices which disadvantage off-Reserve Indigenous children in care.

70. Furthermore, the Alberta CSA Policy has no substantial or pressing legislative objectives. Rather, the CSA Policy runs contrary to Alberta's professed objectives and requirements in the provision of child and family services to the Class members.

71. Pursuant to the *CYFE Act*, Alberta shall act in the best interests of the children in its care. The denial of the CSA Benefit for off-Reserve Indigenous children in care and non-Indigenous children in care, which has a deleterious impact on the provision of services to them and deprives them of various fundamental needs, is not in the best interests of those children.

72. The Class members have suffered loss because of breaches of the *Charter* by Alberta, as set out in paragraphs above. An award of damages under section 24(1) of the *Charter* is appropriate in this case because it would compensate the Class members for the loss they have suffered. *Charter* damages would also vindicate the Class Members' rights under the *Charter* and deter future taking of CSA Benefits.

Benefits Received by the Defendant Alberta

73. The Annual Public Account Reports of Alberta reveal that Alberta treats CSA Benefits as a Federal Transfers to reduce its funding of Child Welfare. However, CSA Benefits are not fungible with Federal Transfers or child Maintenance funding by virtue of the *CSA Act*.

74. The precise amount of CSA Benefits taken by Alberta is not known by the Plaintiffs but is known to Alberta. The Annual Public Account Reports of Alberta for MCFS for the fiscal year ending March 31, 2023 reveals Federal Transfers of $33,332,000.00.

Fiduciary Duty and Trust

75. The Defendants stand in a fiduciary relationship with Canada's Indigenous peoples including the Plaintiffs and the proposed Class. At all material times, the Defendants had undertaken to act in the best interests of the Plaintiffs when they were children in care.

76. A fiduciary duty is owed by the Defendants to First Nation children with respect to First Nation children in care requiring the Defendants to act diligently and in the best interests of First Nations children including ensuring that said children in care receive all benefits to which they are entitled. A general fiduciary duty exists because Alberta, as the fiduciary, undertook to act in the best interests of children in care who are vulnerable to Alberta's control and children in care stand to be adversely impacted by Alberta exercising control over the use of CSA Benefits. Alberta's general fiduciary duty to off-Reserve First Nation children is not in conflict with its duty to act in the best interests of society as a whole, since Alberta does not have discretion about how to use CSA Benefits and must follow the *CSA Act*.

77. The *CSA Act* created a Trust in favour of the Class by placing a condition or restriction on the use of CSA funds; namely, to be used for the exclusive benefit of children in care, as a supplement to, or in excess of, those benefits received from a recipient province including Alberta.

78. The purpose of CSA is to provide monies to be used exclusively for the benefit of Class members who are the most vulnerable and marginalized children in Canadian society.

79. Denial of these benefits to members of the Class was a result of the deliberate and callous actions of Alberta in knowing those actions to be illegal.

80. The opportunities lost, and experiences foregone as a result of the denial of the CSA Benefits to the Class members during their formative years can never be replaced and have caused emotional damage and pain and suffering for the Class members.

Grounds for Restitution

Unjust Enrichment

81. Alberta has been unduly enriched, and the Class correspondingly deprived, by the actions of Alberta, absent any juristic reason for said enrichment. Specifically:

(a) The class were deprived of CSA Benefits by the exercise of Alberta's actions notwithstanding that the *CSA Act* requires that CSA Benefits shall be applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid;

(b) Alberta received a positive financial benefit by applying said CSA Benefits to its general revenue fund for uses other than being applied exclusively toward the care, maintenance, education, training or advancement of the child in respect of whom it is paid; and,

(c) Alberta acted without legal authority in denying the CSA Benefit to off-Reserve Indigenous and non-Indigenous children in care and Alberta is illegally enriched. Maintenance payments to support off-Reserve Indigenous children in care provided by Alberta are not fungible with CSA

Benefits. As such, Alberta has no juristic reason for taking or appropriating CSA payments.

Punitive Damages

82. The conduct of Alberta and Canada is such that it requires the opprobrium of this Court in the form of punitive damages.

83. As set out in detail in this claim, the actions of Alberta were reprehensible and showed a callous disregard for the Plaintiffs' rights and well-being. The conduct of Alberta was deliberate, lasted for decades, and represented a marked departure from ordinary standards of reasonable and decent behavior.

84. Compensatory damages are insufficient in this case, and the conduct of Alberta merits punishment and warrants a claim for punitive damages as punitive damage award is necessary to express society's condemnation of the conduct of Alberta, and to achieve the goals of both general and specific deterrence.

Disgorgement

85. Alberta's failure to provide adequate and equal funding for services and products to the Class members constituted a breach of its fiduciary duties, through which Alberta inequitably obtained quantifiable monetary benefits over the course of the Class period. Alberta should be required to disgorge those benefits, plus interest.

86. In breach of trust, Alberta retained the CSA Benefits and deposited them into its general revenues, the effect of which was to enable Alberta to diminish its borrowing

requirements by the amount equivalent to the CSA Benefits misapplied, resulting in a net benefit to Alberta from this breach of trust. That benefit must be disgorged.

Interest

87. As a consequence of the appropriation of the CSA Benefits under the circumstances set out herein, equity obliges Alberta to pay compound interest at a rate equivalent to the rate at which Alberta customarily earns interest on its investments.

Legislation

88. The Plaintiffs plead and rely upon the provisions of the *CSA Act* and Regulations; The *CYFE Act* and Regulations; *The CFSA Act* and Regulations; The *Income Tax Act;* the *Indian Act* and *The Constitution Act*, 1867, all of which are defined and cited in paragraph 1 hereof, and the *Crown Liability and Proceedings Act*, RSC 1985, c C-50; *The Class Proceedings Act, SA 2003 Chapter C-16.5*; *The Proceedings Against the Crown Act*, RSA 2000 c P.25*;* The *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982; and *An Act respecting First Nations, Inuit and Métis Children, Youth and Families* S.C. 2019, c. 24 all as aforesaid.

Remedy Sought

89. The Plaintiff Kelly Gosal claims against the Defendants as litigation guardian on behalf of the child A.G-L. as a proposed representative Plaintiff on behalf of the Class identified in paragraph 17(a) of this Statement of Claim.

90. The Plaintiffs, Sierra Elise Clarke and Octavian Elias Papa Laboucan, claims against the Defendants as proposed representative Plaintiffs, on behalf of the Class identified in paragraph 17(b) of this Statement of Claim.

91. The Plaintiffs claim as follows on their own behalf, and on behalf of other Class Members:

(a) An Order certifying this action as a Class proceeding and appointing Kelly Gosal, Sierra Elise Clarke and Octavian Elias Papa Laboucan as Representative Plaintiffs;

(b) A declaration that the Defendants breached their legal duties, constitutional duties and statutory obligations to ensure that the Children's Special Allowances payments went to the benefit of the off-Reserve Indigenous and non-Indigenous children in care for whom they were paid;

(c) A declaration defining the Class as stated in paragraph 17 herein;

(d) A declaration appointing in the Co-Counsel Consortium as Class Counsel;

(e) A declaration that the Defendant Alberta's use of the Children's Special Allowances was unconstitutional and unlawful;

(f) A declaration that the Defendant Canada breached fiduciary and/or common law duties of care when it did not take appropriate actions to prevent or curtail Alberta from using Children's Special Allowances to reduce its Child Welfare funding obligations in breach of the *CSA Act*;

(g) A declaration that the Defendants are in breach of section 15 of the *Charter* by discriminating against off-Reserve Indigenous children in care on the basis of the enumerated grounds of "race", "ethnic origin" and/or the analogous grounds of "family status", or "residence of a parent" and/or "lack of Indian or Treaty status or eligibility for Indian or Treaty status under the *Indian Act*" or

"children in care" or "Aboriginal children in care" and that such discrimination is not justified under section 1 thereof;

(h) An accounting for all Children's Special Allowance payments that Canada allowed Alberta to unlawfully obtain and use to offset its child welfare funding obligations;

(i) Restitution of all Children's Special Allowances payments that Canada allowed to be unlawfully taken by Alberta;

(j) Damages under section 24(i) of the *Charter*;

(k) Damages for discrimination and repayment of all benefits improperly denied to the members of the Class;

(l) In the alternative, an aggregate award of money for breach of trust, breach of fiduciary duty, unjust enrichment or conversion;

(m) Damages regarding such an amount as this Court finds appropriate for the cost of administrating the plan of distribution of the recovery awarded;

(n) Punitive damages;

(o) Disgorgement of monetary benefits;

(p) Interest at a compound compensatory rate;

(q) Costs on a full indemnity basis;

(r) Special damages including damages equal to the costs of bringing this action; and,

(s) Such further and other relief as this Honourable Court may deem just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta.

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you