

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

TANYA LABONTE

Plaintiff

-and-

HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA
as represented by THE DIRECTOR OF CHILD WELFARE

Defendant

I hereby certify this to be a
true copy of the original.
[Signature]
for Clerk of the Court

BEFORE THE HONOURABLE)
MR. JUSTICE D.R. THOMAS)
IN CHAMBERS, LAW COURTS,)
EDMONTON, ALBERTA.)

On February 19th, 2008

ORDER

UPON THE APPLICATION of the Plaintiff by Notice of Motion dated July 7, 2006 coming on for hearing on September 12, 13, 2007; **AND UPON READING** the Reasons for Judgment of The Honourable Mr. Justice Slatter dated February 8, 2006, the Affidavit of Frances Misson, sworn July 12, 2006, the Affidavit of Jesse Stechynsky sworn July 15, 2006, the Affidavit of Rhonda Dodds, sworn July 13, 2006, the Affidavit of Kelly Besler sworn October 13, 2006, the transcript of the Cross-Examination on Affidavit of Jesse Stechnysky dated October 30, 2006, the transcript of the Cross- Examination on Affidavit of Frances Misson dated October 30, 2006, the transcript of the Cross-Examination on Affidavit of Rhonda McPhee dated October 30, 2006, the Supplementary Affidavit of Kelly Besler sworn March 28, 2007; **AND UPON HEARING** the submissions of David A. Klein, Robert Lee, Mark Freeman and Nicola C. Hartigan, Counsel for the Plaintiff, Ward Branch, G. Alan Meikle, Q.C., Susan L. Bercov, Counsel for the Defendant Alberta Child Welfare and W. Scott Schlosser, Q.C., Counsel for the Defendant Public Trustee **AND UPON RESERVING** judgment until February 19, 2008;

IT IS HEREBY ORDERED THAT:

1. the Action is certified as a class proceeding;
2. the proceeding, as modified, discloses a cause of action;
3. the class is defined as:

All persons who, while resident in Alberta, suffered personal injury while a minor as a result of a tort by a third party, and between July 1, 1966 and the certification date, were in the actual custody of the Child Welfare:

- (i) as a permanent ward,
- (ii) under a Permanent or Temporary Guardianship Order, or
- (iii) under a Permanent Guardianship Agreement,


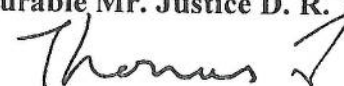

and for whom the Defendants did not make a claim under the *Criminal Injuries Compensation Act*, R.S.A. 1980, c. C-33 or the *Victims of Crime Act*, R.S.A. 2000, c. V-3, or commence a civil action to obtain compensation on their behalf;

4. a subclass for members of the class who are not residents of Alberta on the date of certification shall be and is hereby created, but no non-resident person who otherwise meets the class definition may opt in to the class in the absence of a further order adding a non-resident representative plaintiff;
5. the nature of the claims asserted on behalf of the class are breach of statutory, fiduciary and common law duties owed by the Defendants to the class;
6. the relief sought by the class is general, aggravated, special and punitive damages, interest and costs and such further relief that the Court may deem just;
7. the common issues in this proceeding are:
 - (i) Did the Defendants Child Welfare and the Public Trustee, between 1966 and the certification date, owe a duty to some or all of the various types of class members to protect their legal rights by taking steps to obtain compensation on their behalf, and if so, what was the nature of that duty?
 - (ii) What policies, practices and systems did the Defendants Child Welfare and the Public Trustee have in place between 1966 and the certification date relating to the prosecution of civil claims on behalf of children in care?
 - (iii) Was the existence of, absence of, or content of the policies of the Defendants Child Welfare and the Public Trustee relating to the protection of the civil rights of children in care at any time between 1966 and the certification date so egregious or highhanded as to justify an award of punitive damages?

- (iv) If the answer to question (iii) is affirmative, what quantum of punitive damages should be paid, and to whom?
 - (v) Did the Defendant Child Welfare, in its operation of the child welfare system, and the Defendant Public Trustee, in so far as it was involved in that system, at any time between 1966 and the certification date fraudulently conceal any breach of duty by them to the class members?
8. the Representative Plaintiffs are Tanya Labonte, Rhonda McPhee, and Jesse Stechynsky.
 9. the Public Trustee is added as a Defendant;
 10. a class proceeding is the preferable procedure for deciding the common issues; and
 11. the Representative Plaintiffs shall address the elements below, if they were not addressed in the current version of the Plaintiff's Litigation Plan, in an updated litigation plan within 90 days of filing the Formal Judgment:
 - (a) the steps proposed to provide notice to the class;
 - (b) the steps that are going to be taken to identify necessary witnesses and to locate them and gather their evidence;
 - (c) the location of relevant documents from members of the class as well as others;
 - (d) the exchange of management of documents produced by all parties;
 - (e) ongoing reporting to the class;
 - (f) mechanisms for responding to inquiries from class members;
 - (g) whether the discovery of individual class members is likely and, if so, the intended process for conducting those discoveries

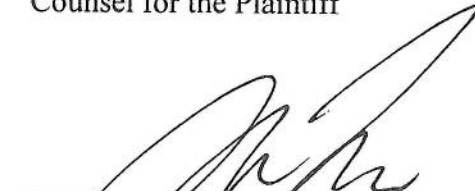
12. the parties will seek further direction in relation to the manner in which a class member may opt in or out of the proceeding;


13. the parties may speak to costs, and may seek other advice and directions as may be necessary.



The Honourable Mr. Justice D. R. Thomas



APPROVED AS TO FORM:


Counsel for the Plaintiff


Counsel for the Defendant
Alberta Child Welfare


Counsel for the Defendant
Public Trustee

Entered this 19 day
of September A.D. 2008

Clerk of the Court

SEAL

Action No.: 0403-12898

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Defendant

ORDER

Robert P. Lee
Old Stratheona Law Offices
Barristers & Solicitors
7904 - 103 Street
Edmonton, Alberta T6E 6C3
Phone: 780-438-4972
Fax: 780-436-7771