

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

BETWEEN:

TANYA LABONTE, JESSE STECHYNSKY and RHONDA MCPHEE

Plaintiffs

- and -

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

Defendants

**STATEMENT OF DEFENCE OF  
HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA**

1. Except as may be expressly admitted herein, the Defendant, Her Majesty the Queen in right of Alberta as represented by the Director of Child Welfare ("Her Majesty"), denies each allegation set forth in the Second Amended Statement of Claim.
2. Her Majesty admits the birth dates of the Plaintiffs set forth in paragraphs 1-3 of the Second Amended Statement of Claim.

3. Her Majesty denies any statutory, fiduciary and common law duty, as alleged or at all, to the Plaintiffs and other potential class members.
4. Her Majesty denies that the Plaintiffs and potential class members suffered personal injury as a result of a tort by a third party.
5. Her Majesty denies that the Plaintiffs and potential class members were victims of a crime.
6. Her Majesty denies any duty to the Plaintiffs and other potential class members, as alleged or at all, to:
  - a) Make applications under the *Criminal Injuries Compensation Act* or *Victim of Crime Act* to obtain compensation on their behalf;
  - b) Commence civil actions to recover compensation on their behalf;
  - c) Advise the Plaintiffs and potential class members of their legal rights to make a claim for compensation or their right to sue; and
  - d) Notify the Office of the Public Trustee of the Plaintiffs and class members' potential claims.
7. Her Majesty denies responsibility for the provision of protective services to potential class members who are Indians, as defined in the *Indian Act* (Revised Statutes of Canada, 1985, Ch. I-5, and regulations made thereunder, as amended from time to time), resident on a reserve beginning approximately 1980. From

1980 to the present, the provision of child protective services to these class members was delegated to various First Nations Child Welfare Societies. Any duties allegedly owed to these potential class members were owed by the First Nations Child Welfare Societies and not by Her Majesty.

8. Her Majesty denies that:

- a) The Plaintiffs and potential class members were in the actual custody, or effective care and control of Her Majesty within the meaning of the *Limitation of Actions Act*, R.S.A. 1980, c. L-15;
- b) The circumstances between the Plaintiffs and class members were such that Her Majesty could confidently be expected to take action;
- c) Her Majesty, notwithstanding authority under Temporary Guardianship Orders, Permanent Guardianship Orders or Agreements and Wardship Orders, is or was in "loco parentis" towards the Plaintiffs and class members; and
- d) Her Majesty is or was so circumstanced with respect to the Plaintiffs and class members such that Her Majesty had or has effective care and control of the Plaintiffs and class members.

9. Further, or in the alternative, prior to, during and after the Plaintiffs and potential class members were under the guardianship of Her Majesty as defined in the *Child Welfare Act*, 1966, S.A. 1966, c. 13 as amended, and the *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12 as amended the Plaintiffs and

potential class members were under the guardianship of other individuals. If duties are owed to the Plaintiff and other potential class members as alleged, which is denied, these duties were owed solely by other guardians, or in the alternative, were jointly owed by the other guardians who are jointly and severally liable for any breach of these duties. In particular, with respect to the Plaintiffs, the following individuals were guardians of the Plaintiffs at all material times:

- a) Tanya LaBonte was under a Permanent Guardianship Order from October 20, 1988 to July 19, 1990 when she attained the age of majority. Prior to October 20, 1988, Tanya LaBonte's mother, Leslie Hill, was the guardian of Tanya LaBonte. Prior to October 20, 1988, any duties owed to Tanya LaBonte, as alleged or at all, were owed by Leslie Hill;
- b) Jessie Stechynsky was the subject of several Temporary Guardianship Orders, from time to time, during the period January 24, 1994 to October 14, 1994. On or about October 4, 1995, Jessie Stechynsky became the subject of a Permanent Guardianship Order which was terminated on or about April 23, 2002. Prior to January 24, 1994 and after April 23, 2002, Colleen and Raymond Stechynsky were the sole guardians of Jessie Stechynsky. Any duties owed to Jessie Stechynsky during this period were owed by Colleen and Raymond Stechynsky. During the period January 24, 1994 to October 14, 1994, Colleen and Raymond Stechynsky were joint guardians of Jessie Stechynsky together with Her Majesty. Any duties owed to Jessie Stechynsky during this period were owed by Colleen and Raymond Stechynsky; and

- c) Rhonda Dodds was the subject of a Temporary Guardianship Order from approximately February 26, 1980 to December 1, 1980. Rhonda Dodds was the subject of a Permanent Guardianship Order from approximately October 8, 1980 to August 31, 1982. On or about August 31, 1982, Rhonda Dodds was adopted. Prior to the Temporary Guardianship Order, the sole guardian of Rhonda Dodds was Susan Ann Silver (nee Johanson). After the adoption, the sole guardians of Rhonda Dodds were her adoptive parents. Any duties owed to Rhonda Dodds prior to February 26, 1980 were owed by Susan Ann Silver. Any duties owed to Rhonda Dodds following her adoption were owed by her adoptive parents. During the period of the Temporary Guardianship Order, any duties owed to Rhonda Dodds were owed by Susan Ann Silver.
10. In the alternative, if any duties were owed to the Plaintiffs and potential class members, as alleged or at all, Her Majesty denies that any such duties were breached. Her Majesty states that the standard of care with respect to protecting legal interests during the relevant time periods was met. In particular, Her Majesty states with respect to the potential class members and the Plaintiffs that:
- a) It was unnecessary in all of the circumstances to commence civil proceedings and bring applications under the applicable Victim of Crime statutes prior to the Plaintiffs and the potential class members reaching the age of majority;
- b) It was not in the best interests of the Plaintiffs and the potential class members to commence civil proceedings and bring applications under the applicable Victim of Crime statutes;

- c) It was not economically feasible to commence civil proceedings and bring applications under the applicable Victim of Crime statutes;
  - d) It was reasonable in all of the circumstances at all material times to decline to commence civil proceedings and bring applications under the applicable Victim of Crime statutes;
  - e) Her Majesty was unaware during the material times of the facts required to commence civil proceedings and bring applications under the applicable Victim of Crime statutes;
  - f) The Plaintiffs and potential class members failed to cooperate with Her Majesty to take steps to protect their legal interests, if any; and
  - g) The Plaintiffs and potential class members had no reasonable cause of action to advance or reasonable basis to commence civil proceedings and bring applications under the applicable Victim of Crime statutes.
11. In the alternative, if there was a breach of duty to the Plaintiffs and the potential class members, the limitation period for commencing actions and bringing Victim of Crime applications did not begin to run until the Plaintiffs and the potential class members reached the age of majority. Any failure to commence civil actions or bring Victim of Crime applications is due to the failure of the Plaintiffs and the potential class members to bring their civil actions and Victim of Crime applications within the limitation periods. The Plaintiffs and other potential class members are solely or contributory negligent for any of their losses.

12. In the alternative, if the limitation period for commencing actions and bringing Victim of Crime applications expired prior to the Plaintiffs' and potential class members reaching the age of majority, the applicable limitation periods expired while the Plaintiffs and other class members were under the guardianship of other third parties who are solely liable for any losses.
13. Her Majesty denies that the Plaintiffs and the class members have sustained the damages alleged or at all.
14. Her Majesty states that the Plaintiffs or some of them and the potential class members or some of them have brought civil actions and Victim of Crime applications, particulars of which include:
  - a) The Plaintiffs and class members have made applications for Victim of Crime benefits and have received the benefits that they are entitled to;
  - b) On or about April 2, 2004 Colleen Stechynsky commenced a civil action on behalf of Jessie Stechynsky; and
  - c) On or about June 29, 2004 an action was commenced by Susan Ann Silver on behalf of Rhonda Dodds.
15. In the further alternative, the limitation period for the Plaintiffs and potential class member for commencing civil actions and bringing Victim of Crime applications has not yet expired.

16. Her Majesty denies that the Plaintiffs and other potential class members have been prejudiced or damaged by any alleged delay in bringing their claims. Further, at all material times, the Plaintiffs and other potential class members had a duty to mitigate their damages by bringing their civil actions and their Victim of Crime applications as soon as possible. Any delay in bringing the claims is due to the failure of the Plaintiffs and other potential class members to mitigate their damages.
17. In the alternative, any alleged breach of duty to the Plaintiffs and other potential class members for the failure to protect legal interests is barred by the provisions of the *Limitations Act*, R.S.A. 2000. c. L-12.
18. Her Majesty denies that any policies or facts were concealed, fraudulently or otherwise, from the Plaintiffs or the potential class members.
19. In response to the entire Second Amended Statement of Claim, Her Majesty denies that any of the decisions referred to in the Second Amended Statement of Claim were operational decisions, but were rather policy decisions as defined by law for which Her Majesty is not liable.

WHEREFORE THE DEFENDANTS PRAY that the action against it be dismissed with costs.

DATED at the City of Edmonton, in the Province of Alberta, this 30<sup>th</sup> day of January, 2009; and delivered by **SUSAN L. BERCOV**, Barrister and Solicitor, Alberta Justice -Civil Law Branch, 9<sup>th</sup> Floor, Peace Hills Trust Tower, 10011 – 109 Street,



Edmonton, Alberta, T5J 3S8, Solicitor for the Defendants, whose address for service is in care of the said Solicitor.

TO: THE PLAINTIFFS

Action No.: 0403 12898

THIS STATEMENT OF DEFENCE is filed by ALBERTA JUSTICE, Solicitors for the Defendant, Her Majesty the Queen in right of Alberta.

---

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

---

The Defendant carries on business at the City of Edmonton, and elsewhere, in the Province of Alberta.

BETWEEN:

TANYA LABONTE, JESSE STECHYNSKY  
and RHONDA MCPHEE

Plaintiffs

This Defendant's address for service is:

- and -

**9<sup>th</sup> floor, Peace Hills Trust Tower  
10011 – 109 Street  
Edmonton, Alberta  
T5J 3S8**

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

Defendants

at which address service of subsequent proceedings in this action may be served as effectively as if served upon the Defendant personally.

---

**STATEMENT OF DEFENCE OF HER  
MAJESTY THE QUEEN IN RIGHT OF  
ALBERTA**

---

Solicitors for the Defendant.

**SUSAN L. BERCOV**

Alberta Justice – Civil Litigation  
9<sup>th</sup> floor, 10011 – 109 Street  
Edmonton, AB T5J 3S8

Phone: (780) 422-9479/Fax: (780) 427-1230

