

Action No. 0403 12898

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 THE PUBLIC TRUSTEE

1. The Public Trustee admits paragraphs 1, 2, and 3 of the Second Amended Statement of Claim. The Public Trustee further admits that it is a corporation sole pursuant to the *Public Trustee Act*.
2. Except as admitted, this Defendant denies each and every allegation in the Second Amended Statement of Claim.
3. The Public Trustee denies any statutory, fiduciary or common law duties, alleged or at all, to the Plaintiffs or other potential class members. Further, and in particular, the Public Trustee did not owe any duty of any kind to any class members who were not subject to a Permanent Guardianship Order between July 1, 1985 and the certification date.

4. The Public Trustee denies that the Plaintiffs and the potential class members suffered personal injury as a result of a tort by a third party or were victims of a crime and puts the Plaintiffs to the strict proof thereof.
5. The Public Trustee denies any duty to the Plaintiffs or other potential class members as alleged or at all, to:
 - a. Make applications under the *Criminal Injuries Compensation Act* or *Victims 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.
6. The Public Trustee further denies that:
 - a. The Plaintiffs and potential class members were in the actual care or control of The Public Trustee within the meaning of the *Limitations of Actions Act*, R.S.A. 1980, c. L-15;
 - b. The circumstances between the Plaintiff, other class members and the Public Trustee were such that The Public Trustee could confidently be expected to take action;
 - c. The Public Trustee, notwithstanding authority under a Permanent Guardianship Order, was in "loco parentis" towards the Plaintiffs and other class members;
and

- d. The Public Trustee is or was so circumstanced with respect to the Plaintiffs and class members such that The Public Trustee had or has effective care and control of the Plaintiffs and class members.
7. The Public Trustee denies responsibility 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 after July 1, 1985. 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 alleged to be owed to these potential class members were owed by the First Nations Child Welfare Societies and not The Public Trustee.
 8. Further, or in the alternative, if duties were owed to the Plaintiffs and other potential class members as alleged, which is denied, the same duties were owed by the other guardians who are also liable for any breach of these duties. In particular, with respect to the Plaintiffs, the following individuals were guardians of the Plaintiffs at 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 and not the Public Trustee;
 - b. Jessie Stechynsky was the subject of several Temporary Guardianship Order, form 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 22, 2002, Colleen and Raymond Stechynsky were the sole guardians of Jessie Stechynsky. Any duties owed to Jessie Stechynsky during this period were owed solely 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.

- c. Rhonda Dodds was the subject of a Temporary Guardianship Order form approximately February 26, 1980 to December 1, 1980. Rhonda Dodds was the subject of a Permanent Guardianship Order form approximately October 8, 1980 to August 31, 1982. On or about September 1, 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 solely by Susan Ann Silver. Any duties owed to Rhonda Dodds following her adoption were owed solely by her adoptive parents.

9. In the alternative, if any duties were owed to the Plaintiffs and potential class members, as alleged or at all, The Public Trustee denies that any such duties were breached. The Public Trustee states that the standard of care with respect to protecting legal interests during the relevant time periods was met. In particular, The Public Trustee states with respect to the potential class members and the Plaintiffs that:

- a. It was not necessary in all of the circumstances to commence civil proceedings and bring applications under the applicable Victims 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 Victims of Crime statutes;
- c. Neither a Victim of Crime application nor a civil action would have materially advanced the Plaintiff's position when factors such as recoverability and existing social benefits were taken into consideration.

- d. It was not economically feasible to commence civil actions or bring Victim of Crime applications;
 - e. The Public Trustee was unaware during the material times of the facts required to bring Victim of Crime applications and commence civil proceedings;
 - f. The Plaintiffs and potential class members failed to cooperate with The Public Trustee making it impossible for The Public Trustee to take steps to protect legal interests; and,
 - g. The Plaintiffs and potential class members had no reasonable cause of action to advance or reasonable basis for bringing a Victim of Crime application.
10. 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 Plaintiff 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 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 contributorily negligent for any of their losses.
11. 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 liable for any losses.
12. The Public Trustee denies that the Plaintiffs and the class members have sustained the damages alleged or at all.

13. The Public Trustee 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 application, particulars of which include:
- a. The Plaintiffs and class members have made application 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.
14. In the further alternative, the limitation period for the Plaintiffs and potential class members for commencing civil actions and bringing Victim of Crime applications has not yet expired.
15. The Public Trustee 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 time, 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.
16. Further, or in the alternative, the claim of the representative plaintiffs and other class members expired when, as adults, they could have brought a civil action or a Victims of Crime application on their own behalf or during the time when the Public Trustee had no responsibility of any kind for these individuals.

17. In the further alternative, the representative plaintiffs and other class members, being over 28 years old, have lost the right to bring this action. This Defendant specifically pleads and relies upon Section 3(1)(b) of the *Limitations Act*, R.S.A. 2000 c-12.
18. 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.
19. The Public Trustee denies that any policies or facts were concealed, fraudulently or otherwise, from the Plaintiffs or the potential class members.
20. In response to the entire Statement of Claim this Defendant 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 this Defendant is not liable.

WHEREFORE THE DEFENDANT PRAYS THAT THE PLAINTIFF'S CLAIM BE DISMISSED WITH COSTS.

DATED at the City of Edmonton, in the Province of Alberta, this 30th day of January, 2009 AND DELIVERED by SCHLOSSER COOK, Barristers & Solicitors, solicitors for the within Defendant, whose address for service is in care of the said solicitors at 10608 - 105 Avenue, Edmonton, Alberta, T5H 0L2.

TO: THE PLAINTIFFS

Action No. 0403 12898

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

THIS STATEMENT OF DEFENCE is
filed by SCHLOSSER COOK, Solicitors
for the Defendant, The Public Trustee.

BETWEEN:

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

**TANYA LABONTE,
JESSE STECHYNSKY AND
RHONDA MCPHEE**

Plaintiffs

- and -

This Defendants' address for service is:

10608 - 105 Avenue
Edmonton, Alberta
T5H 0L2

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

Defendants

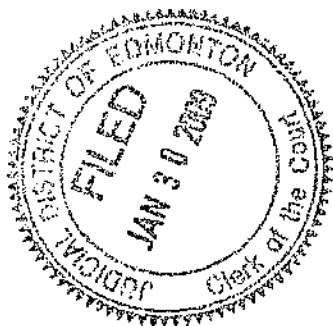
at which address service of subsequent
proceedings in this action may be served as
effectively as if served upon the
Defendants personally.

Solicitors for the Defendants.

**STATEMENT OF DEFENCE of
THE PUBLIC TRUSTEE**

SCHLOSSER COOK
Barristers and Solicitors
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EDMONTON, Alberta
T5H 0L2

Attention: W. S. SCHLOSSER, Q.C.
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SCHLOSSER ♦ COOK

BARRISTERS & SOLICITORS

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DATE: January ²⁰28, 2009

OUR FILE: 1-9217

TO: Old Strathcona Law Office

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