

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50 and amendments thereto

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

No. **\$1811960**
Vancouver Registry

NOV 06 2018
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN 

R.O., an infant by his/her litigation guardian the Public Guardian and Trustee of British Columbia

AND:

PLAINTIFF

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
(MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT AND DIRECTOR OF
CHILD WELFARE), ROBERT RILEY SAUNDERS and INTERIOR SAVINGS
FINANCIAL SERVICES LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff 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 plaintiff 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 plaintiff,

- (a) if you reside anywhere 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 PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, R.O., is a First Nations youth in the continuing custody of the Province of British Columbia pursuant to the provisions of the *Child, Family and Community Service Act*, [R.S.B.C. 1996], c.46. (the "CFCSA").
2. The litigation guardian, the Public Guardian and Trustee, is the Plaintiff's property guardian, pursuant to s. 50 of the *CFCSA*. The Public Guardian and Trustee acts as litigation guardian for children in the continuing custody of the province pursuant to s. 7(2) of the *Public Guardian and Trustee Act*, [R.S.B.C. 1996], c.383 (the "PGTA").
3. The Plaintiff is and was at all material times in the custody of his or her personal guardian, the Provincial Director of Child Welfare (the "Director"), pursuant to s. 50 of the *CFCSA*.
4. The Defendant, Her Majesty the Queen in right of the Province of British Columbia (the "Crown") is represented by her agent, the Ministry of Children and Family Development ("MCFD"). The Defendant, Her Majesty the Queen in Right of the Province of British Columbia (MCFD), is named a defendant pursuant to ss.2(c) and 7 of the *Crown Proceedings Act*, [R.S.B.C. 1996], c.89.
5. The Director is designated by the Minister for Children and Family Development under s. 91 of the *CFCSA* and has the rights, powers, duties and responsibilities for the supervision, care, custody and guardianship of all children in the custody of the province. The Director has the right to delegate his or her rights, powers, duties and responsibilities, but has the duty to train, monitor, supervise and review the decisions and conduct of the delegates.
6. The Defendant, Robert Riley Saunders, is a social worker who was at all material times an employee of the government of British Columbia acting in the course of his employment duties, and was delegated by the Director the right, power, duty and responsibility for the supervision, care, custody and guardianship of the Plaintiff.
7. The Defendant, Interior Savings Financial Services Ltd. ("Interior Savings"), is a financial institution with a registered and records office at 700-275 Lansdowne Street in Kamloops, British Columbia.

The Plaintiff

8. The Plaintiff became a child in the continuing care of the Province pursuant to a continuing custody order. The Plaintiff was and is vulnerable to abuse given his or her history of parental neglect, medical neglect, transiency and exposure to traumatic circumstances.

Saunders

9. In the course of his employment as a social worker, Saunders was delegated responsibility for the Plaintiff, and had fiduciary obligations to the Plaintiff to ensure that he acted at all times in the Plaintiff's best interest, and placed the Plaintiff's interest above his own.
10. Pursuant to s. 2 of the *CFCSA*, Saunders had at all material times an obligation to make the Plaintiff's safety and well-being paramount considerations.
11. Pursuant to s. 4 of the *CFCSA*, Saunders had at all material times an obligation to consider the Plaintiff's best interests, including:
 - (a) The Plaintiff's safety;
 - (b) The Plaintiff's physical and emotional needs and level of development;
 - (c) The importance of continuity in the Plaintiff's care;
 - (d) The quality of the Plaintiff's relations with his or her parents and other persons;
 - (e) The Plaintiff's cultural, racial, linguistic and religious heritage, including the importance of preserving the Plaintiff's cultural identity as an aboriginal person;
 - (f) The Plaintiff's views; and
 - (g) The effects on the Plaintiff of any delays in decision-making.
12. In early 2016, Saunders moved the Plaintiff from a stable home environment into an unstable residential or independent living arrangement in order to make the Plaintiff eligible for payment of certain financial benefits by the Ministry. Saunders then opened a joint bank account with the Plaintiff at Interior Savings. Saunders stole the funds deposited by the Ministry into the joint bank accounts by moving them to

his own individual account at Interior Savings and by paying his personal expenses by electronic transfer from the joint bank account.

13. Saunders knowingly made a series of false and/or misleading statements to the Plaintiff in order to manipulate the Plaintiff into opening a joint bank account with Saunders. Saunders made false statements about the purpose of the joint bank account and the movement of funds and the amount of the funds in the joint account. The Plaintiff believed Saunders' false statements to his or her financial detriment and relied on them to the detriment of his or her well-being.
14. At all material times, Saunders failed to consider the Plaintiff's best interests or safety and well-being. Saunders failed to ensure the Plaintiff received adequate care and support, and failed to provide for the Plaintiff's basic needs. Saunders failed to ensure that the Plaintiff had access to community and familial supports, failed to include the Plaintiff in future and permanency planning, failed to consider the Plaintiff's views, and failed to document the Plaintiff's plan of care. Saunders failed to facilitate the Plaintiff's access to his or her aboriginal and cultural heritage.
15. Saunders was verbally and emotionally abusive to the Plaintiff. Saunders derided the Plaintiff and her family. Saunders' verbal and emotional abuse of the Plaintiff was intended to and succeeded in undermining the Plaintiff's self-confidence and self-esteem, and undermined her belief that she might be entitled to any form of financial support from the state to bring her to a subsistence level of material well-being, such as food, clothing or shelter.
16. In exercising parental control as a delegate of the Director, Saunders exercised ultimate control over the Plaintiff's life. Saunders had complete control over every aspect of the Plaintiff's life, including where the Plaintiff would live, the Plaintiff's access to family members, the Plaintiff's access to services and financial assistance, and the Plaintiff's connection to his or her cultural heritage.
17. The Plaintiff was at all material times in a vulnerable position in relation to Saunders, and Saunders represented the primary source of parental stability and security in the Plaintiff's life. The Plaintiff placed complete trust and confidence in Saunders.
18. Saunders was aware of the Plaintiff's vulnerability and aware that he exercised parental control over the Plaintiff, and breached his fiduciary obligations to the Plaintiff to act in the Plaintiff's best interests and to make the Plaintiff's safety and well-being paramount considerations. Saunders failed to apply for benefits or entitlements to which he knew or ought to have known the Plaintiff was entitled, and did not advise the Public Guardian and Trustee that the Plaintiff had a legal claim or

claims, which prevented the Public Guardian and Trustee from advancing the Plaintiff's claim or claims.

19. Saunders did not act in good faith in his dealings with the Plaintiff. He knew that he did not have lawful authority to deprive the Plaintiff of funds and benefits designated for the Plaintiff. Saunders knew that his actions and statements would harm the Plaintiff.
20. Saunders engaged in the same and similar unlawful and inexcusable activities in respect of dozens of other children in his care, most of whom are Aboriginal children.

Harm to the Plaintiff

21. The Plaintiff was harmed by Saunders' negligent social work, by the misappropriation of funds and benefits designated for his or her care and needs, and by the breach of trust and confidence. The Plaintiff was deprived of those funds and benefits and his or her vulnerability to further predation from other sources increased, and the Plaintiff was exploited due to his or her vulnerability. As a result of Saunders' actions, the Plaintiff's living situation was unstable and transient; he or she was from time to time homeless as a result of Saunders' actions. The Plaintiff's physical and psychological health suffered as a result of Saunders' actions. The Plaintiff's trust and confidence in parental and authority figures has been severely compromised.

Failings of the Director

22. At all material times, the Director delegated parental control to Saunders. The Director failed to adequately supervise, restrict, review and restrain Saunders. The Director failed to implement adequate systems, restraints and controls to detect and prevent Saunders' misappropriation of funds and benefits. The Director failed to conduct reviews of Saunders' files to detect whether Saunders was carrying out his duties appropriately and in accordance with the Plaintiff's best interests.
23. In particular, without limiting the generality of this pleading, Saunders' team lead did not hold the weekly and monthly consultation with Saunders as required by policy and/or failed to ascertain whether the children assigned to Saunders received appropriate care and failed to ascertain their level of well-being. Saunders' team lead was not properly supervised by a manager and the manager was not properly supervised by the Executive Director. The Executive Director was not properly supervised by his supervisors in Victoria.

24. The Director was aware of previous instances of Saunders' misconduct but failed to implement adequate supervision and controls that would have detected Saunders' misconduct in a timely fashion. The Director's failure to detect, supervise, restrict, review and restrain Saunders has resulted in harm to the Plaintiff.
25. Once Saunders' misconduct was detected, the Director failed to move expeditiously to review and restrain Saunders and failed to advise the Plaintiff and ameliorate his or her position in a timely fashion, which exacerbated and prolonged the harms caused by Saunders.
26. **Interior Savings**
27. Saunders opened numerous joint accounts with children known by Interior Savings to be subject to a continuing custody order. Interior Savings assisted Saunders by having the children sign forms opening the joint accounts but failed to advise the children that the accounts were joint accounts with Saunders. Employees of Interior Savings knew Saunders personally because they had repeated interactions with him. In part because of his repeated transactions with Interior Savings' employees, Interior Savings knew that Saunders was a government employee with a fixed salary and that the funds entering into his personal account were irregular and that his transactions patterns were irregular.
28. Interior Savings knew or ought to have known that the children did not personally attend Interior Savings to access any of their funds and that the children did not have electronic access to the funds or have debit or ATM cards. Interior Savings set up these joint accounts knowing that Saunders was the only one of the two 'joint' account holders that would be able to access the funds. Interior Savings knew or ought to have known that Saunders accessed the funds electronically and moved them to his own account with Interior Savings and used the funds to pay his own expenses.

Class Representative

29. The Plaintiff brings this case on his or her own behalf and proposes him or herself as a representative plaintiff for the class of all youth or former youth in the care of the Province in respect of whom Saunders was delegated responsibility and in respect of whom Saunders misappropriated funds or benefits or failed to provide adequate support, care or guardianship.

Part 2: RELIEF SOUGHT

30. The Plaintiff claims damages from the Defendants as follows:

- (a) An order certifying this action pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c.50;
- (b) general damages;
- (c) aggravated and punitive damages;
- (d) damages and remedies for breach of fiduciary duty;
- (e) an interim, interlocutory and permanent injunction requiring the Defendants to provide financial, safety, health, therapeutic and educational support to the Plaintiff and other class members, in addition to and above their entitlements at law;
- (f) tracing and accounting of all funds misappropriated by Saunders;
- (g) an interim, interlocutory or final order restraining Saunders from having direct or indirect contact with the Plaintiff or other class members;
- (h) costs, including special costs and applicable taxes on those costs;
- (i) pre- and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79, and amendments thereto; and
- (j) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. The Plaintiff claims as against Saunders in negligence, defalcation, misfeasance of public office, abuse of process, conversion, breach of fiduciary duty and fraud.
2. The Plaintiff says that the Province is vicariously liable for any torts committed by Saunders. The Plaintiff says that the Province is directly liable in negligence and breached its fiduciary duties to the Plaintiff by ignoring warning signs that Saunders was harming youth in his care and by failing to inform the Plaintiff of Saunders' conduct and remediate the conditions leading to his or her vulnerability and exploitation in a timely way.

(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) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a claim in the nature of a class action for compensation for damages incurred as a result of the tortious acts of the defendants.

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:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Child, Family and Community Service Act, [R.S.B.C. 1996], c.46

Class Proceedings Act, R.S.B.C. 1996, c.50

Crown Proceedings Act. [R.S.B.C. 1996], c.89

Public Guardian and Trustee Act, [R.S.B.C. 1996], c.383