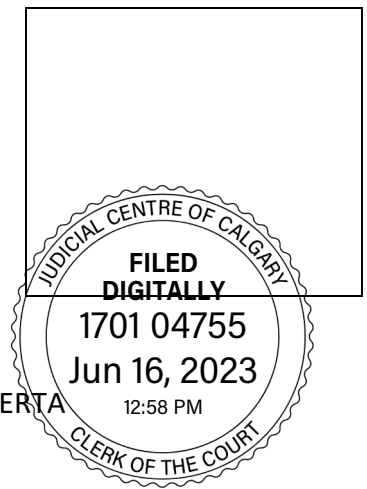


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COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
REPRESENTATIVE PLAINTIFF N.B.  
DEFENDANTS PHILIP HEEREMA, CALGARY EXHIBITION AND  
STAMPEDE LIMITED, and CALGARY STAMPEDE  
FOUNDATION

*Brought under the Class Proceedings Act*

DOCUMENT **BRIEF OF ARGUMENT OF THE REPRESENTATIVE  
PLAINTIFF & THE CERTIFIED CLASS,  
FOR AN APPLICATION FOR SUMMARY JUDGMENT**

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## I. INTRODUCTION

1. This is an Application for summary judgment of the certified common issues. The underlying Class Action focuses on the predatory conduct of the Defendant, Philip Heerema (**Heerema**), while he was a volunteer with or an employee of the Defendants, Calgary Exhibition and Stampede Limited and Calgary Stampede Foundation (collectively, the **Stampede Defendants**).
2. The Stampede Defendants own and operate the Young Canadians, a performing arts school which provides young students with an opportunity to develop their talents and to perform before local and international audiences, with the Calgary Stampede Grandstand Show being an annual highlight for many performers. The Young Canadians prides itself on providing an environment for young people to learn the arts, to develop skills, and to potentially use their experiences as a springboard for further learning and opportunities in the arts.
3. Over the course of decades, in what should have been a positive and nurturing environment, Heerema sexually assaulted, sexually exploited, and sexually lured numerous Class Members<sup>1</sup> who were part of or involved in the Young Canadians.
4. From 1987 to January 31, 2014, the Stampede Defendants employed or allowed Heerema to volunteer in a variety of capacities, and he was a key point of contact for the Class Members. Heerema repeatedly abused his position of power and trust over the Class Members and systematically identified, targeted, and preyed on the vulnerabilities of the Class Members. In carrying out his wrongful acts, he made use of the Young Canadians' equipment, resources, and facilities, and the position of power and trust instilled in him by the Young Canadians organization and the Stampede Defendants.

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<sup>1</sup> As per the Consent Order, filed October 14, 2022, the Class has been defined as: "All individuals who were male, or identified as male, and were students, employees, contractors, or volunteers of the Young Canadians between August 1, 1987 to January 31, 2014" (the **Class** or **Class Members**).

5. Heerema was criminally charged and eventually pleaded guilty, mid-trial, to a variety of sexually exploitive acts that occurred in respect of several Class Members. He received a 10-year sentence and remains incarcerated.
6. In addition to being Heerema's victims, the Class Members are also victims of the Young Canadians organization and the Stampede Defendants, which failed to provide them with a safe and secure environment.
7. The Stampede Defendants also failed to adequately investigate and act upon known complaints. One of the first known complaints was made by a victim of Heerema as early as 1988. Further complaints were made in 2008.
8. The Class Members have been left to pick up the pieces. The impacts of Heerema's predatory conduct and the failures of the Stampede Defendants are widespread and long-lasting. The evidentiary record demonstrates that the Stampede Defendants are both directly liable and vicariously liable for the harm caused to the Class Members and for the corresponding losses and damages suffered by them. A fair and just determination of the certified common issues can be made without the need for a full Common Issues Trial.
9. Summary judgment is an important tool for enhancing access to justice, as confirmed in *Hryniak*<sup>2</sup> and in numerous subsequent cases. Here, a determination of the certified common issues by way of summary judgment will help bring justice to the Class Members, avoid an unnecessary and retraumatizing Trial, and allow for individual damages to thereafter be determined. This Application is an important step forward in finally redressing the harms caused by Heerema and the Stampede Defendants to the Class Members.

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<sup>2</sup> *Hryniak v Mauldin*, [2014 SCC 7](#) (*Hryniak*)

## II. CERTIFIED COMMON ISSUES

10. The Certification Order certified common issues regarding causes of action as against the Stampede Defendants involving both direct and indirect claims:

a) Direct claims: negligence, breach of fiduciary duty and breach of contract

b) Indirect claims: vicarious liability

11. The indirect claim for vicarious liability is dependent on whether Heerema breached any duties of care or fiduciary duties owed to the Class Members. In addition to the facts as outlined below which establish such breaches as having occurred, Heerema was noted in default on August 11, 2020. By virtue of the Noting in Default, Heerema has admitted liability for the claims as pled against him.<sup>3</sup>

12. The following certified common issues, as outlined in Schedule “B” to the Certification Order, filed June 24, 2019, are applicable to the Stampede Defendants and are sought to be determined by this Application (the “**Summary Judgment Common Issues**”):

(1) Were the Defendants, or any of them, negligent, including;

(a) Did the Defendants or any of them owe a duty of care to the Class Members to provide a safe and secure environment free of sexual luring, exploitation and assault;

(b) What was the applicable standard of care required of the Defendants or any of them in the circumstances;

(c) Did the Defendants or any of them breach their duties such that their conduct fell below the applicable standard of care; and

(d) Did the conduct of the Defendants or any of them cause losses or damages to the Class Members?

(2) In respect of issue 1(c) and the alleged breaches of duties by Heerema:

(a) Did Heerema engage in inappropriate physical and sexual relationships with Class Members?

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<sup>3</sup> *TLA Food Services Ltd v 1144707 Alberta Ltd*, [2011 ABQB 550](#) at paras 18-24 (*TLA Food Services*)

(b) Did Heerema abuse his position of trust and authority over Class Members?

(c) Did Heerema sexually lure, exploit and assault Class Members?

(d) Did Heerema create child pornography involving Class Members?

(e) Did Heerema engage in deception with respect to his inappropriate conduct, and encourage Class Members to deceive parents and others?

(3) In respect of issue 1(c) and the alleged breaches of duties by the [Stampede Defendants]:

(a) Did the [Stampede Defendants] fail to adequately investigate and screen Heerema before he was hired?

(b) Did the [Stampede Defendants] fail to adequately investigate and screen Heerema before he was promoted and in contact with the Class Members?

(c) Did the [Stampede Defendants] fail to adequately supervise Heerema?

(d) Did the [Stampede Defendants] allow Heerema to interact with the Class Members and expose the Class Members to Heerema, including placing Heerema in a position of authority and supervision over the Class Members?

(e) Did the [Stampede Defendants] allow or direct Heerema to be responsible for advising and explaining to the students, including the Class Members, the code of conduct?

(f) Did the [Stampede Defendants] ignore warning signs of improper sexually exploitive conduct engaged by Heerema with respect to the Class Members?

(g) Did the [Stampede Defendants] fail to adequately investigate and act with respect to Heerema's sexual exploitation and inappropriate conduct with respect to the Class Members, notwithstanding suspicions or actual knowledge of that conduct?

(h) Did the [Stampede Defendants] create or permit an atmosphere tolerant of inappropriate sexual behaviour by Heerema or other people in positions of authority over students and the Class Members?

(i) Did the [Stampede Defendants] fail to establish, implement or enforce adequate policies, practices or procedures to protect the Class Members against sexual abuse and sexual exploitation by staff and people in positions of authority in the Young Canadians organization?

(j) Did the [Stampede Defendants] fail to have proper procedures and safeguards in place to ensure that the Young Canadians' policies, practices and procedures were followed by Heerema?

(4) Is Heerema liable for the tort of intrusion upon seclusion?

(a) Was Heerema's sexual exploitation and inappropriate conduct, including the creation of child pornography involving Class Members, intentional?

(b) Did Heerema invade, without lawful justification, the private affairs or concerns of the Class Members?

(c) Would a reasonable person regard the invasion of privacy as highly offensive causing distress, humiliation or anguish?

(5) Did the [Stampede Defendants] have a contractual relationship with the Class Members?

(a) If so, was it an express or implied term of the contracts with the Class Members that the [Stampede Defendants] would take all reasonable steps to safeguard the safety, security and well-being of the Class Members while attending the Young Canadians' school?

(b) Did the [Stampede Defendants] breach that term of the contracts?

(c) Did the breach of that term of the contracts cause losses or damages to the Class Members?

(6) Did the Defendants or any of them owe a fiduciary duty to the Class Members?

(a) Were the Defendants or any of them in a position of trust and authority over the Class Members?

(b) Did Defendants or any of them breach that fiduciary duty?

(c) Did the breach of fiduciary duty by the Defendants or any of them cause losses or damages to the Class Members?

(7) If Heerema breached any duties of care or fiduciary duties owed to the Class Members, are the [Stampede Defendants] vicariously liable for such breaches by Heerema:

(a) Does a precedent exist in which vicarious liability has been found such as to impose vicarious liability between Heerema and the [Stampede Defendants] in this Action?



(b) If the answer to question 7(a) is no, then:

(i) was the relationship between Heerema and the [Stampede Defendants] sufficiently close; and

(ii) is there a sufficient connection between the wrongful conduct alleged in this Action and the conduct authorized by the [Stampede Defendants] as employer for Heerema?

(8) Did the [Stampede Defendants] have actual knowledge of Heerema's sexual luring, exploitation and abuse of the Class Members?

(9) Does the conduct of any of the Defendants justify an award of punitive damages?

### III. SUMMARY JUDGMENT

13. Rule 7.3 of the Rules of Court provides that a party may apply to the Court for summary judgment for all or part of a claim when, among other grounds, there is no defence to a claim or part of it.<sup>4</sup>

14. In *Hryniak*, the Supreme Court of Canada signalled the "cultural shift" that that the legal system must undertake to enable increased access to justice and identified summary judgment as an important tool for enhancing access to justice. The principal goal remains the same: a fair and just process that results in a just adjudication of disputes".<sup>5</sup>

15. In *Weir-Jones*,<sup>6</sup> the Court of Appeal of Alberta addressed summary judgment and highlighted that "[t]he key issue is the approach to be taken in determining the absence of a defence to, or 'merit' in a claim".<sup>7</sup> The Court of Appeal described the key considerations as follows:

a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?

b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a

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<sup>4</sup> *Alberta Rules of Court*, [AR 124/2010](#) ("Rules of Court") at r. 7.3

<sup>5</sup> *Hryniak* at paras 28 and 34

<sup>6</sup> *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, [2019 ABCA 49](#) (*Weir-Jones*)

<sup>7</sup> *Weir-Jones* at para 11

threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.

c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.

d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.<sup>8</sup>

16. It is well established law that both parties to a summary judgment application must put their "best foot forward",<sup>9</sup> meaning that "they are expected to present the best evidence that they have on the material aspects of the dispute".<sup>10</sup>
17. In these circumstances, the Court must consider "whether examination of the existing record can lead to an adjudication and disposition that is fair and just to both parties." The standard for "fairness" is not whether the process is as exhaustive as a trial, but rather, whether the judge has confidence that they have the facts required to apply the relevant legal principles.<sup>11</sup> In assessing the record, the Court should "presume that the best evidence from both sides is before [it]", and "ask whether a negative inference can be drawn from the absence of evidence on certain points."<sup>12</sup>
18. As the Supreme Court of Canada explained in *Canada (Attorney General) v Lameman*: "a summary judgment motion cannot be defeated by vague references to what may be

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<sup>8</sup> [Weir-Jones](#) at para 47

<sup>9</sup> [Weir-Jones](#) at para 37

<sup>10</sup> *Park Avenue Flooring Inc v EllisDon Construction Services Inc*, [2019 ABQB 73](#) at para 28 (**Park Avenue**)

<sup>11</sup> *Whitecourt Power Limited Partnership v Elliott Turbomachinery Canada Inc*, [2015 ABCA 252](#) at para 9

<sup>12</sup> *1214777 Alberta Ltd v 480955 Alberta Ltd*, [2014 ABQB 301](#) at para 17

adduced in the future, if the matter is allowed to proceed. To accept that proposition would be to undermine the rationale of the rule”.<sup>13</sup>

19. Apart from the Stampede Defendants’ expert evidence, the Stampede Defendants submitted only one Affidavit, from their corporate representative, Sarah Hayes (**Hayes**). Hayes is currently the Vice President of the Calgary Stampede and Executive Director for the Stampede Foundation.<sup>14</sup>
20. Hayes commenced employment with the Stampede Defendants in 2010. As such, she was only present for the latter four years of the Class period (2010-2014). During that time, she was the campaign director and executive director of the Stampede Foundation, wherein her duties focused on fundraising campaigns and working with the Board of Directors to develop agendas, materials, and priorities of the Board. She had limited interactions with Heerema as her duties did not overlap with any of Heerema’s duties. In 2015, following Heerema’s resignation and after the end of the Class period, Hayes became the Vice President of the Calgary Stampede, wherein she now oversees various programs, including the Young Canadians, and serves as a member of the executive team.<sup>15</sup>
21. Hayes has stated her belief that “over 30 individuals would have relevant evidence to give in relation to the common issues” and has provided a list of 13 such individuals by name (the “**Potentially Relevant Evidence**”).<sup>16</sup> Notably, of the 13 individuals listed as having the Potentially Relevant Evidence, three have already provided their evidence on the Summary Judgment Common Issues including Melissa Klassen (**Klassen**), Heerema, and Hayes herself. For the balance of the individuals referenced as having Potentially Relevant Evidence, the Stampede Defendants have not identified or explained whether they have obtained and preserved that evidence in this Action, and why they have not

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<sup>13</sup> *Canada (Attorney General) v Lameman*, [2008 SCC 14](#) at para 19 (**Lameman**)

<sup>14</sup> Affidavit of Sarah Hayes, filed April 22, 2023 (**Hayes Affidavit**) at paras 1-2

<sup>15</sup> Transcript from Questioning of Sarah Hayes, filed June 2, 2023 (**Hayes Transcript**) at 4:8-6:19

<sup>16</sup> Hayes Affidavit at para 35(g)

put that evidence forward for the purposes of this Application, nor has there been a description of the anticipated evidence or how it might, if at all, impact upon a determination of the common issues.

22. During cross-examination, Hayes was provided an opportunity to explain if there was a reason that the individuals with Potentially Relevant Evidence could not have given evidence, but counsel for the Stampede Defendants objected, directing Hayes not to answer questions on “file strategy”.<sup>17</sup>
23. For clarity, there is nothing in the evidentiary record currently before this Honorable Court that suggests or indicates that the Potentially Relevant Evidence would contradict the record of events currently in evidence.
24. The vague references by the Stampede Defendants to the Potentially Relevant Evidence, and what may be adduced in the future, fail to meet the burden of putting their best foot forward and are not sufficient to defeat the Application.<sup>18</sup> Put simply, these vague references are not contrary evidence.
25. The Stampede Defendants have cross-examined three of the fact affiants put forward by the Class: R.S., Klassen and M.J.1. The Stampede Defendants elected not to cross-examine the Representative Plaintiff, N.B. Further, the Stampede Defendants have, to date, elected not to question Heerema, notwithstanding having filed a Notice to Co-Defendant and being adverse in interest.
26. At this time, both parties are deemed to have placed their “best foot forward” and to have put forward the best evidence available to them.<sup>19</sup>

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<sup>17</sup> Hayes Transcript at 51:20-52:27

<sup>18</sup> [Lameman](#) at para 19

<sup>19</sup> [Park Avenue](#) at para 28

#### IV. FACTS

##### A. Heerema's Role within the Young Canadians

27. The Young Canadians is a school operated by the Stampede Defendants that focuses on training youth aged 7 - 19 years in the art of dance, voice, and performance. The students train and perform throughout the year and hold their largest performance as part of the Grandstand Show during the annual Calgary Stampede.<sup>20</sup>
28. Heerema began volunteering in 1983 and moved into role of production assistant in 1987.<sup>21</sup> Heerema was employed by the Stampede Defendants in various capacities until January 31, 2014. From 2002-2014, Heerema was the Business Administrator.<sup>22</sup>
29. As early as August 1, 1987, Heerema was a key point of contact and acted as mentor for the students of the Young Canadians. Heerema was introduced to the Class Members as the senior person that they could go to with any questions.<sup>23</sup> He was understood to be the one "in charge" of the students.<sup>24</sup>
30. Heerema's duties included opening and closing the Young Canadians' studio each day for classes, and he was provided keys to do so.<sup>25</sup>
31. While the nature of his roles and responsibilities changed over time, his involvement with the Young Canadians students was primarily focused on the senior students, and especially the senior male singers.<sup>26</sup>

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<sup>20</sup> Affidavit of N.B., filed October 11, 2018 (**Certification Affidavit**) at paras 5 and 8-9; Affidavit of N.B., filed February 21, 2023 (**NB Affidavit**), Exhibit "M" at CSF000120\_0005; Hayes Affidavit at paras 3-5; Read-ins from the Questioning of Heerema, filed June 12, 2023 (**Heerema Transcript**) at 6:20-7:4

<sup>21</sup> Hayes Affidavit at paras 24-28, Exhibit J and Exhibit L

<sup>22</sup> Certification Affidavit, Exhibit "D" at para 1; NB Affidavit, Exhibit "I" at CSF00067\_0010 and Exhibit "N" at CSF000122\_0005 - 0007; Hayes Affidavit at paras 25-27 and Exhibit K

<sup>23</sup> Affidavit of R.S., filed August 19, 2022 (**RS Affidavit**) at paras 4 and 7; Transcript from Questioning of R.S., filed September 21, 2022 (**RS Transcript**) at 17:12-17:17 and 38:7-38:10

<sup>24</sup> RS Transcript at 64:13-64:26

<sup>25</sup> RS Transcript at 61:24-61:26 and 64:5-64:7

<sup>26</sup> Certification Affidavit, Exhibit "D" at para 2

32. Throughout the Class period, Heerema was actively involved in multiple facets of the Young Canadians. Heerema had routine contact with the students,<sup>27</sup> was involved in almost all aspects of the Young Canadians and was the “point person” for students.<sup>28</sup> As described by Klassen, one of the other instructors of the Young Canadians, “Heerema wore lots of different hats and held lots of roles within the Young Canadians. He was officially a business administrator, but was also involved in providing first aid, physiotherapy, production management, and production services”.<sup>29</sup>
33. At the commencement of the performance year, Heerema was tasked by the Young Canadians to, and was responsible for, reviewing with the students the Young Canadians’ Student Code of Conduct.<sup>30</sup> The Code of Conduct was contained in the Student Handbook and addressed, among other things, faculty and student interactions.<sup>31</sup>
34. Of particular note, the Code of Conduct made Heerema the authority to whom the Class Members reported with no obvious alternate if there were issues, and Heerema had the ability to remove Class Members from the Young Canadians if their behaviour was not representative of the Young Canadians standards.<sup>32</sup>
35. Further, the Student Handbook identified Heerema as a key point of contact and the designated person to handle numerous matters, including without limitation:<sup>33</sup>
- a) Heerema was to be contacted to address any questions or concerns about schedules or other school matters;<sup>34</sup>

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<sup>27</sup> Affidavit of N.B., filed September 29, 2021, Exhibit “B” at para 29; Affidavit of Sarah Hayes, filed October 21, 2021, Exhibit “A” at para 23; Certification Affidavit, Exhibit “D” at para 2

<sup>28</sup> Certification Affidavit at paras 11-14; Heerema Transcript at 67:17-67:25

<sup>29</sup> Affidavit of Melissa Klassen, filed February 21, 2023 (**Klassen Affidavit**), at para 9; See also Affidavit of M.J.1, filed February 21, 2023 (**MJ1 Affidavit**) at paras 4-6

<sup>30</sup> Heerema Transcript at 30:20-31:25, 33:25-35:5; Certification Affidavit, Exhibit “N” at CSF000122\_0007

<sup>31</sup> NB Affidavit, Exhibit “M” at CSF000120\_0032 - 0036

<sup>32</sup> NB Affidavit, Exhibit “M” at CSF000120\_0035 - 0036

<sup>33</sup> See e.g. NB Affidavit, Exhibits “E”, “M”, “P” and “Q” (Apprentice and Seniors Student Handbooks for the years 2002, 2010, 2012 and 2013)

- b) Heerema was to be notified about any absences, and the absence forms were to be submitted to Mr. Heerema for approval;<sup>35</sup>
- c) Students and staff were directed to bring any issues related to Student misbehavior to the attention of Heerema as soon as possible;<sup>36</sup>
- d) Faculty, staff, and Students were directed to “[r]espect and support the guidance, direction, and decisions” of Heerema;<sup>37</sup>
- e) Heerema would meet with the Students to deal with any breaches of the Student Code of Conduct or persistent misbehaviour, and to determine disciplinary measures;<sup>38</sup>
- f) Misbehaviour and harassment were to be reported to Heerema;<sup>39</sup>
- g) All injuries and accidents during practice sessions and performances were to be reported to Heerema;<sup>40</sup> and
- h) Heerema was to be contacted to address any questions about schedules or rehearsal locations regarding the Grandstand Show, including the need to contact the Grandstand Show production staff.<sup>41</sup>

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<sup>34</sup> NB Affidavit, Exhibit “P” at CSF000138\_0003; NB Affidavit, Exhibit “Q” at NB-000416; NB Affidavit, Exhibit “R” at CSF000154\_0002

<sup>35</sup> NB Affidavit, Exhibit “P” at CSF000138\_0003; NB Affidavit, Exhibit “Q” at NB-000416; NB Affidavit, Exhibit “R” at CSF000154\_0002

<sup>36</sup> NB Affidavit, Exhibit “P” at CSF000138\_0034; NB Affidavit, Exhibit “Q” at NB-000434; NB Affidavit, Exhibit “R” at CSF000154\_0022

<sup>37</sup> NB Affidavit, Exhibit “P” at CSF000138\_0034; NB Affidavit, Exhibit “Q” at NB-000434; NB Affidavit, Exhibit “R” at CSF000154\_0022

<sup>38</sup> NB Affidavit, Exhibit “P” at CSF000138\_0033; NB Affidavit, Exhibit “Q” at NB-000433; NB Affidavit, Exhibit “R” at CSF000154\_0023

<sup>39</sup> NB Affidavit, Exhibit “E” at CSF000030\_0002; NB Affidavit, Exhibit “P” at CSF000138\_0034; NB Affidavit, Exhibit “Q” at NB-000434; NB Affidavit, Exhibit “R” at CSF000154\_0024

<sup>40</sup> NB Affidavit, Exhibit “P” at CSF000138\_0036; NB Affidavit, Exhibit “Q” at NB-000436; NB Affidavit, Exhibit “R” at CSF000154\_0022

<sup>41</sup> NB Affidavit, Exhibit “P” at CSF000138\_0003; NB Affidavit, Exhibit “Q” at NB-000416; NB Affidavit, Exhibit “R” at CSF000154\_0002

36. Heerema was also responsible for creating and updating the student and staff handbooks, and coordinating sessions on “workplace harassment”.<sup>42</sup> The Stampede Defendants identified that volunteers and staff who serve or work with children, including the Young Canadians, are “assessed as high risk”. As such, it was important to ensure the children, staff and volunteers participate in the harassment free workshops.<sup>43</sup> The workplace harassment training “procedure” encouraged staff and students to report concerns or problems directly to Heerema which was expressly stated as being “deemed the most effective course of action for a harassment free environment.”<sup>44</sup>
37. Heerema was frequently at the Young Canadians’ facilities before, during and after classes and rehearsals. Each day, Heerema would arrive early to open the Young Canadians’ studio and wait with the students at the end of the night for them to be picked up by their parents before closing the studio.<sup>45</sup>
38. Heerema also transported students in a vehicle to and from the Stew Hendy Arena, a facility off the Stampede grounds which was occasionally used to prepare for the Grandstand Show. Heerema would often be alone with the students during these transport sessions.<sup>46</sup>
39. Heerema was in charge of taking attendance and disciplinary matters.<sup>47</sup> He would often attend classes to provide the students with announcements and information regarding schedules, fundraising and other matters for the Young Canadians.
40. Heerema was in charge of scheduling for the Young Canadians, with a “texting system” implemented for Heerema and the Class Members to communicate about the students

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<sup>42</sup> Heerema Transcript at 30:20-31:27; Affidavit of N.B., filed September 29, 2021, Exhibit “B” at para 65; Hayes Affidavit, Exhibit “A” at para 51

<sup>43</sup> NB Affidavit, Exhibit “U” at CSF000001\_0011

<sup>44</sup> NB Affidavit, Exhibit “U” at CSF000001\_0011

<sup>45</sup> RS Transcript at 13:11-13:27; Certification Affidavit, Exhibit “D” at para 2; Heerema Transcript at 18:20-19:17

<sup>46</sup> Heerema Transcript at 22:6-22:13, 23:3-23:5, and 47:2-47:17; MJ1 Affidavit at paras 8(f) and 9-11

<sup>47</sup> NB Affidavit, Exhibits “E”, “G”, “I”, “J”, “K”, “M”, “O”, “P”, “Q” and “R”; Heerema Transcript at 18:20-19:17



being late or sick.<sup>48</sup> Heerema's supervisors were aware that he was exchanging text messages with the Class Members.<sup>49</sup>

41. The Stampede Defendants provided Heerema with unfettered access to all of the Young Canadian social media accounts, as well as student files which contained personal information of each student including, without limitation, their date of birth, home addresses, phone numbers, and email addresses, which information he used to contact and connect with Class Members both inside and outside of "Young Canadians' hours".<sup>50</sup>
42. Heerema also acted as an onsite medical provider for the Young Canadians students. In the event a student was injured while at the School, Heerema would be the first point of medical contact.<sup>51</sup> He also provided physiotherapy and massage therapy to students, despite no certified training.<sup>52</sup>
43. In connection with his roles and responsibilities for the Young Canadians, Heerema was provided with, and had access to, an office and a computer on Stampede grounds,<sup>53</sup> and regularly had one or more students in his office, often without another adult present.<sup>54</sup>
44. The set of keys provided by the Stampede Defendants to Heerema allowed him to access many areas of the Stampede Grounds, including stage areas, behind the scenes areas, locker rooms, janitorial and service closets, and physical therapy rooms.<sup>55</sup>
45. In addition to an office, computer, and keys, the Stampede Defendants provided Heerema with, and gave access to, a landline phone and cell phone.<sup>56</sup>

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<sup>48</sup> Heerema Transcript at 39:7-40:6

<sup>49</sup> Heerema Transcript at 39:16-40:6

<sup>50</sup> Heerema Transcript at 38:11-38:17 and 55:10-55:16; Affidavit of N.B., filed September 29, 2021, Exhibit "B" at paras 81-82; Affidavit of Sarah Hayes, filed October 21, 2021, Exhibit "A" at paras 65-66

<sup>51</sup> Certification Affidavit, Exhibit "D" at para 2

<sup>52</sup> RS transcript at 56:10-56:13; MJ1 Affidavit at para 5; NB Affidavit, Exhibits "V", "W" and "I"; Heerema Transcript at 7:24-8:1

<sup>53</sup> Heerema Transcript at 19:25-22:5, 41:7-42:6, 42:27-43:1; Klassen Affidavit at paras 15-16; NB Affidavit, Exhibit "EE"

<sup>54</sup> Heerema Transcript at 35:17-36:26; Certification Affidavit at para 33; Klassen Affidavit at paras 15-16

<sup>55</sup> Heerema Transcript at 19:25-22:5; Certification Affidavit, Exhibit "D" at para 2; MJ1 Affidavit at paras 7-8

46. In addition to attending to daily matters at the Young Canadians, Heerema organized and/or chaperoned off-site trips for the Young Canadians' students, including trips to Banff and Disneyland.<sup>57</sup> For one of the trips to Disneyland, Heerema was the sole employee chaperone.<sup>58</sup>
47. The Stampede Defendants provided Heerema with a corporate credit card, and approved expenses for dinners at Boston Pizza with Heerema and the senior male singers after class.<sup>59</sup>
48. The faculty and administration of the Stampede Defendants promoted and identified Heerema to the students, parents, and others as a key member of the Young Canadians. The Young Canadians even celebrated December 13, 2013, as "Phil Heerema Appreciation Day" on the Young Canadians' Facebook webpage, and asked the students to sign a book for Heerema to express their gratitude for the work Heerema did for the Young Canadians.<sup>60</sup>
49. The Stampede Defendants viewed Heerema as affable and hard-working, and as such, trusted him.<sup>61</sup> Senior staff at the Young Canadians acknowledged that the Stampede Defendants relied on Heerema "sometimes to a fault, for the continued success in the many aspects of [the Young Canadians'] business".<sup>62</sup>
50. As stated by the Stampede Defendants' expert, Dr. Choate, "Heerema had significant power in his relationships with students that grew over time... His job description was extensive allowing for widespread involvement (and thus perception of power and

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<sup>56</sup> Affidavit of N.B., filed September 29, 2021, Exhibit "B" at paras 30-34; Affidavit of Sarah Hayes, filed October 21, 2021, Exhibit "A" at paras 24-28

<sup>57</sup> Heerema Transcript at 48:6-49:25, 51:20-52:21 and 58:19-58:27; Certification Affidavit, Exhibit "D" at para 2; NB Affidavit, Exhibit "Y"

<sup>58</sup> Heerema Transcript at 55:26-56:6

<sup>59</sup> Heerema Transcript at 45:20-46:24 and 63:24-65:4; NB Affidavit, Exhibit "Z"; Affidavit of N.B., filed September 29, 2021, Exhibit "B" at paras 94-96; Affidavit of Sarah Hayes, filed October 21, 2021, Exhibit "A" at paras 78-80

<sup>60</sup> NB Affidavit at para 21 and Exhibit "C"

<sup>61</sup> Hayes Affidavit at para 23; Hayes Transcripts at 6:20-7:14

<sup>62</sup> NB Affidavit, Exhibit "X"

institutional trust)... The [Stampede Defendants] demonstrated a great deal of trust in Heerema which appeared to have been evident to students".<sup>63</sup>

## **B. Heerema's Sexual Misconduct**

51. While hailed by the Stampede Defendants as a leader in the Young Canadians, Heerema engaged in sexually exploitative and sexually abusive conduct with Class Members, including sexual intercourse, oral sex, nudity, body critiquing, touching, hazing and masturbation. Heerema's improper conduct occurred both on and off the Stampede grounds.
52. A number of the areas on the Stampede Grounds provided Heerema with seclusion and privacy, and he took advantage of the opportunities afforded to him to have one-on-one interactions with several Class Members. Many of the interactions involved male students in partial or complete undress while Heerema critiqued or touched their bodies, including genital contact.
53. Heerema purchased gifts for and bought dinners for the Class Members that he exploited and abused.<sup>64</sup>
54. Heerema also used social media to interact with the Class Members, including chat, texting, sexting, exchanging pornography, and exchanging sexual images and video content.<sup>65</sup>
55. Heerema's grooming behaviour included a balance of favours and expressions of power. He relied upon power, control, coercive control, victim selection, capacity to hide his behaviours and utilized his institutional position within the Young Canadians organization.<sup>66</sup>

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<sup>63</sup> Affidavit of Peter W. Choate, filed May 8, 2023 (**Choate Report**), Exhibit "A" at p. 24

<sup>64</sup> Heerema Transcript at 43:19-44:8 and 44:16-45:2; Certification Affidavit, Exhibit "D"

<sup>65</sup> Heerema Transcript at 41:7-42:6, 42:27-43:15; Certification Affidavit, Exhibit "D"

<sup>66</sup> Choate Report, Exhibit "A" at pp. 24 and 26

56. The evidentiary record confirms numerous Class Members fell victim to Heerema's sexual misconduct over the Class period, as outlined below. The individual victims referenced below are those Class Members for which there is evidence on the Court record at this time.

**(i) R.S.**

57. R.S. was a member of the Young Canadians from 1987-1989.<sup>67</sup> His first inappropriate encounter with Heerema was in March of 1988, at the age of 16, after R.S. asked Heerema to purchase beer for him.<sup>68</sup>

58. Heerema agreed to purchase the beer and told R.S. to meet him at Glenmore Park to pick it up. He directed R.S. to meet him in a parking lot by the public washroom. Once there, R.S. and Heerema met in one vehicle. Heerema explained to R.S. that this area was a "cruising spot" for men to meet other men.<sup>69</sup>

59. The conversation quickly turned to how often R.S. masturbated. Heerema gave R.S. a pornographic magazine and then proceeded to masturbate R.S.<sup>70</sup>

60. Following the initial incident, the sexual assaults on R.S. continued until approximately August of 1988. The subsequent assaults occurred while Heerema performed massage therapy or physiotherapy on R.S. One additional incident occurred on the Stampede grounds after a night of classes. R.S. was intoxicated on beer that Heerema had purchased, and Heerema proceeded to perform oral sex on him.<sup>71</sup>

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<sup>67</sup> RS Transcript at 6:12-6:22

<sup>68</sup> RS Affidavit at para 9

<sup>69</sup> RS Affidavit at para 10; RS Transcript at 45:26-46:23, 47:17-48:8 and 49:18-51:7

<sup>70</sup> RS Affidavit at para 10; RS Transcript at 51:8-52:13

<sup>71</sup> RS affidavit at paras 11-12; RS transcript at 83:9-84:6

**(ii) D.D.**

61. D.D. was a singer and dancer in the senior male division of the Young Canadians from 1990-1992. Over this period, Heerema ingratiated himself with D.D. by favouring him with extra attention and gifts.<sup>72</sup>
62. In the summer of 1992, Heerema took D.D. to dinner to celebrate his birthday and because D.D. was leaving Calgary to go away to college. After dinner, D.D. and Heerema went for a walk around Heritage Park. Heerema suggested they sit and the lay down in the grass. Heerema proceeded to sexually assault D.D. by sliding his hand down into D.D.'s pants, onto his genitals over his underwear.<sup>73</sup>

**(iii) M.H.**

63. Heerema gave massages to M.H. on the Stampede grounds, under the Grandstand stage in the medical room. During the massages, Heerema masturbated and performed oral sex on M.H. In turn, M.H. would masturbate and perform oral sex on Heerema. The sexual assaults on M.H. occurred "numerous times".<sup>74</sup>

**(iv) M.J.1**

64. M.J.1 was a student at the Young Canadians for 6 years. He joined the junior male singer division at age 12 in 2003, and was in the senior male singer division between 2005 and 2008.<sup>75</sup>
65. In the Fall of 2005, when M.J.1 was 14 years old, Heerema took M.J.1 into a small room at the Young Canadians' studio known as the Chevron Room under the pretense that M.J.1 had a costume fitting, which was not true. Heerema told M.J.1 he was going to give him a workout plan. Heerema directed M.J.1 onto a table and told him to do some

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<sup>72</sup> Certification Affidavit, Exhibit "D" at para 33

<sup>73</sup> Certification Affidavit, Exhibit "D" at para 33; Heerema Transcript at 78:20-79:5

<sup>74</sup> Heerema Transcript at 80:3-81:4

<sup>75</sup> MJ1 Affidavit at paras 1-2 and Exhibit "A" at para 24

sit ups. Heerema proceeded to direct M.J.1 to undress and Heerema touched his body all over, including his genital area.<sup>76</sup>

66. Heerema continued to sexually assault M.J.1 on multiple occasions over the course of four years while he was a student of the Young Canadians. The sexual activity included incidents of mutual oral sex and mutual masturbation, digital penetration of his anus and exchange of nude photographs. Numerous incidents occurred at the Young Canadians' studio, including in the Chevron Room as part of the "checkups" on his workout plan. One incident occurred on the Young Canadians' trip to Disneyland in August 2007, where Heerema initiated a mutual masturbation contest with M.J.1 in his hotel bathroom, followed by mutual oral sex later in the evening.<sup>77</sup>
67. During the course of the encounters with M.J.1, Heerema inserted himself into M.J.1.'s personal life, communicating with him directly by email and text, giving gifts and taking M.J.1 to Boston Pizza for dinner with other select senior male singers. Heerema would give M.J.1 rides home after practices at the Young Canadians, sometimes alone with him. When M.J.1 tried to distance himself from Heerema, Heerema made him feel guilty and remorseful, and ostracized within the senior male singer division. It took until 2010 for M.J.1 to finally terminate contact.<sup>78</sup>

**(v) M.J.2**

68. M.J.2 is the brother of M.J.1. He was employed by the Stampede Defendants in production services for the Grandstand Show from 2002 to 2007.<sup>79</sup> M.J.2 was identified as a victim of Heerema during the police investigation.<sup>80</sup>

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<sup>76</sup> MJ1 Affidavit, Exhibit "A" at para 25

<sup>77</sup> MJ1 Affidavit at paras 3-15 and Exhibit "A" at paras 26-30; Heerema Transcript at 54:2-54:22 and 73:21-74:18

<sup>78</sup> Certification Affidavit, Exhibit "D" at paras 31-32; Heerema Transcript at 74:19-74:24

<sup>79</sup> NB Affidavit, Exhibit "DD"

<sup>80</sup> NB Affidavit, Exhibit "CC"

**(vi) K.S.**

69. K.S. was a student of the Young Canadians for nine years, and was in the senior male singer division between 2012 and 2014. When K.S. was a senior, Heerema spoke with him online and in person about his family problems, lack of self-confidence and body image issues. K.S. considered Heerema to be a father figure.<sup>81</sup>
70. When K.S. was about 15-16 years old, Heerema set up a meeting with K.S. at the Young Canadians' studio to give him a workout plan and advised K.S. that there would be weekly checkups on his progress. The workout plan included an "exercise" where K.S. was directed to masturbate in the shower while standing on his toes.<sup>82</sup>
71. Heerema demanded regular checkups to evaluate K.S.' progress on the workout plan. The checkups occurred on multiple occasions at the Young Canadians' studio, in the medical room below the Grandstand stage, and in the boys change room at the Stew Hendry Arena. During the checkups, Heerema directed K.S. to remove his clothing and masturbate in front of him. Heerema would take photographs with his cellphone for "before and after" pictures. Heerema also poked and prodded K.S.' body, including his penis, during the checkups. Heerema also offered K.S. "motivation money" to encourage him to attend the checkups.<sup>83</sup>
72. In addition to the "checkups", Heerema encouraged K.S. to send nude photographs. The sexual misconduct occurred between 2013 up to when Heerema resigned from the Young Canadians on January 31, 2014.<sup>84</sup>

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<sup>81</sup> Certification Affidavit, Exhibit "D" at para 19

<sup>82</sup> Certification Affidavit, Exhibit "D" at para 20

<sup>83</sup> Certification Affidavit, Exhibit "D" at paras 21-22; Heerema Transcript at 75:9-76:9

<sup>84</sup> Certification Affidavit, Exhibit "D" at para 23

**(vii) B.N.1**

73. B.N.1 was a student of the Young Canadians for eight years, and was in the senior male singer division between 2009 and 2013.<sup>85</sup> He was identified as a victim of Heerema during the police investigation.<sup>86</sup>
74. Heerema directed B.N.1 to take off his clothes in front of him, stating “You need to get naked and expose all your emotions to rebuild your self-confidence”.<sup>87</sup>

**(viii) B.N.2**

75. B.N.2 is the brother of B.N.1. He was a student of the Young Canadians for seven years, and was in the senior male singer division between 2007 and 2013. He was identified as a victim during the police investigation.<sup>88</sup>

**(ix) R.W.**

76. R.W. was a student of the Young Canadians for seven years, and was in the senior male singer division between 2008 and 2013.<sup>89</sup> He was identified as a victim during the police investigation.<sup>90</sup>
77. Heerema exchanged sexually explicit text messages with R.W.<sup>91</sup>

**(x) M.S.**

78. M.S. was an apprentice male singer between 2012 and 2013.<sup>92</sup> He was identified as a victim during the police investigation.<sup>93</sup>

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<sup>85</sup> NB Affidavit, Exhibit “DD”

<sup>86</sup> NB Affidavit, Exhibit “CC”

<sup>87</sup> Heerema Transcript at 77:8-77:12 and 77:22-78:2

<sup>88</sup> NB Affidavit, Exhibit “CC”

<sup>89</sup> NB Affidavit, Exhibit “DD”

<sup>90</sup> NB Affidavit, Exhibit “CC”

<sup>91</sup> Heerema transcript at 78:3-78:5

<sup>92</sup> NB Affidavit, Exhibit “DD”

<sup>93</sup> NB Affidavit, Exhibit “CC”



**(xi) D.W.**

79. Heerema solicited nude photographs of D.W. via email.<sup>94</sup>

**(xii) B.S**

80. Heerema supplied B.S. with alcohol while on a trip to Banff. Heerema then proceeded to take B.S.' pants off and masturbate him.<sup>95</sup>

**(xiii) Q.V.**

81. Q.V. was a student of the Young Canadians for 7 years and was in the senior male singer division between 2010 and 2014. Q.V. considered Heerema to be a mentor to him.<sup>96</sup>

82. Over the course of several months, starting from April 2013, Heerema initiated contact with Q.V. over Facebook. Heerema told Q.V. he was "sexy and handsome", a talented dancer and singer, and told Q.V. he looked forward to "our friendship in the future...with or without the Young Canadians".<sup>97</sup>

83. Between August 9 and September 4, 2013, Heerema solicited pictures of Q.V. over Facebook at least 10 times, seeking "pictures" of his tan lines, including his waist tan line which involved Q.V. lifting his shirt and lowering his shorts to just above his groin.<sup>98</sup>

84. Heerema also texted with Oliver Armstrong, the stage manager of the Grandstand Show, in 2012 and 2013 about his strong sexual interest in Q.V.<sup>99</sup>

**(xiv) N.B.**

85. N.B. is the Representative Plaintiff in this Action. He was a student at the Young Canadians for 6 years. He first joined as a junior student in February 2008, and became

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<sup>94</sup> Heerema Transcript at 79:16-79:24

<sup>95</sup> Heerema Transcript at 82:21-82:25, 83:8-83:12

<sup>96</sup> Certification Affidavit, Exhibit "D" at para 15

<sup>97</sup> Certification Affidavit, Exhibit "D" at para 16

<sup>98</sup> Certification Affidavit, Exhibit "D" at para 17

<sup>99</sup> Certification Affidavit, Exhibit "D" at para 18; NB Affidavit, Exhibit "EE" at NB0001839-1840; Heerema Transcript at 70:14-72:6

an apprentice male singer in August 2008. As an apprentice, N.B. trained with the Young Canadians from August 2008 to July 2009 and appeared in all the Young Canadians performances, including the Christmas, spring and Calgary Stampede Grandstand shows. N.B. was an apprentice student with the Young Canadians from August 2008 to July 2011.<sup>100</sup>

86. In August 2011, N.B. auditioned with the Young Canadians to be a senior student, but was not accepted and did not participate in the Young Canadians for the 2011 to 2012 season.<sup>101</sup> Heerema contacted N.B. directly over Facebook in May 2012 and invited him to re-audition for the Young Canadians after he was not accepted into the school the previous year. N.B. auditioned in August 2012 and was accepted as a senior student. He was in the senior male singer and senior male dancer divisions between 2012 and 2014.<sup>102</sup>
87. N.B. respected Heerema because he “ran the show” at the Young Canadians and was involved in almost all aspects of the Young Canadians.<sup>103</sup> He understood that Heerema was the “point person” for the students to report to and deal with any problems.<sup>104</sup>
88. During the winter break in 2013, when N.B. was 16 years old, Heerema sent private messages to N.B. on Facebook and Apple iMessage. At the direction of Heerema, the messages escalated to exchanging nude photographs and messages of sexual content, including Heerema inviting N.B. to come over to his house and have a shower together.<sup>105</sup>
89. N.B. was reluctant to return to the Young Canadians on January 7, 2014 when classes resumed. Over the next several weeks, Heerema made persistent efforts over Facebook and in person to meet with N.B. alone at the Young Canadians’ studio. On January 12,

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<sup>100</sup> Certification Affidavit at para 5

<sup>101</sup> Certification Affidavit at para 6

<sup>102</sup> Certification Affidavit at paras 6-9 and Exhibit “D” at para 4

<sup>103</sup> Certification Affidavit at pars 17-18 and Exhibit “D” at para 4

<sup>104</sup> Certification Affidavit at para 14

<sup>105</sup> Certification Affidavit at paras 22-25 and Exhibit “D” at paras 5-7; Heerema Transcript at 72:17-73:8

2014, after classes were done for the day and on the pretext of reviewing a letter of reference, Heerema took N.B. into a small studio space at the Young Canadians' studio and closed the door. Heerema took and held N.B.'s hands in his own. While continuing to hold onto his hands, Heerema stated that he would appreciate how "good looking" N.B. was if he sent Heerema a picture of him naked coming out of the shower. Heerema also said that during the next Young Canadian's trip to Disneyland that spring, N.B. should find a reason to go to his room so that they could "chat or do whatever". Heerema said that "[they didn't] have to fuck in the corner" but that they could "find ways to continue [their] friendship". Heerema proceeded to hug N.B. for a long time.<sup>106</sup>

90. While in the midst of this conversation, Heerema and N.B. were interrupted on two occasions by staff members of the Young Canadians. Both John Morgan and Angela Benson, on separate occasions, entered the room but abruptly left after seeing Heerema engaged in conversation with N.B. N.B. felt completely trapped in the situation and the room with Heerema.<sup>107</sup>
91. On January 27, 2014, Heerema asked N.B. to leave class and come to his office after he learned that N.B. was considering disclosure of what had taken place between them. Once they were alone in his office, Heerema told N.B. that if their Facebook or Apple iMessage conversations were to be shown to anyone, it "would not be good" for him or N.B. Heerema then hugged N.B. before allowing him to leave the office.<sup>108</sup>
92. That evening, N.B. told his parents about what was taking place with Heerema. The next day, N.B. attended with his parents at the Sheldon Kennedy Child Advocacy Centre to meet with Calgary Police and report the incidents that took place with Heerema.<sup>109</sup>

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<sup>106</sup> Certification Affidavit at paras 29-31 and Exhibit "D" at para 8

<sup>107</sup> Certification Affidavit at para 32

<sup>108</sup> Certification Affidavit at para 33

<sup>109</sup> Certification Affidavit at para 34 and Exhibit "D" at para 10

**(xv) T.L.**

93. T.L. was a student of the Young Canadians for 8 years and was in the senior male singer division between 2012 and 2014. Due to Heerema's role in the Young Canadians, T.L. considered Heerema to be a father figure and mentor.<sup>110</sup>
94. In December 2013, Heerema began texting with T.L. about his personal problems and insecurities. Over the course of several weeks, Heerema guided the discussions to T.L.'s body insecurities and repeatedly suggested that T.L. send a picture of his buttocks so Heerema could "rate it". Eventually, T.L. felt despondent and agreed.<sup>111</sup>
95. On January 7, 2014, Heerema hugged T.L. in the hallway of the Young Canadians' studio and kissed him on the neck. At the end of January, T.L. went into Heerema's office to speak with him about his contact with N.B. In response, Heerema told T.L. that if "it" got out, he would be fired and the Young Canadians would fall apart.<sup>112</sup>

**C. The Complaints, Violations of Policies and Failure to Act**

96. The first known complaint was made by R.S., a former student who was with the Young Canadians from 1987 to 1989, and repeatedly sexually assaulted by Heerema while he was a student, starting in 1988 when he was 16 years old.<sup>113</sup>
97. In the fall of 1988, R.S. attended a party at Bill Avery's (**Avery**) house after the final performance for one of the dinner theatres put on by the Young Canadians.<sup>114</sup> R.S. understood that Avery was the director of the Grandstand Show and other productions put on by the Young Canadians.<sup>115</sup>

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<sup>110</sup> Certification Affidavit, Exhibit "D" at para 11

<sup>111</sup> Certification Affidavit, Exhibit "D" at paras 12-13; Heerema Transcript at 79:9-79:11

<sup>112</sup> Certification Affidavit, Exhibit "D" at para 14

<sup>113</sup> RS Transcript at 6:12-6:22; RS Affidavit at paras 1-3 and 9-12

<sup>114</sup> RS Affidavit at para 14; RS Transcript at 68:10-68:19

<sup>115</sup> RS Transcript at 16:24-17:5; NB Affidavit, Exhibit "I" at CSF00067\_0010

98. At the party, R.S. told one of his friends about the interactions with Heerema. In turn, his friend advised R.S. to tell one of the adults, and specifically, Avery.<sup>116</sup> R.S. then took Avery aside and advised him of Heerema's inappropriate behaviour with himself and some of the other students (**First Complaint**).<sup>117</sup>
99. Specifically, R.S. stated that he thought Heerema was creepy and wanted him to stay away, and advised Avery that Heerema "needs to be watched and shouldn't be around kids".<sup>118</sup> R.S. understood that Heerema was in a position to have access to the young male students of the Young Canadians and was concerned.<sup>119</sup> R.S. advised Avery that Heerema had been inappropriate with him. Avery inquired about what R.S. meant by "inappropriate", and R.S. confirmed that Heerema had touched him and molested him.<sup>120</sup>
100. Avery responded by telling R.S., "you can't say things like that", "don't be going around causing trouble" and "saying things like that have serious consequences". Avery told R.S. that he could not be in the Young Canadians if he said such things.<sup>121</sup>
101. As a result, R.S. proceeded to keep quiet about Heerema's inappropriate conduct during the rest of his tenure at the Young Canadians out of fear that he would be kicked out of the program.<sup>122</sup>
102. According to R.S., Heerema paid a lot of attention to another male student of the Young Canadians, T.A., who he believed Heerema to be having an inappropriate relationship with as well.<sup>123</sup>

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<sup>116</sup> RS Affidavit at para 14; RS Transcript at 69:14-70:7 and 71:16-72:17

<sup>117</sup> RS Affidavit at para 15

<sup>118</sup> RS Affidavit at para 15; RS Transcript at 72:18-72:24

<sup>119</sup> RS Affidavit at para 15; RS Transcript at 77:5-77:20 and 78:23-79:9

<sup>120</sup> RS Transcript at 78:5-78:12 and 87:26-88:25

<sup>121</sup> RS Affidavit at para 16; RS Transcript at 77:16-77:23 and 87:26-88:25

<sup>122</sup> RS Affidavit at para 17; RS Transcript at 79:11-79:26

<sup>123</sup> RS Transcript at 44:7-44:12, 44:27-45:15, 71:16-72:12

103. Starting in 1966, Alberta had a mandatory reporting law for child abuse which would have required the Stampede Defendants to report Heerema's sexual abuse of R.S. to child protection services.<sup>124</sup>
104. The Stampede Defendants have not provided evidence from Avery in respect of the First Complaint, or subsequent complaints as detailed below. Again, when asked whether there was any reason why Avery could not have provided an affidavit in response to this Application, counsel for the Stampede Defendants objected.
105. As of 2002, the Stampede Defendants had formal written staff policies that strictly prohibited intimate contact and isolation with a student,<sup>125</sup> sexual harassment,<sup>126</sup> and personal relationships or fraternizing with the students at any time outside of scheduled activities.<sup>127</sup>
106. Hayes stated that, to the best of her knowledge, all employees were trained on the policies and the policies were enforced.<sup>128</sup> However, Hayes confirmed that she was never personally involved in any review of the Stampede Defendants' policies and procedures with staff during the Class period; Colleen Caron (nee Gabb) (**Caron**), the Production Coordinator and Heerema's direct supervisor as of 2000, would have had that responsibility.<sup>129</sup> The Stampede Defendants have not provided evidence from Caron on whether the formal policies and procedures were in fact provided to and reviewed with all employees. Again, when asked whether there was any reason why Caron could not have provided an affidavit for this Action, counsel for the Stampede Defendants objected.
107. The only direct evidence on this point is from Klassen, who was a teacher from 2000-2010 during the Class period. Klassen stated that, to the best of her knowledge and

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<sup>124</sup> Transcript from cross-examination of Peter W. Choate, filed June 14, 2023 (**Choate Transcript**) at 41:21-42:16

<sup>125</sup> NB Affidavit, Exhibit "F"

<sup>126</sup> Hayes Affidavit at para 12 and Exhibit "A"; NB Affidavit, Exhibit "E"

<sup>127</sup> NB Affidavit, Exhibit "N"

<sup>128</sup> Hayes Affidavit at para 11 and 29.

<sup>129</sup> Hayes Transcript at 19:26-21:16

recollection, there were no policies or procedures identified or enforced for staff.<sup>130</sup> During cross-examination, Klassen was shown the 2002 Employee Code of Conduct, which listed 18 guidelines, including the following:<sup>131</sup>

- a) During instruction and demonstration ensure that touching between staff and student, between student and student, or between staff and staff is appropriate;
- b) Avoid intimate contact and isolation with a student. If you are required to be with the child in a less public environment, such as going to the washroom, assisting in a private change room, or driving them somewhere, ask a parent or another staff member to accompany you; and
- c) It is unadvisable to develop a relationship with the child outside of your role and activities with the Stampede.

108. Klassen acknowledged that this Employee Code of Conduct included specific guidelines with respect to instructing and interacting with the students, and that “if the [Stampede Defendants] had this, it is a good list”. However, Klassen reiterated that she did not recall ever being provided a copy of the 2002 Employee Code of Conduct, or any Employee Code of Conduct, during her tenure within the Class period.<sup>132</sup>

109. In 2008, Heerema’s interactions with the Class Members were also the subject of at least two written reports from concerned faculty. One such report was a written complaint made by a faculty member of the Young Canadians, approximately a month before a second written report was received.

110. It is unclear what, if anything, the Stampede Defendants did in response to the written reports detailing Heerema’s inappropriate behaviour with the Class Members. If anything was done, it appears to have been ineffective, as Heerema continued to prey

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<sup>130</sup> Klassen Affidavit at paras 7-8; Transcript from the Questioning of Melissa Klassen, filed June 15, 2023 (**Klassen Transcript**) at 21:6-21:12

<sup>131</sup> NB Affidavit, Exhibit “F”

<sup>132</sup> Klassen Transcript at 25:18-28:15

upon the Class Members up until his resignation shortly after the Calgary Police Service's investigation began in early 2014. In fact, Heerema confirmed that he was not aware of the written complaint and did not recall any discussions with the Stampede Defendants regarding complaints made about him.<sup>133</sup>

111. The second known complaint regarding Heerema's interactions with the Class Members was submitted on or about August 14, 2008, by Klassen, the then Director of Gymnastics and Acrobatics, with the assistance of Robin Nanji, an acrobatic instructor (**Second Complaint**).<sup>134</sup>
112. Klassen confirmed that it was well known within the faculty, staff, and students that Heerema was friendly with the students, including spending time with the students outside of regularly scheduled classes.<sup>135</sup>
113. The Second Complaint was a formal complaint which arose from concerns regarding observations of Heerema's inappropriate relationships with Class Members, particularly senior male students, and after Klassen had previously voiced concerns about Heerema to Brian Foley (**Foley**), the Director of the Grandstand Show. Specifically, Klassen and another instructor, Robin Nanji (**Nanji**), had observed some of the senior male students in Heerema's office late in the evening after classes had ended. This occurred multiple times and eventually reached a point where Klassen and Nanji felt so uncomfortable with the situation, that they would simply sit and wait in Heerema's office until the boys would leave to ensure Heerema was not alone with them. This led Klassen to voice her concerns with Foley, who in turn asked her to prepare a formal complaint.<sup>136</sup>

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<sup>133</sup> Heerema Transcript at 60:07-61:16

<sup>134</sup> Klassen Affidavit at paras 19-20

<sup>135</sup> Klassen Affidavit at para 13

<sup>136</sup> Klassen Affidavit at paras 14-18



114. The Second Complaint was prepared by Klassen with the assistance of Nanji, and was provided to Foley, Avery and Caron.<sup>137</sup>

115. The Second Complaint detailed some of the observed inappropriate behaviour of Heerema with the senior male students, including discussions about partying and underage drinking, students staying late in Heerema's office, Heerema picking up students from parties to drive them home, and Heerema messaging students daily through MSN live chat. Klassen concluded with the following paragraph:<sup>138</sup>

I don't feel comfortable with the way I've observed Phil interacting with the Senior Boys. I am worried that there is much more to the story that we don't know and I am very concerned with their safety. It has always been stressed, since I have worked for the Young Canadians, that we are in NO WAY allowed to interact unprofessionally with the students or associate with them outside of the studio. I have witnessed Phil do this on several occasions, I am confused as to why this has gone on for so long with Phil. I myself have indicated my concerns on several occasions and feel that it is now necessary to report to you Mr. Avery.

116. The Second Complaint identified two Class Members who were observed to be hanging around Heerema's office after class in the evening and with whom Heerema was having inappropriate discussions with: B.M. and M.J.1. Despite having the Second Complaint, the Stampede Defendants did not follow-up with either Klassen or M.J.1,<sup>139</sup> being one of the two named Class Members in the formal complaint letter. There is no record of the Stampede Defendants following up with B.M. either. Heerema also confirmed that the Second Complaint was never brought to his attention by the Stampede Defendants nor addressed with him.<sup>140</sup>

117. M.J.1 confirmed the conduct complained of by Klassen in the Second Complaint and the fact that several staff members of the Stampede Defendants had witnessed M.J.1 alone with Heerema in his office, including Foley, Avery and Caron, each of whom were

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<sup>137</sup> Klassen Affidavit at paras 14-23

<sup>138</sup> Klassen Affidavit, Exhibit "A"

<sup>139</sup> Klassen Affidavit at paras 23-24; MJ1 Affidavit at paras 22-23

<sup>140</sup> Heerema Transcript at 60:7-61:16

provided a copy of the Second Complaint. Despite this, no one on behalf of the Stampede Defendants contacted M.J.1 about the Second Complaint. In fact, M.J.1 confirmed Foley would regularly pull him aside to raise concerns about his appearance, but in none of those instances did Foley ask about his safety, interactions with Heerema or the Second Complaint.<sup>141</sup>

118. M.J.1 was identified as a victim through the criminal proceedings. Further, Heerema pleaded guilty to sexually exploitive acts and making child pornography involving M.J.1.<sup>142</sup>
119. M.J.1 was repeatedly sexually assaulted by Heerema, about once or twice a month, over a period of four years. The assaults started at the age of 14, in 2005. Various sexual assaults occurred in numerous locations throughout the Stampede facilities, both during and after scheduled classes, including in Heerema's office. The assaults were occurring at the time of the Second Complaint and continued thereafter.<sup>143</sup>
120. Less than a month after the Second Complaint was submitted by Klassen, Caron created a written report which summarized her "general observations" of Heerema. The written report included concerns that had been raised by Klassen, but also included additional, distinct reports of inappropriate behaviour not included in the Second Complaint. The written report was received by the Stampede Defendants on or about September 12, 2008 (**Third Complaint**).<sup>144</sup>
121. The inappropriate behaviour detailed in the Third Complaint included the following:
  - a) Heerema considering himself a superior to the other faculty, often "pulling rank" and making reference to "[his] staff and [his] school";

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<sup>141</sup> MJ1 Affidavit at paras 16-23

<sup>142</sup> Certification Affidavit, Exhibit "D" at paras 24-32

<sup>143</sup> MJ1 Affidavit at paras 8-15 and Exhibit "A" at paras 24-32; Heerema Transcript at 54:2-54:22, 73:21-74:18

<sup>144</sup> NB Affidavit, Exhibit "W"; Hayes Transcript at and Undertaking Response no. 3

- b) Heerema acting as the “self-appointed health practitioner”, assessing and treating students’ injuries, notwithstanding a nurse being on site during rehearsals;
  - c) Heerema becoming “far too friendly” and personally involved with some students, which goes “far beyond the role he is hired for” and “causes some uneasy feelings and questions within the cast”;
  - d) Heerema lounging in the faculty office with the senior male students “before classes begin and often with the doors closed”; and
  - e) an incident involving a Class Member receiving a back massage from Heerema as he lay on a couch with his shirt off.
122. The Third Complaint was brought to the attention of Avery and Wendy Folgeman (**Folgeman**), Director of Employee Services.<sup>145</sup> After discussing the “various questions that seem to float in [Heerema’s] wake” with Folgeman, Avery suggested to Caron that they approach the matter and present the issues to Heerema together.<sup>146</sup> However, the Stampede Defendants have presented no evidence of any follow-up to, or investigations arising from, the Third Complaint. Again, Heerema has confirmed that no complaints were brought to his attention by the Stampede Defendants nor addressed with him.<sup>147</sup>
123. Heerema also confirmed other inappropriate conduct, involving student nudity, was known by the Stampede Defendants. The Young Canadians had an initiation for the senior male singers called the “underwear run”, which occurred after the final Grandstand Show each year. The senior male singers would disrobe and run into the girls’ dressing room, frequently naked, while Heerema and other staff observed. In fact,

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<sup>145</sup> NB Affidavit, Exhibit “W”; Hayes Transcript, Undertaking Response no. 2

<sup>146</sup> NB Affidavit, Exhibit “W”

<sup>147</sup> Heerema Transcript at 60:7-61:16

the staff would facilitate the underwear run by ensuring the younger students were not present.<sup>148</sup>

124. The record also reveals at least one other employee for the Stampede Defendants, the stage manager of the Grandstand Show, was aware of Heerema's "strong sexual interest" in one of the Class Members in 2012 and 2013.<sup>149</sup>

125. From the time that the First Complaint was brought to the attention of the Stampede Defendants in 1988, and until Heerema's resignation and arrest in January of 2014, the current Court record confirms that at least 15 Class Members were sexually exploited, sexually lured, and/or sexually assaulted by Heerema.

126. From the time that the Second Complaint and Third Complaint were brought to the attention of the Stampede Defendants in 2008, and until Heerema's resignation and arrest in January of 2014, the current Court record confirms at least 9 Class Members were sexually exploited, sexually lured, and/or sexually assaulted by Heerema.

**D. The Criminal Investigation, Charges and Guilty Plea**

127. After N.B. and others reported Heerema's conduct to the Calgary Police Service, the CPS began a criminal investigation. Heerema was subsequently arrested and charged with sexually exploitive acts, involving eight current or former members of the Young Canadians. The charges included:<sup>150</sup>

- 4 counts of sexual assault;
- 4 counts of sexual exploitation of a minor;
- 4 counts of luring a minor over the internet;
- 3 counts of making child pornography;

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<sup>148</sup> Heerema Transcript at 68:11-69:24

<sup>149</sup> Certification Affidavit, Exhibit "D" at para 18; NB Affidavit, Exhibit "EE" at NB0001839-1840; Heerema Transcript at 70:14-72:6

<sup>150</sup> Certification Affidavit at para 40

- 3 counts of accessing child pornography;
- 2 counts of unlawful confinement;
- 1 count of possessing child pornography; and
- 1 count of assault.

128. During a preliminary inquiry in July 2016, eight Class Members testified against Heerema. Following the preliminary inquiry, the Crown proceeded to a trial in respect of the charges against Heerema.<sup>151</sup>

129. The evidence seized by the CPS at Heerema's residence and at the Young Canadians' facilities included Heerema's personal laptop and a Young Canadian's desktop computer located at the Young Canadians' facilities. The desktop computer contained at least one child pornography image of one of the Class Members taken at the Young Canadians' facility.<sup>152</sup>

130. Heerema's criminal trial began on January 15, 2018, and was set for four weeks. Approximately two weeks into the criminal trial, following the testimony of N.B. and 4 other Class Members, Heerema entered a guilty plea on several counts:<sup>153</sup>

- Count 1: in relation to two charges for sexual assault committed at or near Calgary, Alberta, on July 1, 1992, and August 12, 1992, respectively, contrary to section 271 of the Criminal Code;
- Count 4: in relation to charges for sexual exploitation of a minor committed at or near Calgary, Alberta, between November 1, 2005, and May 4, 2008, contrary to section 153(1) of the Criminal Code;
- Count 5: in relation to charges for making child pornography committed at or near Calgary, Alberta, between December 1, 2007, and May 4, 2008, contrary to section 163.1(2) of the Criminal Code;

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<sup>151</sup> Certification Affidavit at para 41

<sup>152</sup> Heerema Transcript at 41:7-42:6, 42:27-43:1; Certification Affidavit, Exhibit "D" at paras 35-37, NB Affidavit, Exhibit D

<sup>153</sup> Certification Affidavit at para 42

- Count 7: in relation to charges for luring a child by means of a computer system committed at or near Calgary, Alberta, between December 10, 2013, and January 27, 2014, contrary to section 172.1(1)(1)(A) of the Criminal Code;
- Count 10: in relation to charges for luring a child by means of a computer system committed at or near Calgary, Alberta, between December 1, 2013, and January 27, 2014, contrary to section 172.1(1)(1)(A) of the Criminal Code;
- Count 13: in relation to charges for luring a child by means of a computer system committed at or near Calgary, Alberta, between April 17, 2013, and January 27, 2014, contrary to section 172.1(1)(1)(A) of the Criminal Code;
- Count 17: in relation to charges for sexual exploitation of a minor committed at or near Calgary, Alberta, between October 20, 2011, and October 19, 2013, contrary to section 153(1) of the Criminal Code; and
- Count 18: in relation to charges for making child pornography committed at or near Calgary, Alberta, between October 20, 2011, and October 19, 2013, contrary, to section 163.1(2) of the Criminal Code.

131. In connection with this guilty plea, Heerema and the Crown submitted an Agreed Statement of Facts,<sup>154</sup> in which Heerema admitted, for the purpose of supporting his guilty plea and determining the appropriate sentence, that he:

- committed the acts described in Counts 1, 4, 5, 7, 10, 13, 17 and 18;
- “was in a position of trust and a position of authority with respect to the complainants”; and
- “abused his position of trust and authority in his contacts with those complainants”.

132. The Court accepted a joint submission on sentencing by counsel for Heerema and the Crown, and he was sentenced to 10 years in prison.<sup>155</sup>

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<sup>154</sup> Certification Affidavit, Exhibit “D”

<sup>155</sup> Certification Affidavit at para 45

133. As demonstrated by the nature and extent of his guilty plea in the criminal proceedings, Heerema was provided unfettered access to the Class Members by the Stampede Defendants. He was afforded both power and opportunity, over several decades, to harm the Class Members. It is clear from the record on this Application that all of this occurred in a sexually charged atmosphere.<sup>156</sup>

**E. Conduct of the Stampede Defendants Following Heerema's Arrest**

134. The Stampede Defendants conducted an "Employee Investigation" with Heerema, on January 31, 2014. Heerema met with Susan Garnett (**Garnett**), Vice President of People Services, and Kerri Logan (**Logan**), People Services Advisor.<sup>157</sup>

135. During the interview, Heerema admitted the following, among other things:

- a) He primarily used email to communicate with the students of the Young Canadians, but would also use social media accounts and texting;
- b) He had communicated with 10-12 students with his own personal Facebook account, primarily the senior singers;
- c) The conversations with the students were "probably not appropriate";
- d) The conversations with N.B. had "escalated" a couple of times and they had exchanged nude photographs with each other;
- e) That 3-4 male students had "been open in the last year" with Heerema;
- f) He treated one of the Class Members, S.M., two years prior for an alleged teeter-totter injury to his genitals while nobody else was present;
- g) He received photographs from one of the Class Members, K.S., in his underwear;

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<sup>156</sup> Heerema Transcript at 68:11-69:24

<sup>157</sup> NB Affidavit, Exhibit "AA"

- h) One of the other faculty members took a photo of a Class Member, wearing only a dance belt, jumping into Heerema's arms while he was dressed as Santa, and that there was another photo shoot with this Class Member "when he was dancing around";
  - i) T.L. had sent him a picture of his bare bottom;
  - j) That he really "loves" the students but understood that reference to love was "perhaps not being the appropriate word in this situation"; and
  - k) He intended to resign from the Young Canadians that day.
136. The next day, on February 1, 2014, Garnett sent an email to senior staff of the Stampede Defendants, acknowledging that she "probably should be reaching out with the business cards of CPS and a support service to the five individuals whom [she has] been made aware of".<sup>158</sup>
137. An internal "Issue Brief" was circulated to certain senior staff of the Stampede Defendants, dated February 8, 2014, summarizing the alleged steps taken after being informed of the communications involving N.B.<sup>159</sup> The Issue Brief stated, among other things, that the Stampede Defendants had proactively communicated situation details to parents and students, established contact with affected individuals, and made counselling resources available.
138. In reality, the only evidence of communications made to the students' families were scripted phone calls with limited to no details, and reassurance from the Stampede Defendants that they have nothing to suggest that family's child was involved.<sup>160</sup> To confirm, the Stampede Defendants have not provided evidence to confirm these phone calls were in fact made, or by whom. If the phone calls were made to the students'

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<sup>158</sup> NB Affidavit, Exhibit "BB"

<sup>159</sup> NB Affidavit, Exhibit "GG"

<sup>160</sup> NB Affidavit, Exhibit "GG" at CSF000180\_0006 and Exhibit "FF" at CSF000015\_0001



families, the scripted answers to anticipated questions from the families included statements that:<sup>161</sup>

- “A safe secure environment for our students is our first priority”;
- “We have no reason at all to think that your child was involved”;
- “We are simply shocked by the allegations, there were no previous concerns”;
- “The students and families of those who we believe may have been directly impacted have already been informed”; and
- “It would be very unusual for a staff member to be alone with any student at our facilities”.

139. Considering the evidentiary record and history of complaints about Heerema, these statements are simply untrue.

140. Likewise, during cross-examination, Hayes referred to an alleged in-person conversation with the senior male students, wherein Susan Garnett and Karen Connellan were to present certain “speaking notes”. While the Stampede Defendants have not provided evidence to confirm this meeting with the senior male students in fact occurred, the speaking notes included that:<sup>162</sup>

- “None of these allegations have been proven and we do not know if they are true”;
- “We also began our own internal investigation. That investigation has led to the names of students who may have been victims of inappropriate communications and/or behaviours by the former employee”;
- “The names of the students involved will remain confidential - we do not know if these students have been impacted or not but we are informing those whose names came up”;
- “We have brought in support professionals who are here on site to assist you”; and

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<sup>161</sup> NB Affidavit, Exhibit “FF”

<sup>162</sup> Hayes Transcript at 47:14-47:26 and Undertaking Response no. 4; “Speaking Notes”, CSF000023 (attached as **Appendix A**)

- “We will be sending a letter today to all students to inform them and their families of the situation. You will not be identified. Here is a copy of the letter that will be sent.”

141. Of note, the speaking notes indicate a copy of a letter being provided at this meeting regarding the situation with Heerema, and later to be sent out to the students and their families. The Stampede Defendants have not produced such letter or provided evidence that a letter was in fact provided to the students and their families at any point.
142. The only evidence in regard to communications with the students is from N.B. and M.J.1, who confirmed that there was no formal discussion with the students and at no point did the Stampede Defendants reach out to them to discuss the allegations involving Heerema.<sup>163</sup> That evidence was not challenged.
143. N.B. and M.J.1 also confirmed they were not offered counselling or support from the Stampede Defendants.<sup>164</sup> Hayes suggested in cross-examination, despite no direct knowledge, that Denise Bodnaryk (**Bodnaryk**), Director of Peoples Services, offered to provide funds on behalf of the Stampede Defendants for N.B.’s counselling. However, N.B. has confirmed that the Stampede Defendants did not offer to pay for his counselling with a psychologist, as he requested in 2016. Rather, the Stampede Defendants offered for N.B. to utilize a social worker, who N.B. did not feel comfortable speaking with, as that person was not trained in the specific area of trauma he had experienced and was affiliated with the Stampede Defendants. Again, N.B.’s evidence was not challenged, and when Hayes was asked if there was a reason Bodnaryk could not have provided an affidavit, counsel for the Stampede Defendants objected.<sup>165</sup>
144. There is also no record of the Stampede Defendants contacting the affected individuals, including the five Class Members with whom Heerema specifically admitted to

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<sup>163</sup> Certification Affidavit at para 36; NB Affidavit at para 20; MJ1 Affidavit at para 24

<sup>164</sup> MJ1 Affidavit at para 25; NB Affidavit at paras 21-23.

<sup>165</sup> Hayes Transcript at 49:8-50:9; NB Affidavit at para 21

inappropriate communications and interactions, and whom the Stampede Defendants acknowledged needing support.<sup>166</sup>

145. The Stampede Defendants subsequently organized a workshop for all current senior and show band students of the Young Canadians, as well as the faculty. At the workshop, an ex-police officer provided a presentation which focused on advising students that sending sexual pictures of themselves to others could have a lifelong negative impact on the students' lives but did not address anything regarding the allegations against Heerema or about adult sexual exploitation of minors. When N.B. contacted the Stampede Defendants later in 2014 to ask about the steps being taken to ensure such a situation did not happen again, N.B. was advised that the cyberbullying presentation was the immediate step that would be taken.<sup>167</sup>
146. Following Heerema's sentencing in the criminal proceedings, the Stampede Defendants unilaterally made public statements emphasizing the support that they say they provided to victims following Heerema's arrest, and the improvements that they say they have made since then.<sup>168</sup>
147. Several Class Members contacted Class Counsel distressed and outraged by these public statements. As a result, Class Counsel responded with a public statement confirming the Class Members' ongoing needs for support have not been met, and some Class Members have received no support from the Stampede Defendants.<sup>169</sup>
148. The Stampede Defendants' public statements were self-serving and inaccurate, and aggravated the suffering of Class Members.

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<sup>166</sup> NB Affidavit, Exhibits "AA" and "BB"; Hayes Transcript at 46:16-49:5; Appendix A, Speaking Notes, CSF000023

<sup>167</sup> Certification Affidavit at paras 37-38

<sup>168</sup> NB Affidavit, Exhibit "HH"

<sup>169</sup> NB Affidavit, Exhibit "II"

## V. LAW AND ARGUMENT

### A. Summary Judgment Common Issues vis-à-vis Heerema

149. Heerema was noted in default on August 11, 2020. By virtue of the Noting in Default, liability for the claims against Heerema has been admitted.<sup>170</sup> In any event, the evidentiary record supports each element of the causes of action against Heerema.
150. In respect of negligence, Heerema was expected to exercise the standard of care of a “careful or prudent parent”<sup>171</sup> to ensure the Class Members were provided a safe and secure environment, which was free of sexual exploitation and sexual abuse.
151. In respect of Heerema’s fiduciary duty, it is well recognized that parents, guardians, schools, and others who are responsible for the care of minors, owe a fiduciary duty to those minors.<sup>172</sup> Again, Heerema’s fiduciary duties were similar to that of a parent. He owed a fiduciary duty to the Class Members to ensure that reasonable care was taken of them both physically and emotionally and that they were protected from intentional torts. Heerema had a responsibility to ensure the Class Members’ safety at the Young Canadians.<sup>173</sup>
152. Heerema, through the criminal proceedings and the within Action, has acknowledged and admitted to numerous instances of inappropriate physical and sexual relationships with the Class Members, in direct breach of the applicable standard of care and fiduciary duties owed to the Class Members. He abused his position of trust and authority to sexually lure, exploit and assault the Class Members, and pressured his victims to deceive their parents and others. The resulting harm to the Class is profound.
153. In respect of the tort of intrusion upon seclusion, Heerema’s inappropriate conduct was pervasive throughout the Class Period: he intentionally targeted vulnerable Class

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<sup>170</sup> [TLA Food Services Ltd](#) at paras 18-24

<sup>171</sup> *MacCabe v Westlock Roman Catholic Separate School*, [2001 ABCA 257](#) at para 26 (**MacCabe**), citing *Myers v Peel (County) Board of Education*, 1981 CanLII 27 (SCC)

<sup>172</sup> *Seed v Ontario*, [2012 ONSC 2681](#) at para 99 (**Seed**)

<sup>173</sup> [Seed](#) at para 104

Members, preyed upon those vulnerabilities, and committed various lewd and criminal acts against the Class Members, including the creation of child pornography, thereby invading their private affairs. Any reasonable person would regard such conduct as highly offensive, causing distress, humiliation, and anguish to the Class Members.<sup>174</sup>

**B. Common Issues 1, 3 and 8: Negligence of the Stampede Defendants**

154. To succeed in a claim of negligence against the Stampede Defendants, the Representative Plaintiff and Class must prove that:<sup>175</sup>

- a) the Stampede Defendants owed the class members a duty of care;
- b) the Stampede Defendants breached the duty of care by engaging in conduct that fell below the standard of care;
- c) the Class Members suffered damage; and
- d) the damages were caused by the Stampede Defendants' breach of duty.

155. Claims of systemic negligence also tend to focus on whether the overarching organizational body ensured there were policies and procedures to protect its students.<sup>176</sup> As will be outlined in further detail below with the expert evidence, protection of the Class Members does not merely involve implementing adequate policies and procedures, more importantly it involves enforcement of those policies and procedures.

**(i) Duty of Care Owed to the Class Members**

156. The Young Canadians constitutes a school and educational institution and therefore owed a duty of care to the Class Members to provide a safe and secure environment for the Class Members, which was free of sexual exploitation and sexual abuse. The

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<sup>174</sup> *Jones v Tsige*, [2012 ONCA 21](#) at para 55

<sup>175</sup> *Mustapha v Culligan of Canada*, [2008 SCC 27](#) at para 3

<sup>176</sup> *WP v Alberta (No 2)*, [2013 ABQB 296](#), at paras 39-40

Stampede Defendants owed a duty of care to the Class Members to ensure that they were not at risk of being subjected to sexual abuse, sexual assault, sexual exploitation, and sexual luring.

157. As noted above, the standard of care to be exercised by school authorities in providing for the supervision and protection of its students or for whom they are responsible is that of the “careful or prudent parent”.<sup>177</sup>

158. The standard of care depends upon, amongst other things:

- a) the state of knowledge of those in charge of the school;
- b) the reasonably informed educational standards and policies of the day; and
- c) the measures implemented to prevent abuse and other factors.<sup>178</sup>

**(ii) Expert Evidence on the Standard of Care**

159. The Class has provided expert opinion evidence from James Fayette (**Fayette**),<sup>179</sup> currently a faculty member of the Dance Conservatory of Charleston. Fayette has experienced a lifelong journey in the performing arts, having been a student, professional dancer, union negotiator and Managing Director all with dance intuitions, and now leader of a school for dance.<sup>180</sup>

160. Fayette noted that the students of the Young Canadians, as early as 8 years old, train 20 hours a week with additional time added during rehearsal weeks leading up to performances. The Young Canadians expressly required that class and rehearsals would take priority over other extracurricular activities, with consideration only given to school exams. Such an intense level of commitment is consistent with most other high-level

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<sup>177</sup> [MacCabe](#) at para 26

<sup>178</sup> *Rumley v British Columbia*, [2001 SCC 69](#) at para 33; *LR v British Columbia*, [1999 BCCA 689](#) at para 21; *LeFrancois v Guidant Corporation*, [2008 CanLII 15770](#) (ONSC) at para 77

<sup>179</sup> Affidavit of James Fayette, filed February 21, 2023 (**Fayette Report**); Affidavit of James Fayette, filed May 26, 2023 (**Fayette Reply Report**)

<sup>180</sup> Fayette Report, Exhibit “A” at p. 1

performing arts training programs.<sup>181</sup> As such, faculty and administrators are not only responsible for the safety, health and well-being of the students; they are responsible for shepherding the students' passion and helping them find a balance between life and the performing arts. Therefore, interactions with the students must have healthy boundaries and consider the vulnerabilities associated with young people pursuing arts and competing at the highest level. Clear boundaries are absolutely essential in this environment.<sup>182</sup>

161. While formal policies and guidelines informing student interactions for dance and performing arts institutions have grown more sophisticated over the Class period, Fayette confirmed that the prevailing standard of care throughout considers the inherent vulnerabilities of the students and the fact that they need to be protected from exploitation by a bad acting adult who may be part of the institution. There is a clear expectation and minimum standard of care that safeguards the Class Members by avoiding inappropriate adult/student interactions and power dynamics.<sup>183</sup>
162. The applicable standard of care of an institution such as the Young Canadians includes:
  - a) Any person working or volunteering for the institution should receive training on how to correctly interact with students, be instructed to limit their interactions with the students, and that all those interactions should be limited activities sanctioned by the institution;<sup>184</sup>
  - b) For a large and prestigious arts institution such as the Young Canadians, supervisors should receive training about working with young students and how to aid their subordinate faculty and staff in enforcing policies, providing good guidance, and identifying any signs of inappropriate or suspicious behaviour. Such training should be provided at the beginning of employment and restated at the beginning of every

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<sup>181</sup> Fayette Report, Exhibit "A" at p. 2

<sup>182</sup> Fayette Report, Exhibit "A" at p. 3

<sup>183</sup> Fayette Report, Exhibit "A" at p. 3

<sup>184</sup> Fayette Report, Exhibit "A" at pp. 3-4

academic year, and revisited if there are any new changes to the standards at the school or new incidents of inappropriate behaviour within the institution;<sup>185</sup>

- c) In addition, the institution should have in place specific rules that are clearly communicated to all staff and volunteers which are understood for interactions with students. There should be clear ways of enforcing and reporting inappropriate behaviour without the fear of retaliation or adverse consequences;<sup>186</sup>
- d) Best practices involve always having a licensed medical professional perform physiotherapy or medical treatment to students, not regular employees of the institution;<sup>187</sup>
- e) Staff and faculty should be directed to restrict electronic communications to necessary communications related to a particular program or activity in which the student is participating. Best practices involve having a parent or guardian copied on all messages and the message should be sent through the school's official channels, which can and should be monitored;<sup>188</sup>
- f) An administrative structure should be implemented to provide consistent oversight of staff, faculty and volunteers, along with a culture and practice of frictionless reporting for any inappropriate behaviour. At a minimum, for any suspected abuse, there needs to be a way for it to be reported without fear of retaliation or adverse consequences to the individual reporting or against the victim of the suspected abuse. Everyone in the institution should be made aware of the procedure for reporting and who at the school is best to receive those reports needs to be identified;<sup>189</sup>

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<sup>185</sup> Fayette Report, Exhibit "A" at p. 5

<sup>186</sup> Fayette Report, Exhibit "A" at p. 6

<sup>187</sup> Fayette Report, Exhibit "A" at p. 9

<sup>188</sup> Fayette Report, Exhibit "A" at p. 12

<sup>189</sup> Fayette Report, Exhibit "A" at p. 13 and 21



- g) Any off-campus interactions with the students should be in a public setting and involve another adult;<sup>190</sup>
  - h) If a teacher or other staff had knowledge that an adult at the institution had concerns about the safety of a student, there is an obligation to report and investigate, regardless if the student is over the age of 18;<sup>191</sup>
  - i) In the event that a staff member becomes aware of another staff member harming a student in any way, especially engaging in sexual acts with a student, it should be reported immediately as abuse. The report should go to the faculty's supervisor, head of school or through any established and proper internal reporting structure within the institution. There should be clear channels for reporting without fear of retaliation or negative impact to the staff members' employment, and they should be aware of possible negative and legal consequences for the failure to report suspected sexual abuse of a student. The institution should temporarily suspend the individual and prohibit them from interacting with students immediately until an investigation can be conducted. Such procedure applies regardless of whether the student is over the age of 18; but if the student is under the age of 18, there would be additional reporting to the appropriate legal authorities.<sup>192</sup>
163. Fayette further confirmed that, throughout the Class period, it was never appropriate for a faculty or staff member to be alone in a private setting with a student, and it was always considered grossly inappropriate to sexually exploit a student in any way. Institutions have evolved in their awareness and understanding of how to better prevent the behaviour which may lead to a student becoming exploited, and policies and practices have evolved to better protect the students. However, the absence of

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<sup>190</sup> Fayette Report, Exhibit "A" at p. 20

<sup>191</sup> Fayette Report, Exhibit "A" at p. 23

<sup>192</sup> Fayette Report, Exhibit "A" at pp. 24-25 and 28

formal policies in the earlier years never meant that the expected standard of care for protecting students from exploitation was not already in place.<sup>193</sup>

164. For an institution like the Young Canadians, that means ensuring the facilities and premises are a safe environment. Any use of the space should be approved in advance for a specific activity, which is to help the students in training or professional development. The institution should ensure there is reasonable supervision of the activity with a staff member on the premises, e.g. no one-on-one meetings inside an office. This standard did not vary throughout the duration of the Class period.<sup>194</sup>
165. In very general terms, the following protections for students should be in place at a performing arts school:<sup>195</sup>
- a) No private one-on-one interactions;
  - b) Touching should be appropriate and only to further teaching correct practices;
  - c) No private communications with a student from an unmonitored personal account;
  - d) Limitations on how much control and power any individual has over any student's progress; and
  - e) Strict enforcement of these policies and oversight of the faculty, staff and volunteers.

**(iii) Breaches of the Duty of Care**

166. The evidentiary record establishes that the Stampede Defendants breached the duty of care owed to the Class Members throughout the Class Period by:
- a) Failing to investigate and report allegations of sexual abuse reported by R.S. in the First Complaint;

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<sup>193</sup> Fayette Report, Exhibit "A" at p. 27

<sup>194</sup> Fayette Report, Exhibit "A" at p. 27

<sup>195</sup> Fayette Reply Report, Exhibit "A" at p. 4

- b) Admonishing R.S. for reporting the First Complaint, thereby instilling fear of retaliation or adverse consequences to the victim for reporting;
- c) Allowing Heerema to interact with the Class Members and exposing the Class Members to Heerema, including placing Heerema in a position of authority and supervision over the Class Members, thereby placing them at risk and in danger;
- d) Failing to properly supervise Heerema, including allowing him to be alone with the Class Members on and off of the Stampede Defendants' facilities. Some activities, such as dinners at Boston Pizza with the senior male students, were completely unrelated to the sanctioned activities of the Young Canadians. Nonetheless, the Stampede Defendants approved expenses submitted by Heerema for these activities;
- e) Failing to establish, implement or enforce adequate policies, practices or procedures to protect against sexual abuse or exploitation by staff and people in positions of authority in the Young Canadians. The Class acknowledges that various staff policies existed throughout the Class period. However, Klassen's evidence was, to the best of her recollection, those policies were not identified or enforced among the staff of the Young Canadians.<sup>196</sup> To meet the minimum standard of care, these policies need not only exist but be clearly communicated through the institution, put in to practice, and enforced, thereby creating a culture of adherence and a universal, school-wide protection of the Class Members;<sup>197</sup>
- f) Failing to have proper procedures and safeguards in place to ensure that the Young Canadians' policies, practices, and procedures were followed by Heerema. As noted by Klassen, if she had any concerns, questions or issues, she was required and directed to speak with Heerema first.<sup>198</sup> In respect of the Harassment Free

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<sup>196</sup> Klassen Affidavit at para 8

<sup>197</sup> Fayette Reply Report, Exhibit "A" at p. 4

<sup>198</sup> Klassen Affidavit at para 10

Workshop - General Overview, which focused on employee interactions rather than student interactions in any event, Heerema was again positioned as the center of flow of information and everyone who received the training was instructed to go to Heerema with any concerns or reporting as the “most effective course of action for a harassment free environment”;<sup>199</sup>

- g) Ignoring the warning signs of improper, sexually exploitive conduct engaged by Heerema with respect to the Class Members.<sup>200</sup> In particular, the Second Complaint detailed inappropriate student interactions with Heerema and named specific Class Members. The Second Complaint effectively rang the alarm bells with Klassen stating “I don’t feel comfortable with the way I’ve observed [Heerema] interacting with the senior boys. I am worried there is much more to the story that we don’t know and I am very concerned with their safety”.<sup>201</sup> It is difficult to envision a clearer warning sign without Klassen explicitly stating that she believed Heerema was having sexual relations with the Class Members;
- h) Failing to respond adequately, or at all, to the First Complaint, Second Complaint and Third Complaint, each of which detail distinct inappropriate conduct of Heerema with the Class Members, in clear violation of the Stampede Defendants’ own policies;
- i) Creating or permitting an atmosphere tolerant of inappropriate behaviour by Heerema, including behaviour in clear violation of the Stampede Defendants’ own policies. Heerema’s conduct was not “clandestine” as suggested by the Stampede Defendants.<sup>202</sup> The Stampede Defendants permitted Heerema’s inappropriate behaviour to continue, despite at least three known complaints, in addition to the

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<sup>199</sup> Fayette Report, Exhibit “A” at pp. 18-19

<sup>200</sup> RS Affidavit; Klassen Affidavit, Exhibit “A”; NB Affidavit, Exhibit “W”

<sup>201</sup> Klassen Affidavit, Exhibit “A”

<sup>202</sup> Statement of Defence of the Stampede Defendants, filed September 19, 2019, at para 12

- fact that Heerema was texting with another employee about his strong sexual interest in Q.V.;
- j) Permitting Heerema to perform massage therapy and physiotherapy on the Class Members, often alone on the Stampede grounds without supervision by another adult, despite no certified training. As the record confirms, multiple incidents of sexual abuse were perpetrated by Heerema while performing massage therapy or physiotherapy on the Class Members;
  - k) Putting the Stampede Defendants' own interests and reliance on Heerema for the success of the program ahead of the interests of the Class Members; and
  - l) Failing to take adequate steps following Heerema's arrest and provide appropriate counselling services to the Class Members, despite known victims.<sup>203</sup>
167. The Stampede Defendants' conduct fell far below the standard of care to act as a careful and prudent parent of the Class Members. The Stampede Defendants breached their duty owed to the Class Members to protect them from unreasonable risk of harm caused by Heerema's sexual misconduct.
168. As a direct result of the Stampede Defendants' numerous breaches of their duty to the Class, the Class Members suffered significant harm.

**(iv) The Expert Opinion of Dr. Choate**

169. In response to the Summary Judgment Application, the Stampede Defendants have relied on the expert opinion evidence of Dr. Choate (**Choate Report**). The Choate Report can essentially be divided into two separate reports/sections:
- a) A report critiquing the expert opinion evidence provided by James Fayette (the "**Expert Critique**"); and

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<sup>203</sup> *CO v Williamson*, [2020 ONSC 3874](#) at paras 101, 104 and 106-110

b) A report providing an overview of the academic literature pertaining to some of the certified common issues (the “**Academic Overview**”).

**(a) Problems with the Expert Critique**

170. Dr. Choate’s Expert Critique was specifically to identify the “limitations” of Fayette’s opinion.<sup>204</sup> Within the Expert Critique, Dr. Choate attempts to undermine the reliability of the Fayette Report by criticizing Fayette’s credentials, research methodology, and expertise.
171. Dr. Choate has provided similar reports to the Alberta Court of King’s Bench in the past which were deemed inadmissible for a number of reasons that are analogous and applicable to the Choate Report provided in this case.<sup>205</sup>
172. In refusing to admit similar opinion evidence proffered by Dr. Choate in the past, Justice Dario outlined why this form of opinion evidence is not appropriate, stating as follows:<sup>206</sup>

...The stated intent for the second report is to identify the frailties of [the opposing expert’s] testimony relied upon by the Provincial Court Judge. It is not proper expert opinion because some of it veers into argument and “[a]rguments are the domain of counsel, not of expert witnesses”...

...

Further, Dr. Choate’s criticisms of [the opposing expert’s] expertise and qualifications are not for him to make. This is the domain of counsel. Rebuttal expert opinion evidence is intended to assist the Court in its fact-finding mission by providing a balanced and neutral, yet opposing view, when appropriate. Dr. Choate does not provide this view...

...Further, it is the role of counsel – not other witnesses (expert or otherwise) – to argue and up to the Court to determine whether she is a properly qualified witness and what weight to give to her evidence...

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<sup>204</sup> Choate Report at p. 26

<sup>205</sup> *SM v Alberta (Child, Youth and Family Enhancement Act, Director)*, [2019 ABQB 972](#) (*SM v Alberta*)

<sup>206</sup> [SM v Alberta](#) at paras 169-175

173. The Choate Report is similarly critical of the Fayette Report, but on issues in which Dr. Choate has no or limited experience.<sup>207</sup> On cross-examination, Dr. Choate admitted that none of his human resources experience has dealt with the administration of youth programs,<sup>208</sup> sexual misconduct or sexual assault of a minors,<sup>209</sup> or the creation or implementation of policies specifically for the protection of minors.<sup>210</sup> In addition to never being qualified as an expert in these areas, Dr. Choate has no personal or professional experience in the performing arts and has never been involved in the administration of such a school.<sup>211</sup>
174. As stated by Justice Dario in specific reference to Dr. Choate providing similar critiques of an opposing expert:<sup>212</sup>

The ability to review and summarize various scholarly works, and to criticize [the opposing expert's] evidence does not make Dr. Choate an expert qualified to give opinion evidence on attachment theory as it relates to Indigenous people or culture. As noted in *R v Pham*, 2013 ONSC 4903 "that the witness with some knowledge in an area has read texts etc. does not make him or her an expert qualified to give opinion evidence in the areas in which he had read": at para 66. In *R v Mathisen*, 2008 ONCA 747, the Court agreed with the trial judge that a witness was not qualified to give an expert opinion outside the area of his field of expertise simply because he had extensively reviewed literature: at paras 126-127.

175. Similarly in this case, Dr. Choate's ability to review and summarize various scholarly works on sexual abuse, assault and harassment involving minors, and to criticize the Fayette Report, does not make Dr. Choate an expert qualified to give opinion evidence on the applicable standard of care and adequacy of the Stampede Defendants' policies and procedures throughout the Class period. Of note, Dr. Choate acknowledges the lack

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<sup>207</sup> Choate Transcript at 16:5-18:3

<sup>208</sup> Choate Transcript at 13:1-13:5

<sup>209</sup> Choate Transcript at 13:6-13:9

<sup>210</sup> Choate Transcript at 13:10-13:14

<sup>211</sup> Choate Transcript at 15:2-15:22

<sup>212</sup> [SM v Alberta](#) at para 173

of academic publications in the evolution of policy over time within the performing arts learning environments.<sup>213</sup>

176. The Expert Critique by Dr. Choate is inappropriate, unfounded, and not admissible in any event.

**(b) Problems with Dr. Choate's Academic Overview**

177. Dr. Choate's Academic Overview cites to over 40 separate books, papers, news releases, articles, or literature upon which he relies for the Choate Report.<sup>214</sup> During cross-examination on the Choate Report, Dr. Choate confirmed that he did not author or collaborate on any of the referenced literature, that they were not based on any of his personal experiences, and that he did not discuss the Choate Report or any of its contents with the authors of those scholarly works.<sup>215</sup>
178. The Academic Overview is primarily a summation of the referenced literature, relying predominantly on the various scholarly works and other cited sources in fields for which Dr. Choate has little to no direct expertise. As confirmed by Dr. Choate, he simply found the referenced literature and reviewed them in order to prepare his report.<sup>216</sup>
179. As previously outlined by this Honorable Court in determining whether to admit this type of expert evidence, Justice Dario found:<sup>217</sup>

This is problematic because "there is difficulty with admitting expert evidence that does nothing more than adopt the opinions expressed in another report, if that report is only admissible as hearsay evidence"...

... Dr. Choate relies on over 70 sources, many of which have multiple authors. I acknowledge that this is to be expected in a report of a social science nature and that expert opinion is still admissible even if it based on hearsay evidence; however, the hearsay evidence is only admissible to show the information on

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<sup>213</sup> Choate Report at p. 4

<sup>214</sup> Choate Report at footnotes 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 40, 41, 42, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 65

<sup>215</sup> Choate Report at 16:5-18:3

<sup>216</sup> Choate Report at 16:5-18:3

<sup>217</sup> [SM v Alberta](#) at paras 167-168



which the opinion is based, not as evidence of the facts on which the opinion is based: R v Lavallee, 1990 CanLII 95 (SCC), [1990] 1 SCR 852 at 893-895, 108 NR 321. Dr. Choate presents the cited sources for the truth of their contents and the hearsay is so extensive that it is difficult to discern what expert opinion Dr. Choate is himself providing. [emphasis added]

180. Similarly, it is difficult to discern what expert opinion Dr. Choate is himself providing in the Choate Report.<sup>218</sup>
181. In addition, Dr. Choate was asked to provide a copy of the instructions received from counsel for the Stampede Defendants to prepare his report, as well as any prior drafts of the Choate Report. Dr. Choate, through counsel, ultimately refused this undertaking request, stating that it “is not relevant to a matter at issue and asks for information covered by litigation privilege”.<sup>219</sup> This refusal is surprising, considering counsel for the Stampede Defendants ask the same undertaking of James Fayette for prior draft reports, which were provided.<sup>220</sup> To confirm, any litigation privilege attached to an expert report is waived when the expert report is used in Court.<sup>221</sup> In this case, that occurred the Stampede Defendants filed Dr. Choate’s expert report for this Application. Further, counsel’s instructions and any prior drafts are relevant to the Choate Report given Dr. Choate’s admitted failure to consider two key issues - whether the Stampede Defendants’ policies were followed and whether the complaints were acted upon.<sup>222</sup>
182. The basis cited for this refusal raises independence and impartiality concerns over the Choate Report. Expert opinion evidence must be the product of the expert’s independent judgment, uninfluenced by who has retained him or the outcome of the litigation. A proposed expert witness who is unable or unwilling to fulfill his duty to the Court is not properly qualified to perform the role of an expert.<sup>223</sup>

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<sup>218</sup> [SM v Alberta](#) at para 168

<sup>219</sup> Choate Transcript, Undertaking no. 1

<sup>220</sup> Undertaking Responses of James Fayette, filed June 15, 2023, Undertaking No. 1

<sup>221</sup> *Drapaka v Patel*, [2013 ABQB 247](#) at para 33

<sup>222</sup> See e.g. *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, [2021 ABQB 784](#) at paras 12-20; Choate Transcript at 45:5-45:13

<sup>223</sup> *White Burgess Langille Inman v Abbott and Haliburton Co*, [2015 SCC 23](#) at para 32 and 46

**(v) The Expert Reports are Not in Conflict on the Issues Material to Summary Judgment**

183. To the extent that the Choate Report is admissible, it is not substantively in conflict with the Fayette Report on material issues for this motion. Fayette expressly agrees with Dr. Choate's conclusions on several points, including that:<sup>224</sup>
- a) policies and practices evolved over time;
  - b) the Class Members were vulnerable;
  - c) social mores can create barriers for victims of sexual assault to report it; and
  - d) Heerema utilized his power and control given to him by the Stampede Defendants to hide his behaviours.<sup>225</sup>
184. The overarching conclusion of the Choate Report is ostensibly that the Young Canadians' policies "appear to be consistent with what would be expected of an organization such as [the Young Canadians] during "The Class" period"<sup>226</sup> (i.e. that their policies, as written, met the standard of care required of a non-regulated institution during the Class Period). While Dr. Choate finds, in his opinion, that the policies, as written by the Stampede Defendants, met the requisite standard of care, he provides no comment on whether the Stampede's implementation or enforcement of those policies similarly met the requisite standard. Dr. Choate expressly confirmed that he was not asked to opine on these important questions.<sup>227</sup>

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<sup>224</sup> Fayette Reply Report at p. 2

<sup>225</sup> Choate Report at p. 24: "Mr. Heerema had significant power in his relationships with students that grew over time. It would be late in the process when the extent of his control was questioned. It is worth noting that in his resignation letter he states he has been with YC for 36 years (I presume in a variety of roles) thus having built up a significant and sustained presence and role formation within YC. His job description was extensive allowing for widespread involvement (and thus perception of power and institutional trust). This would also have made it harder to question any observed behaviors despite such policy statements as "fraternizing with members of the teaching and production staff outside of officially sanctioned young Canadians activities is not permitted."

<sup>226</sup> Choate Report at p. 26, Conclusion 4

<sup>227</sup> Choate Transcript at 45:5-45:13

185. In Fayette's opinion, the Stampede Defendants' policies and procedures were insufficient to address the minimum standard of care. The Class acknowledges that there is a conflict in the evidence on this discrete question. However, this is not material to determining whether the Stampede Defendants ultimately failed to meet the applicable standard of care.
186. As noted by Fayette, the existence of appropriate policies is just one element of the requisite standard of care to protect students in an academic setting like the Young Canadians. Even if the Court were to accept Dr. Choate's opinion on the adequacy of the Stampede Defendants' policies, that would not explain the Stampede Defendants' failure, refusal, or neglect, in implementing and enforcing its own policies. Fayette further opined in response:<sup>228</sup>

I disagree with Dr. Choate on this point. He describes the Young Canadians as being consistent with other 'non-regulated' agencies, but the Young Canadians has not been consistent with how other performing arts school have administered a minimum standard of care. However, even assuming the policies that they demonstrated were sufficient during the class period, the Stampede Defendants failed to properly implement or enforce those policies. As such, they did not meet the minimum standard of care and the failure to meet the minimum standard of care allowed inappropriate behaviors that directly led to child sexual abuse...

187. As further noted by Fayette:<sup>229</sup>

The Young Canadians' failure to bolster and enforce its own policies created fertile ground for a subversive actor like Mr. Heerema to take advantage of students. The Young Canadians failed to establish a culture of adherence to care and protection of the students. This allowed Mr. Heerema the freedom to lure and groom students unchecked. Contrary to Dr. Choate's conclusion, policies do actually matter, and their implementation and enforcement would have prevented child sexual abuse.

188. Notably, during cross-examination, Dr. Choate admitted that the conduct complained of in the First Complaint,<sup>230</sup> Second Complaint<sup>231</sup> and Third Complaint<sup>232</sup> was in violation of

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<sup>228</sup> Fayette Reply Report at p. 3

<sup>229</sup> Fayette Reply Report at p 4

<sup>230</sup> Choate Transcript at 42:8-42:24

the Stampede Defendants' policies and an organization's reporting obligations, and more should have been done to investigate.

189. Indeed, in Dr. Choate's opinion, Heerema's grooming behaviours and pattern conduct tended to have low visibility and kept his victims silent. As such, he candidly admitted that it was therefore much more important that the existing policies to protect the Class Members actually be followed, and that complaints should be acted upon.<sup>233</sup>
190. Accordingly, in determining whether the Stampede Defendants met the requisite standard of care, the key issue is whether policies were implemented and enforced (not merely in existence). The expert opinion evidence provided by each of the parties in this regard is not in conflict. Rather, both experts agree that Heerema's conduct was in violation of the Stampede Defendants' policies, and more should have been done by the Stampede Defendants to properly enforce those policies and investigate the complaints about Heerema's conduct.

**C. Common Issue 6: The Stampede Defendants' Breach of Fiduciary Duty**

191. A fiduciary relationship exists where:<sup>234</sup>
- a) The fiduciary has the ability to exercise some discretion or power;
  - b) The power enjoyed by the fiduciary can be exercised in such a way that the beneficiary's interests can be affected; and
  - c) The beneficiary is in a position of vulnerability in so far as the fiduciary exercising the control is concerned.
192. Again, it is well recognized that parents, guardians, schools, and others who are responsible for the care of minors, owe a fiduciary duty to those minors. In the context

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<sup>231</sup> Choate Transcript at 32:20-37:9

<sup>232</sup> Choate Transcript at 37:10-41:14

<sup>233</sup> Choate Transcript at 42:25-44:3

<sup>234</sup> *Frame v Smith*, [1987 CanLII 74](#) (SCC), [1987] 2 SCR 99 at paras 39-42

of a school board, a fiduciary relationship is imported as the school board “enjoys a position of overriding power and influence over its students. It is a power dependent relationship, one characterized by unilateral discretion”.<sup>235</sup>

193. A breach of a fiduciary relationship in such a context arises where the party exercising the power or control, acts disloyally, or puts someone else’s interest, including their own, above those of the students, or others in their care. This includes instances where the fiduciary “turns a blind eye to the abuse”.<sup>236</sup>
194. The Young Canadians demanded a significant commitment and dedication from the Class Members. Respect and obedience to instructors, including Heerema was required by the Class Members. The Stampede Defendants exerted a significant degree of control over the Class Members. Failing to abide by the rules and regulations of the Young Canadians would result in expulsion from the program. Moreover, the Young Canadians expressly demanded that students “[r]espect and support the guidance, direction, and decisions” of Heerema.<sup>237</sup>
195. As a result of the level of power the Young Canadians exerted over the Class Members, the Class Members were particularly vulnerable to the Stampede Defendants and a fiduciary relationship existed. The Stampede Defendants abused this position of power and breached the fiduciary duty owed to the Class Members.
196. In particular, the Stampede Defendants trusted Heerema because they viewed him to be affable and hard-working.<sup>238</sup> They acknowledged relying on Heerema, sometimes to a fault, for the continued success in the many aspects of their business.<sup>239</sup> Accordingly, when faced with the complaints about Heerema’s inappropriate conduct, the Stampede

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*Frame v Smith*, [1987 CanLII 74](#) (SCC), [1987] 2 SCR 99 at paras 39-42

<sup>235</sup> *B(KL) v British Columbia*, [2003 SCC 51](#) at para 38 (**BKL**); *G(ED) v Hammer*, [1998 CanLII 15064](#) (BCSC), [1998] BCJ No 992 at para 40

<sup>236</sup> *B(KL)* at para 49

<sup>237</sup> Certification Affidavit at para 13; Certification Affidavit, Exhibit “A” at p. 24 and Exhibit “B” at p. 23

<sup>238</sup> Hayes Affidavit at para 23; Hayes Transcripts at 6:20-7:14

<sup>239</sup> NB Affidavit, Exhibit “X”

Defendants put their own business interests ahead of their duty owed to the Class Members. They turned a blind eye to the complaints, thereby and permitting an environment tolerant of Heerema's misconduct and allowing him to perpetuate his abuse of the Class Members.

**D. Common Issue 5: The Stampede Defendants' Breach of Contract**

197. Upon joining the Young Canadians, a contract was formed between the Class Members and the Stampede Defendants.

198. The existence of an implied contract between a school and its students has been recognized previously by the Alberta Courts in *J.(O.) (Next Friend of) v Strathcona-Tweedsmuir School*.<sup>240</sup> Specifically, with respect to certain of the Class Members, upon admission into the Young Canadians School, and the agreement by the Class Members to be bound by the Student Handbook, a contract was formed.

199. It was an express or implied term of the agreements between the Class Members and the Stampede Defendants, that the Stampede Defendants would take all reasonable steps to protect and ensure the safety, security, and well-being of the Class Members while at the Young Canadians.

200. The Stampede Defendants breached the express or implied terms of the agreements, by failing to protect the Class Members from Heerema.

**E. Common Issue 7: The Stampede Defendants' Vicarious Liability**

201. In addition to the direct liability flowing from the Stampede Defendants' conduct, the Stampede Defendants are vicariously liable for Heerema's actions.

202. Pursuant to the doctrine of vicarious liability, an employer is responsible for:<sup>241</sup>

a) employee acts authorized by the employer; or

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<sup>240</sup> *J(O) (Next Friend of) v Strathcona-Tweedsmuir School*, [2010 ABQB 559](#) at para 27

<sup>241</sup> *Bazley v Curry*, [1999] 2 SCR 534, [1999 CanLII 692 \(SCC\)](#) at para 10 (**Bazley**)

b) unauthorized acts so connected with authorized acts that they may be regarded as modes (albeit improper modes) of doing an authorized act.

203. There is no exemption from vicarious liability for non-profit charitable organizations,<sup>242</sup> nor are agencies exempt from vicarious liability in association with their volunteers.<sup>243</sup> The label attached to a person or occupation is not the determining factor.<sup>244</sup>

204. In determining whether the unauthorized acts of the employee are sufficiently connected with the authorized acts under the second category of vicarious liability, the Supreme Court in *Bazley* noted:<sup>245</sup>

The common theme resides in the idea that were the employee's conduct is closely tied to a risk that the employer's enterprise has placed in the community, the employer may justly be held vicariously liable for the employee's wrong...

205. As a starting point, Courts should first look to see whether judicial precedent exists where employers have been held vicariously liable for the conduct of their employees in respect of similar unauthorized torts. If such precedent exists, then *prima facie*, vicarious liability has been established.<sup>246</sup>

206. In *Bazley*, the Supreme Court affirmed the lower Court's finding that the non-profit organization employer was vicariously liable for the actions of its employee who sexually abused children who were under the care of the employer. The facts in the case at bar are strikingly similar, and it is respectfully submitted that the precedent that the Supreme Court of Canada urged as a starting point to establish vicarious liability exists in *Bazley* itself.

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<sup>242</sup> *Bazley*; *Jacobi v Griffiths*, [1999] 2 SCR 570, [1999 CanLII 693 \(SCC\)](#)

<sup>243</sup> *Rich v Bromley Estate*, [2011 NLTD 16](#) at paras 74-75 (***Bromley Estate***); *CS (Next friend of) v Boy Scouts of Canada*, [2002 ABQB 152](#) at paras 3, 8-11 and 25-28

<sup>244</sup> *Bromley Estate*, at para 75, citing *AG (Nova Scotia) v BMG*, 2007 NSCA 120 at para 58

<sup>245</sup> *Bazley* at para 22

<sup>246</sup> *Bazley* at paras 12-14

207. However, even aside from the existence of similar cases importing vicarious liability on the Stampede Defendants, the importance of imposing vicarious liability on an employer for the intentional torts of their employees arises from broad policy considerations, including ensuring a just and practical remedy to those who suffer as a consequence of wrongs perpetrated by an employee.<sup>247</sup>
208. The employer puts in the community an enterprise which carries with it certain risk. When those risks materialize and cause injury to a member of the public, despite the employer's reasonable efforts, it is fair that the person or organization that creates the enterprise, and hence the risk, should bear the loss. This accords with the notion that it is right and just that the person who creates a risk bear the loss when the risk ripens to harm.<sup>248</sup>
209. In addition to providing a remedy to those who have been wronged, vicarious liability serves a deterrence function:<sup>249</sup>
- Fixing the employer with responsibility for the employee's wrongful act, even where the employer is not negligent, may have a deterrent effect. Employers are often in a position to reduce accidents and intentional wrongs by efficient organization and supervision.
210. Heerema advised that he first started volunteering with the Young Canadians in 1983 and that he moved into an employment role as the production assistant in 1987 or 1988.<sup>250</sup> This is consistent with the evidence of R.S., who confirmed that Heerema had influence over casting decisions within the Young Canadians organization at the time, was a key point of contact and a mentor for the students of the Young Canadians.<sup>251</sup>
211. Heerema was perceived by the Class Members as an integral part of the Young Canadians in his capacity as an employee or volunteer (production assistant, business

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<sup>247</sup> [Bazley](#) at para 31

<sup>248</sup> [Bazley](#) at para 31

<sup>249</sup> [Bazley](#) at para 32

<sup>250</sup> Heerema Transcript at 8:7-10:6

<sup>251</sup> RS Affidavit at paras 7, 12 and 13



administrator, instructor, first aid medic, disciplinarian, faculty member). They considered him the “boss” of the organization.<sup>252</sup>

212. While Heerema’s abusive conduct went beyond the scope of his enumerated responsibilities with the Young Canadians, it still fell within the scope of his authority and within the enterprise conferred on him by the Stampede Defendants:<sup>253</sup>

Vicarious liability is generally appropriate where there is a significant connection between the creation or enhancement of a risk and the wrong that accrues therefrom, even if unrelated to the employer’s desires. Where this is so, vicarious liability will serve the policy considerations of provision of an adequate and just remedy and deterrence.

213. In *Bazley*, the Court set out a non-exhaustive list of factors to guide the inquiry as to whether the required significant connection exists in situations in which an employee has committed an intentional tort, such as the sexual assaults, exploitation and luring committed by Heerema in this case. Those factors include:<sup>254</sup>

- a) the opportunity that the enterprise afforded the employee to abuse his power;
- b) the extent to which the wrongful act may have furthered the employer’s aims;
- c) the extent to which the wrongful act was related to friction, confrontation or intimacy inherent in the employer’s enterprise;
- d) the extent of power conferred on the employee in relation to the victim; and the vulnerability of potential victims to wrongful exercise of the employee’s power.

214. Considering those factors, the relationship between the Stampede Defendants and Heerema was such that his wrongful conduct was directly connected with the conduct that was authorized by the Stampede Defendants for several reasons, including:<sup>255</sup>

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<sup>252</sup> Certification Affidavit at para 14; MJ1 Affidavit at paras 5-6

<sup>253</sup> [Bazley](#) at para 41

<sup>254</sup> [Bazley](#) at para 41

<sup>255</sup> Certification Affidavit, Exhibit “D”

- a) The close relationship between staff, teachers, students, employees, contractors and volunteers at the Young Canadians created or enhanced the risk of sexual abuse and sexual exploitation;<sup>256</sup>
- b) The nature of Heerema's employment or volunteer positions which encompassed numerous roles such as production assistant, coach, administrator, production manager, and first aid medic; the responsibilities afforded to Mr. Heerema, such as reviewing and updating both the staff and student handbooks; the direct supervision of employees, contractors and volunteers; and the day-to-day contact between Heerema and the Class Members created opportunities for Heerema to abuse his power and authority over the Class Members;<sup>257</sup>
- c) The Stampede Defendants designated Heerema as the first point of contact in the Student Handbooks for students to address, among other things, all absences, concerns, or disciplinary matters;<sup>258</sup>
- d) The Stampede Defendants also designated Heerema as the emergency contact, coordinator, lead organizer and chaperone for trips taken by the Young Canadians<sup>259</sup> with "everything that was created for the trip [being] passed through people at the office of the Stampede"<sup>260</sup> and, in some instances, Heerema was the only employee of the Young Canadians in attendance;<sup>261</sup>
- e) The Stampede Defendants provided Heerema with unfettered access to all student files and contained personal information of each student including, without limitation, their date of birth, home addresses, phone numbers, and email

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<sup>256</sup> Fayette Report, Exhibit "A" at p. 19; Fayette Reply Report, Exhibit "A" at pp. 3 and 5-6

<sup>257</sup> Certification Affidavit, Exhibit "D" at para 1; NB Affidavit, Exhibit "I" at CSF00067\_0010 and Exhibit "N" at CSF000122\_0005 - 0007; Hayes Affidavit at paras 24-28 and Exhibits "J", "K" and "L"; Heerema Transcript at 30:20-31:25 and 33:25-35:5; RS Affidavit at para 7; MJ1 Affidavit at paras 3-8; Klassen Affidavit at para 9

<sup>258</sup> See e.g. NB Affidavit, Exhibits "E", "M", "P" and "Q"; Heerema Transcript at 33:25-35:16; Certification Affidavit, Exhibit "N" at CSF000122\_0007

<sup>259</sup> Heerema Transcript at 48:6-49:25

<sup>260</sup> Heerema Transcript at 54:23-55:16

<sup>261</sup> Heerema Transcript at 55:26-56:14

addresses, which information he used to contact and connect with Class Members both inside and outside of Young Canadians' hours;<sup>262</sup>

- f) The opportunities afforded by the Young Canadians to Heerema to foster sexually exploitive relationships by allowing Heerema to have access to office space which would segregate the Class Members from the rest of the students and staff and by allowing Heerema to travel with the Class Members on trips that required the Class Members and Heerema to stay in hotel rooms;<sup>263</sup>
- g) Several instances of the alleged abuse took place at the Young Canadians' facilities to which Heerema had unfettered access;<sup>264</sup>
- h) Pornographic material, including of Class Members, was stored on the Stampede Defendants' property, including a computer located at the Young Canadians' office;<sup>265</sup>
- i) The close and intimate relationship between Heerema and the Class Members was fostered and encouraged by the Young Canadians promoting Heerema as a central employee of the Young Canadians, and directing Class Members to respect and abide by his directions, thereby enhancing Heerema's position of power and authority and creating or enhancing the risk of sexual exploitation and sexual abuse;<sup>266</sup> and

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<sup>262</sup> Heerema Transcript at 35:17-36:26

<sup>263</sup> Certification Affidavit, Exhibit "D"; MJ1 Affidavit at paras 9-11

<sup>264</sup> Certification Affidavit, Exhibit "D"; MJ1 Affidavit at paras 9-11; Heerema Transcript at 19:25-22:1; 73:16-75:8; 75:9-76:9; 80:3-81:4

<sup>265</sup> Heerema Transcript at 41:7-42:6, 42:27-43:1; Certification Affidavit, Exhibit "D" at paras 35-37

<sup>266</sup> Choate Report, Exhibit "A" at p. 24; Fayette Report, Exhibit "A" at p. 19; Fayette Reply Report, Exhibit "A" at pp. 3 and 5-6

j) Allowing Heerema and the Class Members to communicate via personal email, text messaging or through social media provided additional opportunities to Heerema to foster sexually exploitive relationships.<sup>267</sup>

215. Taking into consideration the relevant law and known existing factual framework, it is submitted that the Stampede Defendants are vicariously liable for Heerema's misconduct during the Class period.

#### **F. The Harm Suffered by the Class Members**

216. It has only been in recent years that Canadian society and the Canadian Judicial system have begun grappling in earnest with the true impact that sexual assault and sexual interference have on children and youth.

217. In the recent Supreme Court of Canada decision in *R. v Friesen*, the Supreme Court of Canada recognised that the impacts of sexual abuse go well beyond physical damage, and can cause severe and lasting psychological damage:

This emphasis on personal autonomy, bodily integrity, sexual integrity, dignity, and equality requires courts to focus their attention on emotional and psychological harm, not simply physical harm. Sexual violence against children can cause serious emotional and psychological harm that, as this Court held in *R. v. McCraw*, [1991] 3 S.C.R. 72, “may often be more pervasive and permanent in its effect than any physical harm” (p. 81).<sup>268</sup>

218. Further, all of the Class Members identified as male at the time they attended the Young Canadians. Many of the Class Members identified as being gay while with the Young Canadians or came out as gay after their time with the Young Canadians.

219. The impact on children and youth can be even more pronounced for males or for members of the LGBT2Q+ Community:<sup>269</sup>

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<sup>267</sup> Certification Affidavit, Exhibit “D”; Heerema Transcript at 35:17-36:26

<sup>268</sup> *R v Friesen*, [2020 SCC 9 \(Friesen\)](#), at para 56

<sup>269</sup> [Friesen](#) at paras 69 and 73

...Victimization can be particularly shameful for boys because of social expectations that males are supposed to appear tough... Embarrassment, humiliation, and homophobia form a particularly toxic and stigmatizing combination for male child victims...

Similarly, LGBTQ2+ youth may be especially vulnerable because of the marginalization they continue to experience in society... Sentencing judges should be attentive to the ways in which LGBTQ2+ youth may “experience sexual assault differently than heterosexual victims”... Sexual violence may cause young LGBTQ2+ victims to experience unique forms of isolation and may negatively affect how they feel about the process of coming out. A lack of specialized services may compound these problems...(citations omitted)

#### **G. Common Issue 9: Punitive Damages are Warranted**

220. Punitive damages are awarded in exceptional cases where “misconduct is so malicious, oppressive and high-handed that it offends the court’s sense of decency”. An award of punitive damages is not intended to be compensatory, but rather the aim is to punish the defendant and to “act as a deterrent to the defendant and to others from acting in this manner”.<sup>270</sup>
221. The Class submits that punitive damages are appropriate in the circumstances and would act to deter other agencies or organizations from exhibiting the same conduct as the Stampede Defendants. The Stampede Defendants repeatedly breached the duty of care owed to Class Members, and the aggravating circumstances are significant.
222. In addition to bestowing “significant power” upon Heerema, as specifically identified by Dr. Choate,<sup>271</sup> which Heerema used to harm students in the Stampede Defendants’ care, at various points during the Class Period, the Stampede Defendants expressly acknowledged the dangers they had created without addressing them in any meaningful way.
223. Despite receiving a complaint from a victim of Heerema, directly identifying sexual abuse, and subsequent complaints by faculty and staff regarding Heerema’s

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<sup>270</sup> *Hill v Church of Scientology*, [1995] 2 SCR 1130, [1995 CanLII 59](#) (SCC) at para 199

<sup>271</sup> Choate Report, Exhibit “A” at p. 24

inappropriate conduct, the Stampede Defendants failed to take appropriate steps to protect the Class Members who were under their care.

224. Specifically, at the very outset of the Class Period, a known victim came forward to raise concerns about Heerema's conduct, but was swiftly shut down, discouraged from further comment, and ignored. The Stampede Defendants failed to act on the First Complaint dating back to 1988.<sup>272</sup> The uncontradicted evidence before this Court is that Avery, upon receiving the First Complaint, and after confirming with R.S. that Heerema had in fact touched him and molested him,<sup>273</sup> engaged in what can only be described as victim blaming stating: "you can't say things like that", "don't be going around causing trouble" and advising R.S. that he could not be in the Young Canadians if he said such things.<sup>274</sup>
225. Over 30 years later, the Stampede Defendants engaged in a similar form of victim blaming, placing R.S. through a lengthy cross-examination on his Affidavit in which counsel for the Stampede Defendants repeatedly suggested impropriety on behalf of R.S., such as:
- a) using Heerema "as a means to the end if the end was to purchase beer";<sup>275</sup>
  - b) trying to "reconcile the idea" that R.S. thought Heerema was creepy, "but at the same time [R.S.] would be choosing to be around him";<sup>276</sup>
  - c) trying to "reconcile the idea" that R.S. thought Heerema was creepy, or that something was off, with R.S.' "decision to meet [Heerema] at Glenmore Park later in the day when there weren't other people present";<sup>277</sup>

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<sup>272</sup> RS Transcript at 78:5-78:12 and 87:26-88:25

<sup>273</sup> RS Transcript at 78:5-78:12 and 87:26-88:25

<sup>274</sup> RS Affidavit at para 16; RS Transcript at 77:16-77:23 and 87:26-88:25

<sup>275</sup> RS Transcript at 41:2-42:26

<sup>276</sup> RS Transcript at 42:27-43:5

<sup>277</sup> RS Transcript at 48:9-48:18

- d) putting to R.S. that he “would have formed the impression or perhaps reasonably have foreseen that if [R.S.] approached [Heerema], after the first incident in the park, that there could be some type of sexual interaction”;<sup>278</sup>
- e) clarifying that “I suppose my question is ultimately, and based on what you’ve just said, were you ever interested in those sexual acts with [Heerema]?”;<sup>279</sup> and
- f) after confirming that Heerema turned his attention to another student when the sexual abuse of R.S. stopped, inquiring about whether anything had occurred between R.S. and Heerema that may have “precipitated that change”.<sup>280</sup>

226. Eventually R.S. aptly stated in cross-examination:<sup>281</sup>

I was always of the mindset that, you know, I wasn't a child, I wasn't forced, you know, so on and so forth, so I was a willing participant but I realized after going to therapy, that I was a kid and I wasn't a willing participant.

227. To further aggravate matters, by 2008, the Second Complaint and Third Complaint were brought to the attention of Foley, Avery, Caron and Fogleman. Avery finally acknowledged the need to address the “various questions that seem to float in [Heerema’s] wake”<sup>282</sup> but there is no evidence that this ever occurred. Notwithstanding the concerns that Heerema was becoming “far too friendly” and personally involved with some students, causing “some uneasy feelings and questions within the cast,” these concerns were never investigated. The immediately prior complaint submitted by Klassen stated unequivocally, “I am very concerned with [the Class Members’] safety”<sup>283</sup> and identified, by name, two senior male students spending time alone with Heerema in his office after hours. Heerema pleaded guilty to sexually exploitive acts with one of

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<sup>278</sup> RS Transcript at 60:20-60:24

<sup>279</sup> RS Transcript at 61:7-61:9

<sup>280</sup> RS Transcript at 65:11-65:16

<sup>281</sup> RS Transcript at 82:12-82:18

<sup>282</sup> NB Affidavit, Exhibit “W”

<sup>283</sup> Klassen Affidavit, Exhibit “A”

those students, M.J.1, during that exact time period. There is no tenable explanation for why, at minimum, the Stampede Defendants failed to act on these complaints.<sup>284</sup>

228. This is particularly egregious because Avery specifically knew of a former student who had come forward and been subject to sexual abuse by Heerema years earlier.<sup>285</sup> The failure to act again, 20 years later, when faced with clear problematic behavior in breach of the Stampede Defendants' own policies is both astounding and inexplicable.
229. The aggravating circumstances do not end with Heerema's resignation and arrest. Instead, the conduct of the Stampede Defendants following Heerema's departure further exacerbated the circumstances. The Stampede Defendants did not reach out to the students and families who were impacted to offer counselling services or to address what had happened. Rather, they apparently reassured families that their children were not impacted, despite no way of knowing that, and held a cyber-bullying seminar which ostensibly placed the blame on the victims of Heerema's predatory behavior (the message being that the situation with Heerema happened because of errors made by the students).
230. When given an opportunity to acknowledge what had happened in a public fashion, the then CEO of the Calgary Stampede, contrary to the experience of several Class Members, stated that the Calgary Stampede had "been very open and transparent with parents", "reaching out to all families" and offered counselling services.<sup>286</sup> Again, the Stampede Defendants have not provided direct evidence that these steps occurred, and the uncontradicted evidence from two of the Class Members, and victims of Heerema, is that they did not.
231. Specifically, through their own internal investigation prior to the criminal proceedings,<sup>287</sup> the Stampede Defendants identified a number of victims like M.J.1, and

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<sup>284</sup> Certification Affidavit, Exhibit "D" at paras 24-32

<sup>285</sup> RS Affidavit at para 16; RS Transcript at 77:16-77:23 and 87:26-88:25

<sup>286</sup> NB Affidavit, Exhibits "HH" and "II"

<sup>287</sup> NB Affidavit at Exhibits "DD"



each of the individuals who would later testify during the criminal proceedings, as victims of Heerema's conduct. This document entitled "TYC Background Information" identifies a number of victims by name and the years they attended the Young Canadians.<sup>288</sup> There is no evidence before this Court to confirm that Stampede Defendants ever reached out to the identified victims, and offered counseling or support as claimed. Rather, the Stampede Defendants have required each victim to be both personally and financially responsible for addressing the trauma that occurred to them while in the care of the Stampede Defendants.<sup>289</sup>

232. To date, the Stampede Defendants have not publicly acknowledged the harm to Class Members, nor have they facilitated assistance to help address the trauma inflicted on Class.
233. Since the commencement of the within Action, the Stampede Defendants have repeatedly engaged in a delay and deny approach to the litigation, requiring the Class to take numerous steps , only to consent at the 11<sup>th</sup> hour. These steps include:
  - a) The Representative Plaintiff filed the application for certification on October 17, 2018, along with a supporting affidavit from N.B., and an extensive brief of law, filed April 12, 2019. The Stampede Defendants ultimately consented to certification the day before the scheduled certification hearing, on June 9, 2019;
  - b) The Stampede Defendants were served Notices to Admit Facts and Documents on June 4, 2021. Upon request, three extensions were granted to the Stampede Defendants to respond. On August 19, 2021, the Stampede Defendants provided responses, but only substantively responded to 9 out of the 247 requested admissions.<sup>290</sup> It was not until the Plaintiff filed an application to compel responses on September 29, 2021, and a brief of law filed October 15, 2021, that the Stampede

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<sup>288</sup> NB Affidavit at Exhibits "DD"

<sup>289</sup> MJ1 Affidavit at paras 22-25

<sup>290</sup> Application to Compel Responses to the Notices to Admit Facts and Documents, filed September 29, 2021

Defendants finally provided more appropriate responses on October 21, 2021;<sup>291</sup> and

c) The Plaintiff filed an application to amend the Class definition on August 19, 2022, along with a supporting affidavit from R.S., and a brief of law, filed August 25, 2022. R.S. was cross-examined at length on his affidavit. Again, the Stampede Defendants ultimately consented to the amended Class definition the day before the scheduled hearing, on September 6, 2022. The consent order arising therefrom required the Stampede Defendants to pay costs to the Class in the amount of \$2500. To date, the Stampede Defendants have failed to pay the costs awarded, despite repeated follow up from Class counsel to counsel for the Stampede Defendants.

234. As found in *Hilltop Group v Katana*,<sup>292</sup> where a defendant has obfuscated, delayed or been less than forthright in their evidence, punitive damages may be awarded.

235. It is submitted that the Stampede Defendants' repeated disregard for the Class Members warrants redress through an award of punitive damages. The Class is seeking a declaration that punitive damages against the Stampede Defendants are warranted in the circumstances. However, the Class proposes that the quantum of punitive damages be determined after the Class Members' damages are individually assessed, so the Court can better assess whether the individual damages are insufficient to achieve the goal of punishment and deterrence.<sup>293</sup>

## VI. CONCLUSION

236. The Summary Judgment Common Issues, each addressed above, can be justly adjudicated through the summary judgment procedure. The relevant factual basis can be accurately and fairly gleaned from the existing evidentiary record. Here, many of the documents speak for themselves. Based on the evidentiary record before this Court,

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<sup>291</sup> Affidavit of Sarah Hayes, filed October 21, 2021

<sup>292</sup> *Hilltop Group Ltd v Katana*, [2002 CanLII 9075](#) (ONSC) at para 10

<sup>293</sup> *Hill v Church of Scientology of Toronto*, [1995 CanLII 59 \(SCC\)](#), [1995] 2 SCR 1130 at para 196

Heerema and the Stampede Defendants have no defence to the claims advanced by the Class. The Summary Judgment Common Issues are not genuine issues for trial.

**VII. RELIEF REQUESTED**

237. The Plaintiff and the Class seek an order granting:

- a) Judgment in respect of each of the Summary Judgment Common Issues; and
- b) Enhanced costs of this Application.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of June, 2023.

**JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**

Per:



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For Carsten Jensen, KC, FCI Arb, Kajal Ervin, Gavin Price, Cassandra Sutter and William Katz, Counsel to the Representative Plaintiff and to the Class

## VIII. LIST OF AUTHORITIES

1. *Hryniak v Mauldin*, [2014 SCC 7](#)
2. *TLA Food Services Ltd v 1144707 Alberta Ltd*, [2011 ABQB 550](#)
3. *Alberta Rules of Court*, [AR 124/2010](#), Rule 7.3
4. *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, [2019 ABCA 49](#)
5. *Park Avenue Flooring Inc v EllisDon Construction Services Inc*, [2019 ABQB 73](#)
6. *Whitcourt Power Limited Partnership v Elliott Turbomachinery Canada Inc*, [2015 ABCA 252](#)
7. *1214777 Alberta Ltd v 480955 Alberta Ltd*, [2014 ABQB 301](#)
8. *Canada (Attorney General) v Lameman*, [2008 SCC 14](#)
9. *MacCabe v Westlock Roman Catholic Separate School*, [2001 ABCA 257](#)
10. *Seed v Ontario*, [2012 ONSC 2681](#)
11. *Jones v Tsige*, [2012 ONCA 21](#)
12. *Mustapha v Culligan of Canada*, [2008 SCC 27](#)
13. *WP v Alberta (No 2)*, [2013 ABQB 296](#)
14. *Rumley v British Columbia*, [2001 SCC 69](#)
15. *LR v British Columbia*, [1999 BCCA 689](#)
16. *LeFrancois v Guidant Corporation*, [2008 CanLII 15770](#) (ONSC)
17. *CO v Williamson*, [2020 ONSC 3874](#)

18. *SM v Alberta (Child, Youth and Family Enhancement Act, Director)*, [2019 ABQB 972](#)
19. *Drapaka v Patel*, [2013 ABQB 247](#)
20. *Dow Chemical Canada ULC v NOVA Chemicals Corporation*, [2021 ABQB 784](#)
21. *White Burgess Langille Inman v Abbott and Haliburton Co*, [2015 SCC 23](#)
22. *Frame v Smith*, [1987 CanLII 74](#) (SCC), [1987] 2 SCR 99
23. *B(KL) v British Columbia*, [2003 SCC 51](#)
24. *G(ED) v Hammer*, [1998 CanLII 15064](#) (BCSC), [1998] BCJ No 99
25. *J(O) (Next Friend of) v Strathcona-Tweedsmuir School*, [2010 ABQB 559](#)
26. *Bazley v Curry*, [1999] 2 SCR 534, [1999 CanLII 692](#) (SCC)
27. *Jacobi v Griffiths*, [1999] 2 SCR 570, [1999 CanLII 693](#) (SCC)
28. *Rich v Bromley Estate*, [2011 NLTD 16](#)
29. *CS (Next friend of) v Boy Scouts of Canada*, [2002 ABQB 152](#)
30. *R v Friesen*, [2020 SCC 9](#)
31. *Hill v Church of Scientology*, [1995] 2 SCR 1130, [1995 CanLII 59 \(SCC\)](#)
32. *Hilltop Group Ltd v Katana*, [2002 CanLII 9075](#) (ONSC)

## **IX. APPENDIX "A"**

1. CSF000023, "Speaking Notes"

## Appendix "A"

### Speaking Notes

Susan Garnett to conduct the meeting with Karen Connellan present

- Thank-you for coming –introductions of participants and their roles and titles at the Calgary Stampede.
- We have invited you here to inform you of some serious allegations that have been made involving an individual who worked with the Young Canadians.
- On Wednesday January 29<sup>th</sup> at 3pm we were made aware of an allegation involving inappropriate communications and behaviour by an employee towards a student.
- We were also told at that time that Calgary Police Services had been notified .
- None of these allegations have been proven and we do not know if they are true.
- The individual was immediately suspended and was removed from the premises within 30 minutes of the Stampede being informed.
- The Stampede spoke with Calgary Police Services the next morning and we are supporting them in their investigation.
- We also began our own internal investigation.
- That investigation has led to the names of students who may have been victims of inappropriate communications and or behaviours by the former employee.
- The names of the students involved will remain confidential- we do not know if these students have been impacted or not but we are informing those whose names came up.
- We feel that we have the responsibility to inform you that you are one of those students
- We know that this may be very distressing.
- We have brought in support professionals who are here on site to assist you.
- We are going to give you contact information for Calgary Police Services in case you have feel that you any information that you may want to share with police .
- We will be sending a letter today to all students to inform them and their families of the situation. You will not be identified. Here is a copy of the letter that will be sent.
- We can try to answer any questions you have the best we can but there are privacy limitations on what information can be provided at this time.
- Most importantly, we need you to know that the Stampede cares about you first and foremost. Your participation in the program is important to us and nothing you will say or do will change that. The Young Canadians are a great group – the program is strong, nothing is going to happen to The Young Canadians.
- You can remain in this office as long as you need to.
- Is there someone that you want to call or that we can call for you?
- Do you have transportation- can we arrange it for you?