

2024 01G CP 0064
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION

BETWEEN:

INNU NATION INC., GREGORY RICH, MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN

PROPOSED REPRESENTATIVE
PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

FIRST DEFENDANT

AND:

HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR

SECOND DEFENDANT

Brought under the *Class Actions Act*, SNL 2001, c C-18.1

AMENDED STATEMENT OF CLAIM

I. Definitions

1. In this Statement of Claim, in addition to terms defined elsewhere herein, the following terms have the following meanings:

- a) “Class” and “Class Members” means members of the **Survivor Class** and members of the **Innu Governments Class**.

- b) **“Class Period”** means the period from and including March 31, 1949 and ending on August 1, 2009.
- c) **“Indian Day Schools”** means such schools whose students were or are eligible for compensation through the Federal Indian Day Schools Settlement Agreement, which received court approval in 2019.
- d) **“Indian Residential Schools”** means such schools whose students were eligible for compensation through the Indian Residential Schools Settlement Agreement, which received court approval in 2006.
- e) **“Innu”** means Innu of Labrador, as a people inclusive of its members, who are anyone registered or eligible to be registered as a member of Sheshatshiu Innu First Nation or of Mushuau Innu First Nation, or who is otherwise a member of the Innu Nation of Labrador.
- f) **“Innu Day Schools”** means such schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish, that operated during the Class Period.
- g) **“Innu Governments Class”** means the Innu government organizations that formally represent the Innu of Labrador, this class being composed of the Innu Nation, Sheshatshiu Innu First Nation, and Mushuau Innu First Nation.
- h) **“NL Residential Schools”** means such schools and facilities whose students were eligible for compensation through the Newfoundland and Labrador Residential Schools Settlement Agreement, which received court approval in 2016.

- i) “**Survivor Class**” and “**Survivor Class Members**” means all Innu persons wherever they may reside or be domiciled, who attended an **Innu Day School** during the **Class Period** or such persons as the Court otherwise recognizes or directs.

II. Parties

2. The Proposed Representative Plaintiff, Innu Nation Inc. (“Innu Nation”), acts as the Representative Plaintiff for the Innu Governments Class. The Innu Governments Class represents the collective interests and authority of the Innu as a whole and within each Innu community.
3. Innu Nation is a not-for-profit corporation incorporated under the laws of Newfoundland and Labrador to organize and unite the Innu, act on their behalf, and represent their rights and interests. It is authorized to, among other things, protect, promote, and advance the legal, constitutional, and Aboriginal rights of the Innu, including their Aboriginal rights protected under s. 35 of the *Constitution Act, 1982*. It represents the Innu as a collective, including in land claim and self-government negotiations with Canada and the Province. Its head office is situated at Sheshatshiu, NL A0P 1M0.
4. The Innu of Labrador are a people with a population of approximately 3200 who now primarily reside in two communities: Natuashish, a reserve set aside for

Mushuau Innu First Nation, and Sheshatshiu, a reserve set aside for Sheshatshiu Innu First Nation. The members of these First Nations are also members of Innu Nation. In 2002 these First Nations were declared to have the capacity of bands within the meaning of the *Indian Act*, RSC 1985, c I-5; their existence as Innu government organizations pre-dates 2002 and goes back many generations. The Innu are an Aboriginal people within the meaning of s. 35 of the *Constitution Act*, 1982, and an Indigenous people within the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples*.

5. Gregory Rich lives in the community of Natuashish and has lived in Davis Inlet and Natuashish at all times material to the within action. In or about 1981, Nukum Mani Shan School was built in Davis Inlet. Gregory Rich attended Nukum Mani Shan School from approximately 1981 to 1984, after which he left the community to attend high school in Happy Valley-Goose Bay. Prior to the construction of Nukum Mani Shan School, there was a variety of other settings where schooling took place in Davis Inlet. He attended at the available school settings in Davis Inlet from approximately 1973 to 1981.

6. Marie Martha Andrew lives in the community of Sheshatshiu and has at all times material to the within action. Peenamin McKenzie School in Sheshatshiu was built in or about 1968. Marie Martha attended Peenamin McKenzie School from 1968 to

1975. Prior to the construction of Peenamin McKenzie School, there was a variety of other settings where schooling took place in Sheshatshiu. She attended at the available school settings in Sheshatshiu from approximately 1965 to 1968.

7. Magdaline (alternatively spelled Madeline) Benuen lives in the community of Sheshatshiu and has at all times material to the within action. She attended Peenamin McKenzie School in Sheshatshiu from approximately 1968 to 1975.
8. The Proposed Representative Plaintiffs Gregory Rich, Marie Martha Andrew, and Magdaline Benuen propose to act as Representative Plaintiffs on behalf of the Survivor Class which includes every person who:
 - a. is or was registered or eligible to be registered as a member of Sheshatshiu Innu First Nation or of Mushuau Innu First Nation, or who is or was otherwise a member of the Innu Nation of Labrador, wherever they may reside or be domiciled; and
 - b. attended a school in Sheshatshiu, Old Davis Inlet, Davis Inlet, and/or Natuashish, anytime from and including March 31, 1949 and ending on August 1, 2009.
9. The Proposed Representative Plaintiff Innu Nation proposes to act as the Representative Plaintiff on behalf of the Innu Governments Class which includes the government organizations that formally represent the Innu of Labrador, this

class being composed of the Innu Nation, Sheshatshiu Innu First Nation, and Mushuau Innu First Nation.

10. The First Defendant, the Attorney General of Canada (hereinafter referred to as “Canada”) represents His Majesty in right of Canada and the Departments of Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) and Indigenous Services Canada (ISC) and their predecessor departments, who at all times material to this matter, had exclusive legislative authority for “Indians” under s. 91(24) of the *Constitution Act, 1867*, and were otherwise responsible for the welfare of all Indigenous peoples, including the Class Members. Canada who participated in funding and in other roles with respect to funded, allowed, or was otherwise involved in the Innu Day Schools as further set out below. Canada’s address for service is Atlantic Regional Office, Department of Justice Canada, Suite 1400, Duke Tower, 5251 Duke Street, Halifax, Nova Scotia, B3J 1P3. In accordance with rule 6.07(3), and based on the facts pleaded herein, this proceeding is brought: in respect of a breach of contract committed within the province (rule 6.07(g)); and founded on a tort committed within the province (rule 6.07(h)).

11. The Second Defendant, His Majesty in right of Newfoundland and Labrador (hereinafter referred to as the “Province”) represented by the Minister of Education and Early Childhood Education, the Minister for Children, Seniors and Social Development, and their predecessor Ministers, was at all times material to this

matter responsible for the education and social development of children in the Innu communities of Newfoundland and Labrador under s. 93 of the *Constitution Act, 1867* and Term 17 of *The Newfoundland Act, 1949*, and allowed, established, operated, designated, funded, oversaw, regulated, administered, or was otherwise involved in the Innu Day Schools as further set out below. The Province's address for service is Civil Division, Department of Justice & Public Safety, P.O. Box 8700, Confederation Building, 4th Floor, East Block, St. John's, NL, A1B 4J6.

III. Innu Day Schools

12. From the time Newfoundland and Labrador joined the Canadian federation in 1949 until the delivery of education shifted to the Innu school board of Mamu Tshishkutamashutau Innu Education (MTIE) in September 2009, the Province oversaw non-residential Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish to serve the local Innu population. The Innu Day Schools were established and administered pursuant to a series of formal and informal agreements between the Province and Canada, which started when the Province joined Confederation and continued until September 2009. The Innu Day Schools were administered indirectly with the support of Canada and the Province until in or around the 1960s, after which point administration of the Innu Day Schools was carried out by various school boards, all of which were appointed by, established

by, creations and were agents of the Province for which they and Canada are wholly responsible.

13. Canada owed the Class Members the highest fiduciary, constitutional, statutory, and common law duties. Although Canada was not responsible for the day-to-day operations of the Innu Day Schools, the fiduciary, constitutional, statutory, and common law duties between Canada and the Innu of Newfoundland and Labrador arose at Confederation in 1949. On November 21, 2002, by Order in Council, the Innu were granted status as First Nations under the *Indian Act*, with reserves being established. By virtue of the special relationship between Innu and Canada, being one of trust, reliance, and dependence, the Class Members were owed a duty by Canada to provide an education in an environment free of abuse, neglect, and maltreatment, and that honoured and protected their culture. Canada was bound to act in accordance with the Honour of the Crown and had a duty to exercise diligence in ensuring education was delivered in a way that protected or, alternatively, did not cause harm to Innu culture and language and the Innu right to transmit these traditions from one generation to the next.

14. Innu children, specifically, members of the Survivor Class who attended Innu Day Schools, were regularly and frequently subjected to abuse while under the control and supervision of those who were responsible for their safety and care. In particular,

they were subjected to systematic abuse including but not limited to assaults and batteries, misconduct of a sexual nature, neglect, and maltreatment, and were generally deprived of the essential components of a healthy childhood. These physical, sexual, emotional, psychological, cultural, and spiritual abuses were systematically perpetrated upon them by teachers, adults in positions of authority, and/or other students. Innu children who attended Innu Day Schools were beaten and were in constant fear of being assaulted, both physically and sexually. Some parents passed away never knowing about the abuse their children were experiencing.

15. At all times during the Class Period, the attendance at Innu Day Schools was compulsory or otherwise forced upon members of the Survivor Class by Canada and the Province, through statute and/or intimidation and coercion by their agents and the organizations and individuals to which Canada and the Province delegated the implementation and operation of the Innu Day Schools. They Innu children were generally unable to tell their parents of the abuse they were suffering, out of intimidation, fear, and threat of reprisal and further abuse. Many parents passed away never knowing about the abuse their children were experiencing.

16. The implementation of the Innu Day Schools was a cornerstone of colonial efforts to force the Innu to settle permanently in villages and end their way of life on the land, efforts which Canada and the Province supported or condoned. Innu children at the

Innu Day Schools returned to their homes at the end of the school day having been taught that the cultural beliefs, values, and teachings of their parents, grandparents, and elders were of no value. The children were taught to be ashamed of their Innu culture, spirituality, identity, language, and practices. The Innu Day Schools fostered an institutionalized culture that was hostile and harmful to Innu culture and spiritual practice, including the Innu way of life. Innu language and culture were strictly suppressed and consistently denigrated by the school administrators, teachers, and other staff, and were treated as inherently inferior. They were forced to discard their Innu identities. The Innu Day Schools attempted to replace the Innu way of life, traditions, culture, language, and spiritual practices with the identity and culture imposed upon the Innu by Canada and the Province.

17. Through the establishment and operation of the Innu Day Schools, Canada and the Province allowed and/or failed to curtail the systematic abuses from occurring, and supported and encouraged the undermining of Innu values, cultures, and practices that were critical to the very existence of the Innu as a group. Innu children were deprived of their heritage, their support networks, and their way of life. They were forced to adopt a foreign language and culture, and were severely punished for non-compliance. The Innu were robbed of the opportunity to govern the education of their children and pass on their traditions, values, and language in a way that would ensure future generations would maintain a foundational and healthy relationship with who they are as Innu people.

18. As it was with Indian Day Schools, Indian Residential Schools, and NL Residential Schools, the purpose of establishing Innu Day Schools was to facilitate the assimilation of Innu into the culture which Canada and in this case the Province wished to impose upon them, resulting in the elimination of their traditional language, culture, religion, and way of life. The intent of Innu Day Schools was not primarily or only to educate them, but rather, to break the relationship between Innu and their culture and identity. Canada and the Province set out and intended to cause the damage which has harmed the Proposed Representative Plaintiffs and the Class Members, or were negligent, ~~and~~ reckless, and/or wilfully blind as to that damage.

19. Through the pursuit of their education policy, which was a policy of assimilation, Canada and the Province in whole or in part, sought to eradicate what they saw as a problem. Canada and the Province sought to relieve themselves of their moral, legal, and financial responsibilities for Innu, the expense and inconvenience of dealing with cultures, languages, habits, and values different from Canada's and the Province's predominant Euro-Canadian heritage, and the challenges arising from land claims, treaties, and other obligations toward Innu and other Indigenous peoples. Through the implementation of these education policies, Canada and the Province severely damaged the identities of those Innu children who attended Innu Day Schools, as well as subsequent generations of Innu, causing irreversible harm to individuals, families, and communities.

20. The Truth and Reconciliation Commission on Indian Residential Schools, in its Final Report, Part 1, Volume 1, states at p. 200:

[...] statements from government and church officials make it abundantly clear that the overall purpose of residential schooling was to separate children from their parents and their culture so they could be “civilized” and “Christianized.” Once so transformed, they could be enfranchised. They would no longer be “Indians,” either culturally or legally, and would have no special claim on the state for support.

21. This intentional assumption of control over Indigenous children in Indian Residential Schools applied equally to students at Innu Day Schools. The goal was to strip these children of their culture, language, and identity, and end the Innu way of life, thereby removing their ability to pass on to succeeding generations their spiritual, cultural, and linguistic heritage.

22. On June 11, 2008, Prime Minister Stephen Harper on behalf of Canada, delivered an apology that acknowledged the harm done by Canada’s Indian Residential Schools:

Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought,

as it was infamously said, “to kill the Indian in the child”. Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.

23. Later, on November 24, 2017, Prime Minister Justin Trudeau apologized to students of NL Residential Schools. Neither of those apologies applied to Innu Day Schools. No apology has been made in respect of Innu Day Schools, nor have Canada or the Province provided compensation to the survivors of Innu Day Schools and their communities.

24. The Truth and Reconciliation Commission and Prime Minister Harper, on behalf of Canada, acknowledged the extreme miscarriage of justice through the settlement of the claims of those who attended Indian Residential Schools. Subsequently, a settlement was reached in 2019 with the many Indigenous persons in Canada who attended Indian Day Schools. However, both the Indian Residential Schools settlement and Indian Day Schools settlement excluded the Innu of Labrador by their exclusion of Innu Day Schools from their lists of eligible schools.

25. In 2023 an additional settlement was reached by Canada with the First Nations whose members attended Indian Residential Schools, known as the Band Reparations or Band Class settlement. However, it excluded the Innu of Labrador because the Innu Day Schools are not in the eligible lists of Indian Residential Schools.

26. The physical and sexual abuse, pain, ~~and~~ distress, and the damages to Indigenous ways of life, language, learning, culture, and heritage, that have been acknowledged by Canada, were also suffered by students who were forced to attend Innu Day Schools, their descendants, and their communities. Innu who were forced to attend Innu Day Schools suffered these same abuses as children. For many of them, as they became parents, they were, in the same way, unable to protect their own children from suffering the same experiences. Yet, they were denied an apology, compensation, or any kind of reconciliation.

27. In its Final Report, the Truth and Reconciliation Commission specifically acknowledged the exclusion of certain students from the Indian Residential Schools Settlement Agreement and the lawsuits against Canada based upon these exclusions. At page 170 of *Honouring the Truth, Reconciling the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*, the Commission “urges all parties to seek expedited means of resolving this litigation.” The Commission issued a call to action which reads as follows:

Call to Action

29) *We call upon the parties and, in particular, the federal government, to work collaboratively with the plaintiffs not included in the Indian Residential Schools Settlement Agreement to have disputed legal issues determined expeditiously on an agreed set of facts.*

This statement of the Truth and Reconciliation Commission rings particularly true in this case. Call to Action 29 has not been achieved with respect to Innu Day Schools.

IV. The Claims

Canada's Breach of Duties

28. Canada owed the highest fiduciary, constitutional, statutory, and common law duties to Class Members, including sui generis, per se, and/or ad hoc fiduciary duties. Canada had the obligation to uphold the Honour of the Crown in all of its ~~dealings with Innu and Innu Governments Class~~. Canada was responsible, during the Class Period for:

- a) the promotion of the health, safety, and well-being of Innu as Indigenous persons in Canada;
- b) the provision of resources including funding, ~~supporting Innu~~, and services to support the Innu, including educational services;
- c) the management, operation, and administration of CIRNAC and ISC, and predecessor departments;
- d) decisions, procedures, regulations promulgated, operations, and actions taken by CIRNAC and ISC, and predecessor departments, as well as the decisions taken by Ministers and other Departments, and their respective ~~employees, servants, officers, and~~ agents in Canada;

- e) the selection, control, training, supervision, and regulation of the ~~designated operators~~ organizations and individuals to which Canada delegated the implementation and operation of the Innu Day Schools and their agents, including administrators, teachers, and staff; and their employees, servants, officers, and agents and for
- f) the care and education, control, and well-being of Aboriginal peoples sent to an Innu Day School during the Class Period;
- g) the provision of educational services to the Class Members, pursuant to the provisions of the *Indian Act*;
- h) administration of the *Indian Act*, as amended, and its predecessor statutes as well as all regulations promulgated under the *Indian Act* and its predecessors;
- i) inspection and supervision of the Innu Day Schools and all activities that took place and for full and frank reporting to Departmental officials and to the families with respect to conditions in all Innu Day Schools and all activities that took place therein;
- j) preserving, promoting, maintaining, and not interfering with Aboriginal rights, including the rights of the Innu to learn, retain and practice, exercise, develop, use, teach, transmit, and revitalize their culture, ~~spirituality, and language, and traditions~~ and the right to fully learn their culture, spirituality, language, and traditions from their families, extended families, and ~~communities~~ (collectively, "Innu Language and Culture rights") and the right of the Innu to control the education and welfare of their children;

- k) ensuring its dealings with Innu were at all times in accordance with the Honour of the Crown as detailed below; and
- l) preferring the interests of Innu to its own interests, in recognition of the fiduciary duty owing by the Crown to Aboriginal peoples.

29. Canada was negligent and in breach of its obligations flowing from the Honour of the Crown and its fiduciary, statutory, constitutional, and common law duties to the Class Members, either on its own or in conjunction with the Province, and such breaches include, but are not limited to, the following:

- a) it allowed a systemic program of forced integration of Innu children through the institution of Innu Day Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional, and physical injury to Class Members;
- b) it failed to properly screen and select the organizations and individuals which it funded and to which it delegated (implicitly or explicitly, and directly or indirectly) the implementation of the Innu Day School system;
- c) it failed to properly monitor and ~~properly~~ oversee the provision of funding it ~~provided~~ to the Province with respect to the Innu Day Schools, ~~knowing or having ought to have known that the operation of those Innu Day Schools was in conflict with its fiduciary duty to protect the safety and cultural identity of the Class Members;~~

- d) it failed to take proper steps to ameliorate the harmful effects of the Innu Day Schools;
- e) it failed to adequately supervise and control the Innu Day Schools and its agents, including administrators, teachers, and non-teaching staff, operating under its jurisdiction;
- f) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to, or were led to, expect from Innu Day Schools or of any adequate education;
- g) it failed to design, construct, maintain, and operate the Innu Day School buildings, which were not adequate for the purpose for which they were intended and detrimental to the emotional, psychological, and physical health of the Survivor Class;
- h) it failed to respond appropriately, or at all, to disclosure of abuses in Innu Day Schools;
- i) it permitted Survivor Class Members to be assaulted and battered, including but not limited to sexual assaults and sexual batteries;
- j) it permitted an environment which allowed student-on-student abuse;
- k) it failed to inspect or audit the Innu Day Schools adequately, or at all;
- l) it failed to ~~implement an adequate system of evaluation, monitoring, and control of~~ properly qualify, evaluate, supervise, and control teachers, administrators, and non-teaching staff of Innu Day Schools;

- m) for most of the Class Period, it failed to recognize Survivor Class Members as Indians under the *Indian Act*, and thus failed to recognize its duty to the Survivor Class Members to the same entitlements as other Indians in Canada;
- n) it failed to close the Innu Day Schools and/or otherwise protect and care for those persons confined therein, when it knew, or ought to have known, that it was appropriate and essential to do so in order to preserve the health, welfare, and well-being of the Survivor Class Members;
- o) it failed to protect the Survivor Class Members from emotional, psychological, physical and/or sexual abuse while attending the Innu Day Schools; and
- p) it conducted Innu education in a way that interfered with the rights of the Innu, including their Innu Language and Culture rights ~~to retain and exercise their culture, spiritual practices, language, and traditions, and the right of the Innu to control the education and welfare of their children,~~ and in doing so, Canada infringed ~~breached~~ the Class Members' Aboriginal Rights, and caused the Class Members cultural, linguistic, spiritual, and social harm, and negatively affected child welfare.

Province's Breach of Duties

30. The Province allowed, created, designed, established, funded, operated, supervised, controlled, maintained, oversaw, administered, and/or regulated all Innu Day Schools. The Province owed the highest fiduciary, constitutional,

statutory, and common law duties to Class Members, including sui generis, per se, and/or ad hoc fiduciary duties. The Province was responsible, during the Class Period for:

- a) the promotion of the health, safety, and well-being of Innu in the Province;
- b) the provision and allocation of resources including funding and services to support the Innu including educational services;
- c) the management, operation, and administration of the Department of Education and Early Childhood Education (hereinafter "EECE") and the Department of Children, Seniors and Social Development (hereinafter "CSSD") and their predecessor Departments;
- d) decisions, procedures, regulations promulgated, operations, and actions taken by the Departments of EECE and CSSD, as well as the decisions taken by Ministers of these Departments, and their respective ~~employees, servants, officers, and agents,~~ including school boards, in the Province;
- e) the selection, control, training, supervision, and regulation of the ~~designated operators~~ organizations and individuals to which the Province delegated the implementation and operation of the Innu Day Schools, and their agents, including administrators, teachers, and staff ~~and their employees, servants, officers, and agents and for the care and education, control, and well-being of Innu attending an Innu Day School;~~
- f) the provision of all educational services and opportunities to the Class Members;

- g) the care, ~~and supervision,~~ education, control, and well-being of all members of the Survivor Class while they were in attendance at an Innu Day School;
- h) the provision of educational and recreational services to the Survivor Class while in attendance at Innu Day Schools;
- i) inspection and supervision of the Innu Day Schools and all activities that took place therein and for full and frank reporting to Departmental officials and to the families with respect to conditions in all Innu Day Schools and all activities that took place therein;
- j) preserving, promoting, maintaining, and not interfering with Aboriginal rights, including Innu Language and Culture rights ~~the Innu right to retain and practice their culture, spirituality, language, and traditions and the right to fully learn their culture, spirituality, language, and traditions from their families, extended families, and communities~~ and the right of the Innu to control the education and welfare of their children;
- k) ensuring its dealings with Innu were at all times in accordance with the Honour of the Crown as detailed below; and
- l) preferring the interests of Innu to its own interests, in recognition of the fiduciary duty owing by the Province to Aboriginal peoples.

31. The Province was negligent and in breach of its obligations flowing from the Honour of the Crown and its fiduciary, statutory, constitutional, and common law

duties to the Class Members, and the Province's breaches include, but are not limited to, the following:

- a) it allowed a systemic program of forced integration of Innu children through the institution of Innu Day Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional, and physical injury to Class Members;
- b) it failed to properly screen and select the organizations and individuals to which it delegated the implementation of the Innu Day School system;
- c) it failed to properly monitor, ~~and properly,~~ oversee, and allocate the provision of funding ~~it made for the Innu Day Schools, knowing or having ought to have known that the operation of those Innu Day Schools was in conflict with its fiduciary duty and other obligations to protect the safety and cultural identity of the Class Members;~~
- d) it failed to take proper steps to ameliorate the harmful effects of the Innu Day Schools;
- e) it failed to adequately supervise and control Innu Day Schools and agents operating under its jurisdiction;
- f) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to, or were led to, expect from Innu Day Schools or of any adequate education;
- g) it failed to design, construct, maintain, and operate the Innu Day School buildings, which were not adequate for the purpose for which they were

intended and detrimental to the emotional, psychological, and physical health of the Survivor Class;

- h) it failed to respond appropriately, or at all, to disclosure of abuses in Innu Day Schools;
- i) it permitted Survivor Class Members to be assaulted and battered, including but not limited to sexual assaults and sexual batteries, at Innu Day Schools or by persons employed by or whose access to victims was facilitated or empowered by Innu Day Schools;
- j) it permitted an environment which allowed student-on-student abuse;
- k) it failed to inspect or audit the Innu Day Schools adequately, or at all;
- l) it failed to implement an adequate system of evaluation, monitoring, and control of teachers, administrators, and non-teaching staff of Innu Day Schools;
- m) it failed to close the Innu Day Schools and/or otherwise protect and care for those students therein, when it knew, or ought to have known, that it was appropriate and essential to do so in order to preserve the health, welfare, and well-being of the Survivor Class Members;
- n) it failed to protect the Survivor Class Members from emotional, psychological, physical and/or sexual abuse while attending the Innu Day Schools; and
- o) it conducted Innu education in a way that interfered with the rights of the Innu, including their Innu Language and Culture rights ~~to retain and~~

~~exercise their culture, spiritual practices, language, and traditions, and the~~
~~right of the Innu to control the education and welfare of their children, and~~
in doing so, the Province infringed ~~breached~~ the Class Members' Aboriginal
Rights, ~~and~~ caused the Class Members cultural, linguistic, spiritual, and
social harm, and negatively affected child welfare.

Infringement Breach of Aboriginal Rights

32. The Class Members are among the Aboriginal peoples of Canada within the meaning of the *Constitution Act, 1982*, s. 35. These Class Members had existing Aboriginal rights at all relevant times, rights which were given constitutional protection in 1982 pursuant to the *Constitution Act, 1982*, s. 35.

33. The Class Members exercised laws, customs, and traditions integral to their distinctive societies prior to contact with Europeans. In particular, and from time immemorial prior to contact with Europeans, the Innu communities have sustained their distinctive cultures through their own way of life, speaking their language Innu-aimun, ~~and~~ practicing their customs and traditions, and freely transmitting all of this from one generation to the next. They hold Aboriginal rights, including Innu Language and Culture rights and the right to control the education and welfare of their children.

34. The infringement of ~~interference~~ in the Aboriginal rights of the Survivor Class Members substantially interfered with their ability to exercise their rights, caused them undue hardship, constituted an unreasonable limitation on their rights, and denied them their preferred means of exercising their rights. This has resulted in losses being suffered by the Survivor Class, their descendants, and their communities as a whole, as represented by the Innu Governments Class. This result was integral to the assimilatory goal of Canada and the Province.

35. Both Canada and the Province had at all material times, and continue to have, a duty not to impair the Class Members' Aboriginal rights, including the exercise of their spiritual practices, languages, traditions, and cultures. Both Canada and the Province have failed in these duties, without justification.

Sui Generis Fiduciary Duty and Honour of the Crown

36. Throughout the Class Period, the Honour of the Crown was engaged and the Crowns' sui generis fiduciary obligations arose as a result of the Crowns taking on their respective roles regarding education and Indigenous peoples in 1949 at Confederation, and in allowing, establishing, operating, designating, funding, overseeing, regulating, administering, or through their other involvement in the Innu Day Schools as described above.

37. The Province and Canada undertook to educate Innu children, and assumed discretionary control over the education of Innu children. When the Province and Canada proceeded to undertake and control the education of Innu children, this necessarily impacted the Aboriginal rights of the Innu, including their Innu Language and Culture rights and the right of the Innu to control the education and welfare of their children. These rights are central to the Innu as a people and constitute cognizable Aboriginal interests. This gave rise to a *sui generis* fiduciary duty and duties flowing from the Honour of the Crown for both the Province and Canada.

38. The Crowns' *sui generis* fiduciary duties required that the Province and Canada uphold their obligations of loyalty, good faith, and full disclosure in accordance with their fiduciary obligations. Paragraphs 29 and 31 above enumerate the many ways that the Province and Canada exercised their control without loyalty or good faith.

39. In undertaking to educate Innu children, and exercising control over their education, the Province and Canada were required to exercise this control in a way that would advance the reconciliation of asserted Crown sovereignty with Innu rights and interests. The Honour of the Crown required that the Province and Canada exercise diligence in ensuring education was delivered in a way that

protected Innu Language and Culture rights and protected the welfare of Innu children. In the alternative, the Honour of the Crown required that the Province and Canada exercise diligence in ensuring education was not delivered in a manner that harmed Innu Language and Culture rights and protected the welfare of Innu children. Paragraphs 29 and 31 above enumerate the many ways that these obligations were breached by both the Province and Canada.

V. Damages

40. As a consequence of the negligence and/or breaches of fiduciary, constitutional, statutory, and/or common law duties, including the infringements ~~breaches~~ of Aboriginal rights and the breaches of duties flowing from the Honour of the Crown, by Canada and the Province and their agents, for whom Canada and the Province are vicariously liable, Survivor Class Members have suffered injury and damages including but not limited to:

- a) assault and battery;
- b) sexual assaults and batteries;
- c) severe emotional, psychological pain and suffering;
- d) loss of language, culture, spirituality, and Innu identity;
- e) interference in the exercise of their Aboriginal rights;
- f) an impairment of mental and emotional health, in some cases amounting to a permanent disability;

- g) an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;
- h) a propensity to addiction;
- i) alienation from community, family, spouses, and children;
- j) harm to parenting and family functioning;
- k) an impaired ability to enjoy and participate in recreational, social, cultural, athletic, and employment activities;
- l) an impairment of the capacity to work and a permanent impairment in the capacity to earn income;
- m) deprivation of an education, including basic literacy and skills necessary to obtain gainful employment;
- n) sexual dysfunction, confusion, and disorientation;
- o) depression, anxiety, and emotional dysfunction;
- p) suicidal tendencies and ideation;
- q) loss of self-esteem and feelings of degradation, shame, fear, humiliation, indignity, and loneliness, both as children and as adults;
- r) nightmares, flashbacks, and sleeping problems;
- s) ~~fear, humiliation, and embarrassment as a child and as an adult;~~
- t) impaired ability to express emotions in a normal and healthy manner;
and
- u) loss of ability to participate in, or fulfill, cultural practices and duties;
- v) propensity to criminal activity resulting in periods of incarceration; and

w) loss of the opportunity to experience a normal childhood.

41. As a consequence of the negligence and/or breaches of fiduciary, constitutional, statutory, and/or common law duties, including the infringements ~~breaches~~ of Aboriginal rights and the breaches of obligations flowing from the Honour of the Crown, by Canada and the Province and their agents, for whom Canada and the Province are vicariously liable, the Innu Governments Class Members have suffered injury and damages as a result of the direct impacts from the Innu Day Schools and from the high levels of intergenerational trauma within the Innu communities flowing from the harms caused to the Survivor Class from the Innu Day Schools. The resulting losses include but are not limited to:

- a. higher levels of addictions, mental health challenges, suicide, crime rates, and child protection intervention;
- b. labour pool impacts within the Innu communities due to intergenerational trauma, both from its direct impact and its impacts on educational attainment, causing losses in economic vitality and harms to the functioning of the Innu Governments Class as organizations; and
- c. loss of ability to fully exercise Aboriginal rights collectively, including losses to language, culture, teachings, spiritual practices, land-based practices, functioning of self-government, and loss to pride and integrity in the sense of collective identity.

42. The Proposed Representative Plaintiffs repeat the foregoing and state that Canada failed to take action to remedy harm and to assist and reconcile with Class Members, despite Call to Action 29 made by the Truth and Reconciliation Commission, and despite settling several other actions based on parallel circumstances, notably with respect to Indian Residential Schools, NL Residential Schools, and Indian Day Schools plus the Band Reparations settlement.

43. The Proposed Representative Plaintiffs repeat the foregoing and state that during the time when Class Members attended Innu Day Schools, they were punished for using their traditional languages and were made ashamed of their traditional language and way of life. Consequently, by reason of the attendance at Innu Day Schools, the Class Members' ability to speak their traditional languages and practice their spiritual, religious, and cultural activities was seriously impaired. The Class Members were denied the ability to exercise and enjoy their Aboriginal rights, both individually and in the context of their collective expression within their communities.

44. The Proposed Representative Plaintiffs repeat the foregoing and state that the interference in the Aboriginal rights of the Class has resulted in the losses referred to above being suffered by their descendants and communities, a result which was integral to the assimilatory goal of Canada and the Province.

Punitive,~~Exemplary~~, and Aggravated Damages

45. The Proposed Representative Plaintiffs plead that Canada and the Province deliberately planned the Innu Day Schools and knew or ought to have known that Innu Day Schools would involve systemic eradication or denigration of the language, religion, and culture of Class Members. The actions were deliberate, malicious, and intended to cause harm, and in the circumstances, punitive,~~exemplary, and aggravated~~ damages are appropriate and necessary.

46. The Proposed Representative Plaintiffs plead that Canada and the Province and their agents, for which the defendants are vicariously liable, had specific knowledge of the systemic and widespread physical, psychological, emotional, cultural, and sexual abuses of Survivor Class Members that were occurring at Innu Day Schools.

47. ~~In the alternative,~~ The Proposed Representative Plaintiffs plead that both Canada and the Province were grossly negligent or negligent and/or willfully blind with respect to the abuses, amounting to conduct which is high-handed, oppressive, and highly reprehensible.

48. Despite this knowledge of the abuses, actual or imputed, Canada and the Province continued to operate the Innu Day Schools, and alloweded them to be operated, and

to support their operation, and took no reasonable steps to protect the ~~Survivor~~ Class Members from these severe abuses and the damages, both personal and intergenerational within the Innu communities, that arose as a result. In the circumstances, the failure to act on that knowledge and to protect vulnerable children in Canada and the Province's care amounts to a wanton and reckless disregard for their safety and renders ~~punitive, exemplary, and aggravated~~ damages, both appropriate and necessary.

49. The harm that resulted from Canada and the Province's conduct as described above resulted in the Survivor Class Members suffering grievous mental harm, including feelings of humiliation, indignity, degradation, and shame, which justifies an award of aggravated damages.

50. The Proposed Representative Plaintiffs plead that the Statement of Reconciliation and the Apology by Canada are admissions by Canada of many of the facts and duties set out herein and that they are supportive of ~~punitive, exemplary, and~~ aggravated damages.

51. At all material times, Canada owed the Class Members a special duty of care, good faith, honesty, and loyalty, pursuant to Canada's constitutional obligations towards Aboriginal peoples and especially Aboriginal children, who were particularly vulnerable. Canada breached those duties, causing severe harm.

52. Canada and the Province breached their fiduciary duties to act in the best interests of Innu, and in particular Innu children, and breached their duties to act in accordance with the Honour of the Crown.

53. The Proposed Representative Plaintiffs repeat the foregoing and further assert that the fiduciary, constitutional, statutory, and common law duties owed by the Defendants to the Plaintiffs were not, at law, delegable to other parties.

54. Any liability of third parties not attributable to the Defendants, directly or vicariously, is excluded from this action.

VI. Statutes Relied Upon

55. The Proposed Representative Plaintiffs plead and rely upon the following:

- a) *Class Actions Act*, SNL 2001, c C-18.1;
- b) *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5;
- c) *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
- d) *Indian Act*, RSC 1985, c I-5;
- e) *The Education Act, 1960*, SNL 1960, c 50, all amendments thereto, and all predecessor and all successor legislative regimes;
- f) *The Department of Education and Youth Act*, RSNL 1970, c 80, all amendments thereto, and all predecessor and all successor legislative regimes;

- g) The Newfoundland Act, 1949 (UK), 12 & 13 Geo VI, c 22, and all amendments thereto;
- h) *Schools Act, 1997*, SNL 1997, c S-12.2, all amendments thereto, and all predecessor and all successor legislative regimes;
- i) *Survival of Actions Act*, RSNL 1990, c S-32;
- j) *Judgment Interest Act*, RSNL 1990, c J-2;
- k) And such other legislation, if applicable, as this Honourable Court may allow.

VII. Relief Sought

56. The Proposed Representative Plaintiffs repeat the foregoing and therefore claim the following damages for which the Defendants are jointly and severally liable:

- a) special damages to be ascertained;
- b) general damages to be ascertained;
- c) aggravated damages to be ascertained;
- d) punitive damages to be ascertained;
- e) constitutional and/or reconciliatory damages to be ascertained;
- f) costs as may be awarded; and
- g) such further and other relief as Counsel for the Plaintiff may seek and this Honourable Court deems just.

57. The Proposed Representative Plaintiffs propose that this action be tried in the City of St. John's, in the Province of Newfoundland and Labrador.

AMENDED at the City of St. John's, in the Province of Newfoundland and Labrador, this 13th day of March, 2025.



WILLIAM A. F. HISCOCK
BUDDEN & ASSOCIATIES
Solicitors for the Representative Plaintiffs
Whose Address for Service is:
5 Hallett Crescent, Unit 4
St. John's, NL A1B 4C4
will@buddenlaw.com

AND

JUDITH RAE and JACLYN MCNAMARA
OLTHUIS KLEER TOWNSHEND LLP
Solicitors for the Representative Plaintiffs
Whose Address for Service is:
250 University Ave, 8th Floor
Toronto, ON M5H 3E5
jrae@oktlaw.com
jmcnamara@oktlaw.com

ISSUED at the City of St. John's, in the Province of Newfoundland and Labrador, this _____ day of _____, 2024.

**2024 01G CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION**

BETWEEN:

**INNU NATION INC., GREGORY RICH, MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN**

**PROPOSED REPRESENTATIVE
PLAINTIFFS**

AND:

ATTORNEY GENERAL OF CANADA

FIRST DEFENDANT

AND:

**HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR**

SECOND DEFENDANT

NOTICE TO THE FIRST DEFENDANT

You are hereby notified that the plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within Thirty (30) days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within the same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten days from the service of this notice upon you, then this proceeding will be stayed.

**TO: The First Defendant
Atlantic Regional Office
Department of Justice Canada
Suite 1400, Duke Tower, 5251 Duke Street
Halifax, NS B3J 1P3.**

**2024 01G CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION**

BETWEEN:

**INNU NATION INC., GREGORY RICH, MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN**

**PROPOSED REPRESENTATIVE
PLAINTIFFS**

AND:

ATTORNEY GENERAL OF CANADA

FIRST DEFENDANT

AND:

**HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR**

SECOND DEFENDANT

NOTICE TO THE SECOND DEFENDANT

You are hereby notified that the plaintiff(s) may enter judgment in accordance with the statement of claim or such order as, according to the practice of the Court, the plaintiff is entitled to, without any further notice to you unless within Ten (10) days, after service hereof upon you, you cause to be filed in the Registry of the Supreme Court of Newfoundland and Labrador at St. John's a defence and unless within the same time a copy of your defence is served upon the plaintiff(s) or the plaintiff(s) solicitor(s) at the plaintiff's solicitor(s) stated address(es) for service.

Provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$ (or such sum as may be allowed on taxation) for costs to the plaintiff(s) or the plaintiff's solicitors within ten days from the service of this notice upon you, then this proceeding will be stayed.

**TO: The Second Defendant
Government of Newfoundland and Labrador
Department of Justice, Civil Division
Confederation Building, 4th Floor, East Block
P.O. Box 8700
St. John's, NL A1B 4J6**

2024 01G CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION

BETWEEN:

INNU NATION INC., GREGORY RICH, MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN

PROPOSED REPRESENTATIVE
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FIRST DEFENDANT

AND:

HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR

SECOND DEFENDANT

Endorsements

RECEIVED on _____ the _____ day of _____,
2024.

This statement of claim and attached notice to defendant(s) was served by me on
the defendant(s), at _____, on _____ the _____ day of
_____, 2024, before the hour of _____ in the _____ noon.

Endorsed on _____ the _____ day of _____, 2024.

2024 01G CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR,
GENERAL DIVISION

BETWEEN:

INNU NATION INC., GREGORY RICH, MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN

PROPOSED REPRESENTATIVE
PLAINTIFFS

AND:

ATTORNEY GENERAL OF CANADA

FIRST DEFENDANT

AND:

HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND AND
LABRADOR

SECOND DEFENDANT

Affidavit of Service

I, _____ of _____,
_____, Newfoundland and Labrador, _____ make oath
(or affirm) and say that I did on _____, the _____ day of _____, 2024,
at approximately _____ .m. serve _____, with the within
statement of claim by leaving a true copy of the same with
_____ personally at _____, and that I
endorsed the date of service thereon on _____, the _____ day of
_____, 2024.

SWORN (OR AFFIRMED) to at _____ in the Province of
_____ this _____ day of _____, 2024,
before me
