

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

BEFORE THE HONOURABLE JUSTICE BROWNE, THE CASE MANAGEMENT
JUDGE

INTERLOCUTORY APPLICATION FOR CLASS CERTIFICATION

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2024 01G CP 0064
Date of Filing Documents:	
Name of Filing Party or Person:	Proposed Representative Plaintiffs
Application to which Document being filed relates:	Application pursuant to Rule 7A for Certification of Class Action
Statement of purpose of filing:	To Certify Class Action

(Inter Partes)

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(Inter Partes)

TO THE HONOURABLE JUSTICE BROWNE:

The Application of the Proposed Representative Plaintiffs hereby states as follows:

PROCEDURAL HISTORY:

1. The Statement of Claim in the matter 2024 01G CP 0064 was issued out of the Supreme Court of Newfoundland and Labrador on January 11, 2024.
2. Justice Browne has been assigned as the case management judge.

NATURE OF THE APPLICATION:

The Proposed Representative Plaintiffs seek the following:

CERTIFICATION

3. An Order certifying this action as a Class Proceeding.

CLASS AND CLASS REPRESENTATIVES

4. An Order certifying a class, the "Survivor Class", defined as every person who:
 - i. 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
 - ii. 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.
5. An Order certifying a class, the "Innu Governments Class", defined as 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.

6. An Order appointing Gregory Rich, Marie Martha Andrew, and Magdaline Benuen as the Representative Plaintiffs of the Survivor Class, whose suitability to act as Representative Plaintiffs is evidenced in their respective Affidavits.
7. An Order appointing Innu Nation as the Representative Plaintiff of the Innu Governments Class, whose suitability to act as a Representative Plaintiff is evidenced in the Affidavits of Prote Poker and George Rich.
8. An Order appointing the law firms of Budden & Associates and Olthuis Kleer Townshend LLP as counsel to the classes ("Class Counsel").

NATURE OF THE CLAIMS

9. An Order stating the nature of the claims asserted on behalf of the Class Members to include:
 - a. negligence;
 - b. breaches of fiduciary duties;
 - c. infringements of Aboriginal rights; and
 - d. breaches of duties flowing from the honour of the Crown,

committed by or on behalf of the Defendant Attorney General of Canada ("Canada") and/or the Defendant His Majesty the King in Right of the Province of Newfoundland and Labrador ("Province"); and

- e. any other claim the Court considers fair and just.

NATURE OF RELIEF SOUGHT IN CLASS ACTION

10. An Order stating the relief sought by the classes in the Class Proceedings to be as follows:

- a. a decision on all issues of the Defendants' liability;
- b. a decision on all remedies available to the Classes, including:
 - i. aggregate damages;
 - ii. aggravated damages;
 - iii. punitive damages;
 - iv. general damages;
 - v. constitutional damages;
 - vi. special damages;
 - vii. equitable compensation;
 - viii. declaratory relief;
 - ix. pre- and post-judgement interest under the *Judgment Interest Act*, RSNL 1990, c J-2;
 - x. costs; and

- xi. such further and other relief as this Honourable Court deems fair and just.

COMMON ISSUES

11. An Order stating the Common Issues to be:

- a. Did either Defendant owe a duty of care to the Survivor Class and/or the Innu Governments Class through their respective roles, as defined below, in relation to schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?

- i. For the purposes of this Order, the “respective roles” of the Defendants refers to:

- 1. for Canada, the inspection of, supervision of, and provision of resources (including funding and educational services) to schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish; and
 - 2. for the Province, allowing, creating, designing, establishing, funding, operating, supervising, controlling, maintaining, overseeing, and/or regulating schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish.

- b. If the answer to (a) is “yes,” did either Defendant breach the standard of care?

- c. Did either Defendant owe a fiduciary duty to the Survivor Class and/or the Innu Governments Class through their respective roles in relation to schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- d. If the answer to (c) is "yes," did either Defendant breach its fiduciary duty?
- e. Did either Defendant infringe the Aboriginal rights of the Survivor Class and/or the Innu Governments Class through their respective roles in relation to schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- f. If the answer to (e) is "yes," was the infringement of Aboriginal rights justified?
- g. Did either Defendant breach duties flowing from the honour of the Crown, in a manner that impacted the Survivor Class and/or the Innu Governments Class through their respective roles in relation to schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- h. If either or both Defendants are liable to the Class Members in either Class in any of the causes of action alleged:
 - i. Can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?

- ii. If the answer to (i) is "yes," in what amount?
- iii. Are the Defendants guilty of conduct that warrants the award of the remedies of aggravated and/or punitive damages available in the circumstances?
- iv. If the answer to (iii) is "yes," in what amount?
- v. Are the remedies of general damages, constitutional damages, special damages, and/or equitable compensation available in the circumstances, and should those remedies be awarded?
- vi. Should declaratory or other relief be granted in any manner?

LITIGATION PLAN

- 12. An Order approving the Proposed Representative Plaintiffs' Litigation Plan which is attached as Schedule "A" of the Draft Certification Order.

NOTICE

- 13. An Order approving the proposed form and content of the Notice of Class Certification ("Notice"), which is attached as Schedule "B" to the Draft Certification Order.
- 14. An Order that the Notice shall be disseminated in accordance with the Notice Program, as defined in the Litigation Plan.

15. An Order approving the Notice Program.
16. An Order that the poster which is attached as Schedule "E" to the Draft Certification Order shall be used to provide notice as described in paragraph 17(b) of the Litigation Plan.
17. An Order appointing Verita Global, LLC as the Notice Administrator for the purposes of disseminating the Notice in accordance with the Notice Program.
18. An Order that the cost of the Notice Program, including the cost of the Notice Administrator, will be a cost of the proceeding and that the Defendants shall reimburse the cost of the Notice Program in full if one of the Classes or both of the Classes are successful at the common issues trial.

SURVIVOR CLASS CONTACT LIST

19. An Order that the Defendants shall use their best efforts to provide the Proposed Representative Plaintiffs and the Notice Administrator a comprehensive list of the names and any last known contact information in their possession or control for the members of the Survivor Class (the "Survivor Class Contact List") within 60 days of this Order further to their undertaking.

20. An Order that the Survivor Class Contact List shall be kept confidential and used solely for the purpose of effecting notice of certification of this action as a class proceeding and for the ongoing prosecution of this action.

OPTING-IN/OPTING-OUT

21. An Order that a potential Class Member who resides outside of the Province of Newfoundland and Labrador may opt in to this class action according to the procedure set out in the Litigation Plan ("Opt-In deadline").

22. An Order approving the opt-in form which is attached as Schedule "C" to the Draft Certification Order.

23. An Order that a potential Class Member who resides inside of the Province of Newfoundland and Labrador who does not wish to be governed by this action may opt out of the class action according to the procedure set out in the Litigation Plan ("Opt-Out deadline").

24. An Order approving the opt-out form which is attached as Schedule "D" to the Draft Certification Order.

25. An Order that any Class Members who validly opt out of this action by the Opt-Out deadline are not bound by any judgment or by the terms of any future

settlement, compensation, or benefits derived from this action, and shall no longer participate in or have the opportunity in the future to participate in this action or any future settlement or compensation arising from it.

26. An Order that states that this Order is binding upon each member of the Class who (a) resides in the Province of Newfoundland and Labrador and who does not validly opt out from this action on or prior to the Opt-Out deadline or (b) resides outside the Province of Newfoundland and Labrador and who has validly opted in to this action on or prior to the Opt-In deadline.
27. An Order that within 30 days of the Opt-Out and Opt-In deadline, the Notice Administrator shall provide to Class Counsel and counsel for the Defendants a list of names of persons who have delivered valid elections to opt out or opt in as the case may be, and the Notice Administrator shall provide a report to the Court with respect to the valid opt-outs and opt-ins received.
28. An Order that no information other than the Notice will be disseminated by the Defendants regarding the class proceeding during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then as approved by the Court.

THE GROUNDS FOR THE APPLICATION ARE:

29. The Statement of Claim discloses a cause of action against the Defendants.

30. There are two identifiable classes of two or more persons. The two classes advance related claims.

31. There are common issues raised in the pleadings.

32. A Class Proceeding is the preferable procedure for the resolution of the common issues.

33. The Proposed Representative Plaintiffs

- a. will fairly and adequately represent the interests of the Class;
- b. have produced a plan for the action that sets out a workable method of advancing the action on behalf of the Class and of notifying Class Members of the action; and
- c. do not have, on the common issues, an interest that is in conflict with the interests of the other Class Members.

34. Sections 3(2), 5, 7, 8, and 9 of the *Class Actions Act*, SNL 2001, c C-18.1 and Rule 7A of the *Rules of the Supreme Court*, 1986, SNL 1986, c 42, Sch D.

35. Such further and other grounds as counsel may advise and this Honourable Court permits.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the

motion:

1. The pleadings;
2. The Affidavit of Prote Poker, sworn on the 27th day of June, 2024;
3. The Affidavit of George Rich, sworn on the 12th day of June, 2024;
4. The Affidavit of Gregory Rich, sworn on the 17th day of June, 2024;
5. The Affidavit of Marie Martha Andrew, sworn on the 2nd day of July, 2024;
6. The Affidavit of Magdaline Benuen, sworn on the 24th day of June, 2024;
7. The Affidavit of Dr. Amber Johnson, to be sworn;
8. The Affidavit of Florence Milley, sworn on the 3rd day of October, 2024;
9. The Affidavit of Carla Peak, sworn on the 3rd day of October, 2024; and
10. Such further and other evidence as counsel may advise and this Honourable Court permits.

DATED AT St. John's, in the Province of Newfoundland and Labrador, this 4th day of October, 2024.



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Helleur, and Alexander Packman
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Solicitors for the Second Defendant

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

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NOTICE TO THE DEFENDANTS

YOU ARE HEREBY NOTIFIED that an Application will be made to the Judge presiding at Chambers at the Court House at St. John's, Newfoundland and Labrador, at 9:30 in the fore noon, on Monday the 15th day of September, 2025 or so soon thereafter as the Application can be heard.

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