IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Innu Nation Inc. v. Canada (Attorney General)*, 2026 NLSC 101
Date: August 26, 2026
Docket: 202401G0064 CP

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 NEWFOUNDLAND AND LABRADOR

SECOND DEFENDANT

Before: Justice Peter N. Browne

Place of Hearing: St. John’s, Newfoundland and Labrador

Dates of Hearing: March 17-20, 2026

Summary:

The Representative Plaintiffs, Innu Nation Inc., Gregory Rich, Marie Martha Andrew and Magdaline Benuen ("Innu Nation and Rich") applied for certification of a proposed class action against the Defendants, Attorney General of Canada and His Majesty the King in Right of Newfoundland and Labrador ("Canada and the Province"), for systemic negligence and various breaches of fiduciary and constitutional duties arising from the operation of Innu Day Schools in Labrador.

The Court granted certification in part. It certified the Survivor and Innu Nation classes and allowed the fiduciary duty, Aboriginal rights, Honour of the Crown, and the negligence claim of the Survivor Class as against the Province to proceed. It struck the systemic negligence claims against Canada in their entirety, and the loss of culture and language claims by the Innu Nation as against the Province, on a without prejudice basis with leave to amend.

Appearances:

William A.F. Hiscock, Paul A. Kennedy, Jaclyn McNamara, Jesse Abell, Adam Babiak and Jennifer Helleur	Appearing on behalf of the Plaintiffs
Gwendoline MacIsaac, Emily Crompton and Victor Ryan	Appearing on behalf of the First Defendant
Donald Anthony, K.C., H. Michael Rosenberg, Emma Walsh and Suzanne M. Orsborn	Appearing on behalf of the Second Defendant

Authorities Cited:

CASES CONSIDERED: *Hollick v. Toronto (City),* 2001 SCC 68; *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46; *McKenna v. Gammon Gold Inc.,* 2010 ONSC 1591; *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19; *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57; *Davis v. Canada (Attorney General),* 2008 NLCA 49; *Ring v. Canada (Attorney General*, 2010 NLCA 20; *Koehler v. Newfoundland and Labrador*, 2021 NLSC 95; *Thorne v. College of the North Atlantic*, 2018 NLCA 33; *Chiasson v. Nalcor Energy*, 2021 NLCA 34; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42; *Dewey v. Corner Brook Pulp and Paper Ltd.*, 2025 NLCA 8; *Cloud v. Canada (Attorney General)* (2004), 247 D.L.R. (4th) 667, [2004] O.J. No 4924 (C.A.); *Palmer v. Teva Canada Ltd.*, 2024 ONCA 220; *Lilleyman v. Bumble Bee Foods LLC*, 2024 ONCA 606; *Anderson v. Canada (Attorney General),* 2011 NLCA 82; *Rumley v. British Columbia*, 2001 SCC 69; *Cooper v. Hobart*, 2001 SCC 79; *Nelson (City) v. Marchi*, 2021 SCC 41; *Edwards v. Law Society of Upper Canada*, 2001 SCC 80; *Just v. British Columbia*, [1989] 2 S.C.R. 1228; *Francis v. Ontario*, 2021 ONCA 197; *G.G. v. Ontario*, 2025 ONSC 3011; *Blackwater v. Plint*, 2005 SCC 58; *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24; *E.D.G. v. Hammer* (1998), 1998 CarswellBC 92, 53 B.C.L.R. (3d) 89 (S.C.), aff'd *E.D.G. v. Hammer*, 2003 SCC 52; *Wewaykum Indian Band v. Canada,* 2002 SCC 79; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development*), 2018 SCC 4; *Southwind v. Canada*, 2021 SCC 28; *Ontario (Attorney General) v. Restoule*, 2024 SCC 27; *Gladstone v. Canada (Attorney General),* 2005 SCC 21; *R. v. Van der Peet*, [1996] 2 S.C.R. 507; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44; *R. v. Desautel*, 2021 SCC 17; *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73; *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14; *R. v. Hape*, 2007 SCC 26; *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5; *Neal v. Canada (Attorney General),* 2025 BCSC 1498; *Fisher River Cree Nation v. Canada (Attorney General),* 2025 FC 561; *Gottfriedson v. Canada*, 2015 FC 706; *Pioneer Corp. v. Godfrey*, 2019 SCC 42; *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31; *Moiseiwitsch v. Canadian National Railway Co.,* 2025 BCSC 2377; *Taub v. Manufacturers Life Insurance Co.* (1998), 1998 CarswellOnt 5216, [1998] O.J. No. 2694 (Ct .J. (Gen. Div.)); *Mueller v. Nissan Canada Inc.*, 2022 BCCA 338; *McLean v. Canada (Attorney General)*, 2018 FC 642; *AIC Limited v. Fischer*, 2013 SCC 69

STATUTES CONSIDERED: *Class Actions Act*, SNL 2001, c. C-18.1; *Constitution Act, 1982,* being Schedule B to the *Canada Act, 1982* (UK), 1982, c.-11; *United Nations Declaration on the Rights of Indigenous People Act*, S.C. 2021, c. 14; *Constitution Act, 1867*, 30 & 31 Vict., c-3, RSC 1985, App. II, No. 5 (U.K.); *Limitations Act*, SNL 1995, c. L-16.1; *Crown Liability and Proceedings Act*, RSC 1985, c. C-50; *British North America Act, 1867*, 30-31 Vict., c. 3 (U.K.)

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INTRODUCTION AND BACKGROUND

Introduction

[1] This is an application for certification of a class action. The representative plaintiffs, Innu Nation Inc. and Gregory Rich et al ("Innu Nation and Rich") seek certification of a proposed class action under the *Class Actions Act*, SNL 2001, c. C-18.1 (the "*Act*") as against the defendants the Attorney General of Canada ("Canada") and His Majesty the King in Right of the Province of Newfoundland and Labrador ("the Province").

[2] Innu Nation and Rich argue this class action is part of a continuing chronicle of class actions that have been certified across Canada aimed at addressing the harms and abuses caused by assimilation by both levels of government in the education of Indigenous children.

[3] They propose two classes. The first class is comprised of persons consisting of individuals who attended Innu Day Schools and bring claims for the loss of language, culture and abuse ("the Survivor Class"). The second class comprises the Innu First Nations and their governments who are bringing claims on the communal loss of language and culture caused by Innu Day Schools ("the Innu Governments Class").

[4] Canada and the Province oppose certification in its entirety. They argue that the proceeding is a veiled attempt to rewrite the unique factual and legal history surrounding the delivery of educational services to Innu children in Labrador and is effectively tantamount to an ahistorical narrative.

[5] Certification is a procedural screening mechanism. The Court's task is not to determine the truth of the allegations, resolve disputed historical facts, assess liability, or determine available remedies. It is confined to deciding whether the requirements of section 5(1) of the *Class Actions Act* have been satisfied.

[6] Specifically, Innu Nation and Rich must establish that: (a) the pleadings disclose a cause of action; (b) there is an identifiable class of two or more persons; (c) the claims raise common issues; (d) a class proceeding is the preferable procedure; and (e) there is a representative plaintiff capable of fairly and adequately representing the class.

[7] The proposed action arises from allegations concerning the establishment, funding, administration, supervision, and operation of the Innu Day Schools. The causes of action pleaded are systemic negligence, breach of fiduciary duty, infringement of Aboriginal rights under section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c.-11, and breach of obligations arising from the Honour of the Crown and the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14)("UNDRIP").

[8] My analysis will be in three stages. First, I will determine whether the pleadings disclose legally viable causes of action under section 5(1)(a). Second, I will determine whether the remaining certification requirements in sections 5(1)(b)-(e) have been established on the "some basis in fact" standard. Third, having determined which causes of action survive, I will identify the causes of action, classes, common issues, and representative plaintiffs that are properly certified and set out the terms of the certification order.

[9] For the reasons that follow, certification is granted in part.

[10] The pleadings disclose viable causes of action in respect of the abuse-based negligence claims against the Province, breach of fiduciary duty, infringement of Aboriginal rights, and breach of obligations arising from the Honour of the Crown against both governments

[11] The systemic negligence claim against Canada and the language-and-culture negligence claim against the Province fail to disclose a reasonable cause of action in their present form and must be struck on a without prejudice basis with leave to amend.

[12] Subject to those limitations, I am satisfied that the remaining certification requirements have been met.

[13] Nothing in my reasons shall constitute a finding that Canada and the Province acted wrongfully, that any Aboriginal right exists or was infringed, that any fiduciary obligation arose or was breached, that the Honour of the Crown was breached, or that any class member suffered compensable damage. Those issues remain for trial.

[14] I will now turn to the statutory requirements for certification beginning with an outline of the background position of the parties.

Background

The Position of the Innu Nation and Rich

[15] The Amended Statement of Claim ("the Claim") pleads allegations in systemic negligence, breach of fiduciary duty (*per se*, *ad hoc* and *sui generis*), infringement of Aboriginal rights under section 35 of the *Constitution Act*, 1982 and breaches of the Honour of the Crown.

[16] Innu Nation and Rich allege that both levels of government are responsible for harms caused by the assimilation of the Innu people's language and culture through the creation, funding, and supervising of educational institutions referred to in the Claim as Innu Day Schools, and that this assimilation resulted in damages for physical and sexual abuse and loss of language and culture.

[17] They point to earlier Schools Class Actions from this Province and elsewhere throughout Canada and say, like these cases, the purpose and effect of Innu Day Schools was to assimilate children by fundamentally disrupting the transmission of their language and culture through the creation of an environment of physical, psychological, emotional and sexual violence, torment and abuse.

[18] When applying its certification analysis, the Court should avoid the legal traps set by Canada and the Province such as limitation periods, core policy immunity and the inapplicability of constitutional remedies or UNDRIP, because these are issues that require detailed evidence followed by a full legal analysis. As such, they are best left for a merit-based trial.

Canada

[19] Canada argues the pleadings contain an acknowledgement by Innu Nation and Rich that it was not responsible for administering the delivery of education to the day schools, either directly or indirectly. Despite this acknowledgement, the pleadings assert broad and generic allegations against Canada, including the failure to prevent physical and sexual abuse and the loss of language and culture.

[20] The proposed class action does not satisfy the required statutory thresholds because it fails to disclose a reasonable cause of action under section 5(1)(a) and fails to provide some basis in fact for the remaining criteria under sections 5(1)(b)-(e).

[21] In particular, the pleadings in negligence and breach of fiduciary duty lack adequate material facts, leading to no reasonable prospect of success; and the causes of action for breach of Aboriginal rights and breach of statutory obligation (the proposed common issues) have no factual basis and are not supported in law.

The Province

[22] The Province acknowledges there is procedural validity surrounding the allegations of abuse and it has an obligation to address these claims. However, it argues they are best pursued through individual causes of action so as to accommodate each claimant’s idiosyncratic facts. Certifying a survivor class would result in the substantive issues being resolved through individual proceedings.

[23] As for the alleged injury to language and culture pled by both Classes, the Province asserts there is no basis in fact to support these allegations. Instead, it argues that since the Province’s entry into Confederation significant efforts were made to promote Innu language and culture.

[24] More importantly, it argues that choices about what the Innu were taught in school and the amount of funding allotted to those schools are not justiciable because they are core policy decisions that engage the exercise of weighing competing social priorities, thereby placing them outside the purview of the courts.

[25] Overall, the proposed class proceeding is entirely unworkable. Instead, this Court should convert the abuse claims into individual actions with the direction of common case management for those claims that name common assailants.

ISSUE

[26] The parties agree that the sole issue for the Court to determine is whether the class action as currently framed can be certified pursuant to the five conjunctive criteria set out at section 5(1) of the *Act*.

RELEVANT LEGISLATION AND JURISPRUDENCE

Legislation

[27] The circumstances under which a class action may be certified are contained in section 5(1) of the *Act*, which states:

> 5 (1) On an application made under section 3 or 4 , the court shall certify an action as a class action where
> (a) the pleadings disclose a cause of action;
> (b) there is an identifiable class of 2 or more persons;
> (c) the claims of the class members raise a common issue, whether or not the common issue is the dominant issue;
> (d) a class action is the preferable procedure to resolve the common issues of the class; and
> (e) there is a person who
> is able to fairly and adequately represent the interests of the class,
> has 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
> does not have, on the common issues, an interest that is in conflict with the interests of the other class members.

Jurisprudence

The General Principles to be Applied to Certification Proceedings

The Purpose of a Class Action

[28] The class action procedure is intended to achieve three advantages: access to justice, judicial economy, and behavior modification. Class action legislation is, accordingly, given a generous, broad, liberal, and purposive interpretation: "it is essential … that courts do not take an overly restrictive approach to the legislation but rather interpret the *Act* in a way that gives full effect to the benefits foreseen by the drafters"; (see *Hollick v. Toronto (City)*, 2001 SCC 68, at para. 14).

Certification Principles

[29] The Supreme Court of Canada has repeatedly emphasized that class proceedings legislation is remedial in nature and must be interpreted generously in order to achieve the above goals; (see *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, at paras. 26-29; *Hollick* at paras. 13-15).

The Function of a Class Action

[30] The core function of a class proceeding is the resolution of issues on a common basis, so as to avoid duplication of fact finding or legal analysis; (see *Hollick; McKenna v. Gammon Gold Inc.*, 2010 ONSC 1591).

[31] A certification motion is a procedural motion. It focuses on the form of the action and its suitability for prosecution as a class proceeding. The motion is not meant to be a test of the merits of the action; (see s. 6(2) of the *Act*).

[32] As the Supreme Court set out in *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, at paragraph 138, "[t]he certification process 'does not allow for an extensive assessment of the complexities or challenges a plaintiff may face in establishing its case at trial' and the approach is not to engage 'in a robust analysis of the merits at the certification stage'". Instead, the certification process should ensure that the claims and issues are suited to class-wide treatment.

Onus and standard of proof

[33] The certification stage is not intended to become a preliminary adjudication on the merits. The Court's task is to determine whether the statutory criteria have been met; not whether the plaintiffs will ultimately succeed at trial: see *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57, at paras. 99-103; *Atlantic Lottery Corp. Inc.*, at paras. 137-139.

[34] The onus is on the applicant for certification to establish the criteria for certification. All five criteria must be met; (see *Davis v. Canada (Attorney General)*, 2008 NLCA 49, at para. 23; *Ring v. Canada (Attorney General)*, 2010 NLCA 20, at para. 10).

Section 5(1)(a)

[35] The standard of proof under section 5(1)(a) requires that the pleadings disclose a cause of action. The test applied in this province is "the plain and obvious test"; (see *Ring*, at paragraph 11). A cause of action is a "factual situation that entitles a person to a legal remedy; (see *Koehler v. Newfoundland and Labrador*, 2021 NLSC 95, at para. 31, citing *Ring*; see also *Thorne v. College of the North Atlantic*, 2018 NLCA 33, at para. 587).

[36] A court should accept the facts as pleaded as being true and should not go beyond the pleadings or consider any evidence; (see *Chiasson v. Nalcor Energy*, 2021 NLCA 34, at para. 8, citing the Supreme Court of Canada decisions in *Atlantic Lottery Corp. Inc.; R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42; see also *Dewey v. Corner Brook Pulp and Paper Ltd.*, 2025 NLCA 8, at para. 88, citing *Thorne*, at para. 52).

[37] The novelty of the claim is not a reason to refuse certification. However, if a novel claim is doomed to fail, then it should not be certified merely because it is novel. In such a situation the Court should consider "whether the viability of the claims presented can be determined on the basis of the facts pleaded and the resolution of questions of law engaged by those facts"; (see *Koehler*, at para. 32, citing *Atlantic Lottery Corporation Inc.*, paras. 18-19; and *Chiasson*, at paras. 8-19).

Section 5(1)(b)-(e)

[38] As for the remaining criteria under 5(1)(b)-(e), the evidentiary threshold is "some basis in fact". This is a lesser standard of proof than that required for the determination of the merits of the claim; (see *Hollick*, at paras. 16-25). It is consistent

with the notion that the certification stage is dealing with procedural issues, not substantive ones, making the criteria less onerous with the basis in fact analysis a low bar; (*Cloud v. Canada (Attorney General)* (2004), 247 D.L.R. (4th) 667, [2004] O.J. No 4924 (C.A.)).

[39] The “some basis in fact” standard is satisfied where “some minimal evidence support[s] the existence of a claim”. It does not require the Court to make factual findings on a balance of probabilities. The Court should not resolve “conflicting facts and evidence” or otherwise assess the strength of the action; (see *Palmer v. Teva Canada Ltd.*, 2024 ONCA 220, at para. 104; *Lilleyman v. Bumble Bee Foods LLC et al, Lilleyman v. Lion Capital LLP et al*, Indexed as*: Lilleyman v. Bumble Bee Foods LLC*, 2024 ONCA 606, at para. 71).

[40] I will discuss various descriptors used by Canadian courts later in my reasons under my section 5(1)(b)-(e) analysis.

SYSTEMIC NEGLIGENCE

Overview

[41] The abuse allegations and the language-and-culture allegations are analytically distinct. Although they arise from the same institutional setting, each engages different duties, different forms of harm, and potentially different legal consequences.

Position of Innu Nation and Rich

[42] Innu Nation and Rich allege that Canada owes duties of care to the Survivor Class and the Innu Governments Class arising from what they describe as the unique constitutional and historical relationship between Canada and the Innu of Labrador,

Canada's legislative authority under section 91(24) of the *Constitution Act, 1867*, 30 & 31 Vict., c-3, RSC 1985, App. II, No. 5 (U.K.).

[43] Relying upon what they characterize as the special constitutional relationship between the Crown and Indigenous peoples, Canada's authority under section 91(24) and Canada's alleged participation in funding arrangements and educational agreements respecting the Innu Day Schools, Innu Nation and Rich argue that these factors establish the necessary proximity to support a duty of care. They point to our Court of Appeal's decision in *Anderson v. Canada (Attorney General)*, 2011 NLCA 82 as support that this relationship is different from the ordinary governmental regulatory relationships.

[44] They argue that Canada retained the ability to impose conditions on educational funding, participated in joint committees concerning Innu programming, and exercised influence respecting funding, standards and oversight, making their role more operational rather than a constitutional authority that would engage core policy immunity.

[45] Innu Nation and Rich also submit that any reliance by Canada on core policy immunity should be left for determination at trial. They cite *Canada (Attorney General) v. Anderson* at paragraph 77, and *Rumley v. British Columbia*, 2001 SCC 69, at paragraphs 25 to 34.

Position of Canada

[46] Canada responds by pointing out that the pleadings acknowledge it did not administer or operate the schools, that its role was limited to funding arrangements and participation in committees concerned primarily with budgetary matters, and that funding, audit authority, and the establishment of standards do not themselves create the proximity required to ground a private law duty of care and engage core policy immunity.

Analysis

[47] Any analysis of the negligence claim against Canada must be grounded in the principles governing Crown liability articulated in *Cooper v. Hobart*, 2001 SCC 79, *Imperial Tobacco*, and *Nelson (City) v. Marchi*, 2021 SCC 41. The Court must first determine whether the pleadings disclose a relationship giving rise to a reasonably foreseeable risk of harm and sufficient proximity to ground a duty of care. If a *prima facie* duty is established, the Court must then consider whether residual policy considerations negate or limit that duty.

[48] Governmental authority over a subject matter does not, standing alone, establish the proximity necessary to create a private law duty of care. As the Supreme Court explained in *Cooper v. Hobart* at paragraphs 34 to 37, proximity requires a sufficiently close and direct relationship such that it is just and fair to impose a duty of care; (see also *Edwards v. Law Society of Upper Canada*, 2001 SCC 80, at paras. 9-14, and *Imperial Tobacco* at paras. 39-44).

[49] The pleadings acknowledge that Canada did not operate the schools on a day-to-day basis; rather it is alleged that it funded educational programs, participated in educational arrangements, and failed to adopt measures that would have protected students and preserved language and culture.

[50] Nor do the pleadings identify any statutory provision imposing a specific private law obligation upon Canada to supervise, administer, inspect, or control the day-to-day educational experiences of students attending the Innu Day Schools. Rather, the alleged duty is framed broadly in terms of Canada's responsibility for Indigenous peoples generally and the successive federal-provincial funding arrangements respecting Innu education.

[51] This raises the critical distinction between policy and operational conduct. As confirmed in *Marchi* at paragraphs 54 to 62, and *Imperial Tobacco* at paragraphs 87 to 90, the allocation of governmental resources, the establishment of public priorities, program design, and the balancing of social, political, economic, and budgetary considerations constitute core policy decisions that are immune from

negligence liability. Operational conduct, by contrast, concerns the implementation or execution of established policy.

[52] The principle of core policy immunity protects governmental decisions involving the balancing of social, economic, political and budgetary considerations. Such decisions are generally immune from negligence liability because they involve choices constitutionally entrusted to the executive and legislative branches rather than the courts.

[53] Courts have repeatedly cautioned against converting disagreements with governmental policy into negligence actions. As stated in *Just v. British Columbia*, [1989] 2 S.C.R. 1228, and reaffirmed in *Marchi*, core policy decisions are not reviewable through ordinary negligence principles.

[54] The current pleadings characterize Canada’s role as one where it ought to have provided greater funding, imposed different funding conditions, intervened more aggressively in educational delivery, established alternative supervisory mechanisms, or adopted policies that better protected language, culture, and student welfare. These allegations challenge core governmental choices concerning the scope and nature of federal involvement in Indigenous education.

[55] The Crown–Indigenous relationship may form part of the factual matrix relevant to fiduciary obligations, Aboriginal-rights claims, and the Honour of the Crown, it cannot transform fundamentally policy-based allegations into operational acts for the purposes of negligence law.

[56] Read generously, the negligence claim against Canada is founded principally upon constitutional authority, funding arrangements, participation in educational policy, and alleged failures to intervene more effectively in Indigenous education.

[57] As pleaded, those allegations challenge the nature and extent of Canada's involvement in Indigenous education rather than identifiable operational conduct capable of grounding a private-law duty of care. The pleading does not identify

sufficiently particularized operational acts from which proximity and a duty of care could reasonably arise.

[58] The deficiency of this pleading is in the manner in which the claim has been pleaded, not in any finding concerning Canada's historical conduct. Assuming the pleaded facts to be true, it is plain and obvious that the negligence claim against Canada, as presently framed, cannot succeed. The claim is therefore struck on a without prejudice basis with leave to amend.

[59] In making this conclusion, I am not finding as a matter of fact that all federal conduct relating to Innu education constituted core policy decision-making. Nor am I determining the historical nature, extent, or character of Canada's involvement in the establishment, administration, supervision, funding, or operation of the Innu Day Schools. Those matters remain disputed and can only be determined on a full evidentiary record.

The Province

[60] The claim respecting the Province differs in an important respect. Unlike the pleadings against Canada, Innu Nation and Rich plead both a statutory framework governing education and direct involvement in establishing, operating, supervising, administering, and funding the Innu Day Schools through provincial educational institutions and school boards.

[61] Citing the decisions *Francis v. Ontario*, 2021 ONCA 197, *G.G. v. Ontario*, 2025 ONSC 3011, and *Rumley* as examples of systemic negligence claims grounded in governmental supervisory obligations, they argue that the Province's alleged proximity to the class members is therefore grounded not only in public authority over education generally, but also in its alleged operational role in delivering educational services through institutions responsible for the care and supervision of students.

[62] The claim advances two distinct categories of alleged harm: first, physical and sexual abuse suffered by members of the Survivor Class; and second, loss of language and culture allegedly suffered by both the Survivor Class and the Innu Governments Class. The viability of the negligence pleadings must be assessed separately with respect to each category.

Abuse Claims

[63] Canadian courts have long recognized negligence claims arising from systemic failures to supervise and protect children in institutional settings; (see *Rumley*, at paras. 25-34, and *Blackwater v. Plint*, 2005 SCC 58, at paras. 75-81). Those authorities establish that allegations of inadequate supervision, protection, reporting structures, and institutional safeguards are capable of giving rise to actionable duties of care.

[64] The Province candidly acknowledges this jurisprudence and recognizes negligence and vicarious liability claims arising from abuse in educational and institutional settings are capable of attracting private law duties of care.

[65] The pleadings allege direct involvement by educational authorities responsible for the supervision, protection, and welfare of students; (see *Rumley* where alleged failures of supervision, management and abuse-prevention systems were treated as cognizable negligence claims).

[66] Accepting the pleaded facts as true, I cannot conclude that those claims are doomed to fail.

[67] Accordingly, the abuse-based negligence claims against the Province disclose a reasonable cause of action.

Language-and-Culture Claims

[68] The language-and-culture claims stand on a different footing. As pleaded, they challenge curriculum design, language-of-instruction decisions, educational priorities, and the allocation of resources over many decades. These allegations are directed principally at governmental policy choices rather than identifiable operational conduct. The effect of the current pleading is to invite the Court to review and assess decades of educational policy choices. That is not the Court's role.

[69] In their present form, the pleadings do not adequately distinguish between operational acts and protected policy-making.

[70] Accordingly, it is plain and obvious that the language-and-culture negligence claim cannot succeed as currently pleaded and it is struck on a without prejudice basis, with leave to amend.

BREACH OF FIDUCIARY DUTY (*Per se, Ad hoc* and *Suis generis*)

Position of the Parties

Innu Nation and Rich

[71] Innu Nation and Rich argue that they have pled sufficient facts to support claims that Canada and the Province owed and breached all three types of fiduciary duties toward the Class Members.

Canada and the Province

[72] In response, Canada argues it is plain and obvious that the pleadings fail to support the existence of any type of fiduciary duty as there are no material facts to support that it undertook to act only in the interests of the Innu Governments Class.

[73] In order for a fiduciary relationship to exist, it requires a pleading that Canada agreed to forsake the interests of Innu children in favour of a non-profit entity which represents the Labrador Innu in its dealings with Canada and the Province; (see paragraph 87 of the First Defendant's Brief).

[74] Similarly, the Province argues that the pleadings setting out the various fiduciary duties are misplaced because it is plain and obvious that neither the Province, nor any school board or religious order, owed the Plaintiffs *per se*, *ad hoc* or *sui generis* fiduciary duties.

Analysis

Breach of Fiduciary Duty (Per Se)

[75] Innu Nation and Rich plead a *per se* fiduciary duty for Canada and the Province at paragraphs 29 to 36 of the Claim, and at paragraphs 44 and 45 of the Claim. Citing the Supreme Court in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, they argue these pleadings meet the requirements necessary to allege such a duty; (see paragraphs 32-33).

[76] The essential elements of a *per se* fiduciary duty are an undertaking to act in the beneficiary's best interests, the discretionary exercise of power by the fiduciary, and a corresponding vulnerability on the part of the beneficiary. These elements are to be contrasted with an *ad hoc* duty which is determined on a case-by-case basis.

[77] They argue their action is similar to that imposed on school boards formulated on the *per se* fiduciary obligation that is akin to the parent/child relationship. The law recognizes the use of these fiduciary principles in Crown–Indigenous relations; (*see E.D.G. v. Hammer* (1998), 1998 CarswellBC 92, 53 B.C.L.R. (3d) 89 (S.C.) at para. 40, affirmed *E.D.G. v. Hammer*, 2003 SCC 52).

[78] Whether such duties ultimately arise depends upon a careful examination of the relationship, the nature of the interests said to be protected, and the extent of the discretion exercised by the alleged fiduciary. All of which requires a developed evidentiary record followed by a full legal analysis as to whether those allegations can ultimately satisfy the legal requirements; (see *Elder Advocates*; *Wewaykum Indian Band v. Canada*, 2002 SCC 79; *Williams Lake Indian Band v. Canada (Aboriginal Affairs and Northern Development*), 2018 SCC 4; *Southwind v. Canada*, 2021 SCC 28; and *Ontario (Attorney General) v. Restoule*, 2024 SCC 27).

[79] Whether the pleaded relationships fall within an established category of *per se* fiduciary relationships represent an arguable extension of existing categories, or are more appropriately analyzed through *ad hoc* or *sui generis* fiduciary principles, is not a question that can be finally determined on a pleadings motion.

[80] Accordingly, I find this allegation contains sufficiently pled facts to support the finding that it is not plain and obvious that it will most certainly fail.

Breach of Fiduciary Duty (Suis Generis)

[81] The Supreme Court's jurisprudence establishes that *sui generis* fiduciary obligations in the Crown-Indigenous context are not confined to reserve lands; (see *Wewaykum Indian Band*, at paras. 79-83; *Williams Lake Indian Band*, at paras. 44-52; *Southwind*, at paras. 61-69).

[82] Innu Nation and Rich plead interests in language, culture, and the education and welfare of Innu children, and further plead that those interests were placed under Crown control through the operation of the Innu Day School system.

[83] Whether those interests ultimately satisfy the requirements of a *sui generis* fiduciary claim is a matter for another day. At this stage, I cannot conclude that such claims are certain to fail.

Breach of Fiduciary Duty (Ad Hoc)

[84] Innu Nation and Rich plead that Canada and the Province exercised substantial discretionary control over the education of Innu children attending Innu Day Schools, and allege that both levels of government undertook responsibility for the children's education, welfare, language retention, and cultural development such that the class members were uniquely vulnerable to the exercise of that discretion.

[85] They further plead vulnerability arising from the children's age, dependence upon state-controlled educational institutions, and the alleged inability of class members or their families to influence educational policies affecting language, culture, and identity.

[86] In response, Canada and the Province argue that the pleadings are insufficient to ground an *ad hoc* fiduciary duty (see *Gladstone v. Canada (Attorney General)*, 2005 SCC 21, at para. 24), because they only contain generalized assertions of trust and reliance and fail to plead the undertaking required by *Alberta v. Elder Advocates of Alberta Society*. They submit that the provision of public education is a public law function owed to the public generally and is incompatible with an *ad hoc* fiduciary obligation requiring loyalty to a particular beneficiary class.

[87] While this argument raises a significant obstacle for Innu Nation and Rich, it cannot be said at this stage that the claim is bound to fail. The pleadings allege discretionary control over matters affecting the education, welfare, language,

culture, and identity of Innu children, coupled with vulnerability arising from age, dependence, and the alleged inability to influence the exercise of that discretion.

[88] Whether those allegations ultimately establish the undertaking and loyalty components required for an *ad hoc* fiduciary relationship is a matter for trial. At this stage, they are sufficient to disclose an arguable claim.

[89] In my view, it is not plain and obvious that the *ad hoc* fiduciary duty claim must fail. The pleading contains sufficient material facts to disclose a legally arguable cause of action.

[90] Consequently, the claim for breach of an *ad hoc* fiduciary duty discloses a reasonable cause of action and should not be struck.

Section 35 Aboriginal Rights

[91] Innu Nation and Rich plead that the Innu possess Aboriginal rights relating to language, culture, and the transmission of Indigenous knowledge and traditions, including rights associated with the upbringing and education of Innu children. They allege that the operation of the Day Schools substantially interfered with the exercise and transmission of those rights.

[92] In response, Canada and the Province argue that the pleading fails to identify a cognizable Aboriginal right as required by the jurisprudence and fails to plead facts establishing an integral pre-contact practice, and improperly seeks to advance inherently collective rights through a class proceeding.

[93] The determination of whether a claimed right exists, its proper characterization, its scope, and whether Crown conduct unjustifiably interfered with that right are intensely fact-specific inquiries that require an examination of historical, cultural, anthropological, and evidentiary records and ordinarily cannot

be determined on the face of a pleading; (see *R. v. Van der Peet*, [1996] 2 S.C.R. 507; *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44; *R. v. Desautel*, 2021 SCC 17).

[94] The Claim alleges that the Innu are an Aboriginal people within the meaning of section 35, that language and cultural transmission formed integral aspects of Innu society, and that governmental action substantially interfered with the exercise and preservation of those traditions.

[95] I do not accept the submission that the pleadings merely allege generalized trust or reliance. Read generously, the Claim pleads considerably more. It alleges that Canada and the Province exercised discretionary authority over matters touching the education, welfare, language, culture, and identity of Innu children; that they assumed responsibility for educational systems affecting those interests; and that members of the proposed classes were dependent upon the exercise of that authority.

[96] The pleadings further allege that governmental decisions were made in circumstances where the proposed class members, particularly children attending the schools, were vulnerable to the manner in which that discretion was exercised.

[97] It is not plain and obvious that the rights asserted are incapable of recognition in Canadian law. Jurisprudence concerning Indigenous language, culture, governance, and the protection of Indigenous identity continues to evolve.

[98] Therefore, assuming the pleaded facts to be true, while they may constitute a novel constitutional claim, I cannot conclude that Innu Nation and Rich have not pleaded sufficient material facts to disclose an arguable claim under section 35 of the *Constitution Act, 1982*.

Honour of the Crown

[99] Innu Nation and Rich have also plead breach of obligations arising from the Honour of the Crown. They allege that Canada and the Province assumed significant responsibility for the education of Innu children and exercised that responsibility in a manner that impaired Innu language, culture, identity, and community wellbeing. They contend that such conduct engaged constitutional obligations flowing from the Honour of the Crown.

[100] In response, Canada and the Province argue that this claim discloses no reasonable cause of action because the Honour of the Crown is not an independent tort and does not give rise to a freestanding claim for damages. Absent an established Aboriginal right, treaty right, fiduciary obligation, or other recognized constitutional duty, allegations of dishonourable conduct do not create an actionable cause of action.

[101] I accept the proposition that the Honour of the Crown is not presently recognized as an independent tort. The Supreme Court has consistently described it as a constitutional principle that informs the interpretation and performance of Crown obligations in its dealings with Indigenous peoples.

[102] However, that does not end the analysis. More recent authorities emphasize that the Honour of the Crown is a foundational constitutional principle from which specific legal obligations may arise depending upon the circumstances.

[103] The content of those obligations is not fixed; rather, it varies according to the nature of the Crown conduct and the interests affected. In other words. it is “a flexible and capacious doctrine that can ‘measure and regulate conduct of the government in relation to aboriginal peoples’’’; (see *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39, at paras. 219- 223; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, at paras. 16-18; and *Restoule*, at para. 53).

[104] The Honour of the Crown is always at stake in the Crown's dealings with Indigenous peoples and constitutes a foundational constitutional principle governing Crown conduct: *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, at paras. 66-73.

[105] Here, the pleading alleges that both levels of government exercised substantial discretionary control over the education of Innu children while in a constitutionally significant relationship with the Innu people. Further, they allege that this authority was exercised in a manner that harmed language, culture, identity, and community interests protected by that relationship.

[106] To strike the claim at this preliminary stage would require the Court to resolve complex constitutional questions without the benefit of historical, cultural, and community evidence that will be necessary to determine if the doctrine applies in this context. The certification process is not intended to perform that function.

[107] Therefore, I find this threshold for striking this pleading has not been met.

United Nations Declaration on the Rights of Indigenous People (“UNDRIP”)

[108] Similarly, Innu Nation and Rich have also pleaded reliance upon UNDRIP, an international instrument adopted by the United Nations General Assembly and subsequently endorsed by Canada.

[109] UNDRIP affirms a range of rights relating to Indigenous peoples, including the preservation and revitalization of Indigenous languages and cultures, Indigenous participation in education, self-determination, and access to effective remedies.

[110] Innu Nation and Rich argue that UNDRIP forms part of the broader legal context in which the pleaded constitutional and Crown-Indigenous claims arise.

While UNDRIP does not itself create a separate cause of action in this proceeding, Canadian courts have recognized that international instruments may assist in the interpretation and development of domestic law.

[111] In *R. v. Hape*, 2007 SCC 26, the Supreme Court confirmed the presumption that domestic law should be interpreted consistently with Canada's international obligations where possible. More recently, in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, the Court recognized the continuing relevance of international law norms within the Canadian legal framework.

[112] While I do not accept that UNDRIP is an independent source of liability, it can, nevertheless, act as an interpretive aid that may inform the evolving understanding of reconciliation, Indigenous rights, and the Crown's obligations toward Indigenous peoples.

[113] It is unnecessary at the certification stage to determine the precise legal force of UNDRIP or whether the facts ultimately established at trial engage any particular provision of the Declaration. Those issues are more appropriately left for determination on a complete evidentiary and legal record; (see *R. v. Hape*, at paras. 53-56; *Nevsun Resources Ltd. v. Araya*, at para. 94; *Haida Nation v. British Columbia (Minister of Forests)*, at paras. 16-18; *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, at paras. 66-73, 79; *Ontario (Attorney General) v. Restoule*, at paras. 71, 219, 234.

[114] Accordingly, I decline to strike the pleading referencing UNDRIP.

Limitations/Statute-Barred Claims

[115] The Province and Canada argue that certain claims are statute-barred pursuant to the *Limitations Act*, SNL 1995, c. L-16.1, section 8(2) "*Limitations Act*". Under section 32 of the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50, provincial limitation periods are applicable to Canada.

[116] The Province says the claims for loss of language and culture are barred by the *Limitations Act*, whereas Canada goes further and argues that the claims in negligence, fiduciary duty, and language and culture, other than those based on trespass to the person, are barred by the *Limitations Act*.

[117] In response, Innu Nation and Rich say these arguments ignore the language of 8(2)(a) and (b) of the *Limitations Act*, which exempts sexual abuse and actions for assault, battery or trespass to the person.

[118] In *Neal v. Canada (Attorney General),* 2025 BCSC 1498, the British Columbia Supreme Court held that limitations issues should await a determination of the common issues, as it was not plain and obvious that the claims were statute barred.

[119] Likewise, in *Fisher River Cree Nation v. Canada (Attorney General),* 2025 FC 561, the Federal Court found that it could not determine the limitations issues with regard to the cause of action in negligence at the certification stage without the benefit of evidence and certified the whole class action.

[120] The potential existence of limitations issues were not a reason to deny certification in other Indigenous schooling cases. In *Cloud*, limitations issues were characterized as an individual defence requiring individual adjudication but were not a barrier to certification; (see paras. 81-82).

[121] In *Gottfriedson v. Canada*, 2015 FC 706, the court found that it was not plain and obvious that claims were time-barred given the *sui generis* relationship between Canada and Indigenous Peoples; (see para. 47).

[122] In *Anderson*, the limitations argument was dealt with through the litigation plan and was not a reason to deny certification; (see para. 136).

[123] To the extent that there are individual limitations issues, these are better suited for determination on an individual basis after determination of the common issues, as courts have found in other cases certifying class actions. Limitation questions frequently involve issues of discoverability, characterization of claims and statutory interpretation that are unsuitable for determination on a pleadings-based record; (see *Pioneer Corp. v. Godfrey*, 2019 SCC 42, at paras. 35-38; and *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, at paras. 29-41).

[124] Here, the pleadings allege physical abuse, sexual abuse, fiduciary misconduct, cultural loss, constitutional breaches, and breaches of duties said to arise from the Crown–Indigenous relationship over an extended historical period. Innu Nation and Rich further rely upon the exemptions contained in section 8(2) of the *Limitations Act* for actions relating to misconduct of a sexual nature, assault, battery, or trespass to the person.

[125] At this stage, I am unable to conclude that the scope of those statutory exemptions can be definitively determined solely from the pleadings. Whether the various causes of action are (i) sufficiently connected to the alleged abuse; (ii) whether particular claims fall within the statutory exemptions; and (iii) whether limitation periods are otherwise postponed or inapplicable, raise mixed questions of law and fact that require a more complete evidentiary record.

[126] Accordingly, I decline to strike any portion of the pleading on limitation grounds under section 5(1)(a).

The "Some Basis In Fact" Analysis: Sections 5(1)(b) to (e)

[127] Earlier in these reasons, I briefly touched on the relevant jurisprudence governing the "some basis in fact" criteria. Recently in *Moiseiwitsch v. Canadian National Railway Co.*, 2025 BCSC 2377, Justice Branch of the BC Supreme Court issued a rallying cry to judges to focus more on the application of the principle rather than its interpretation; (see para. 4).

[128] At paragraphs 111 to 117 of *Moiseiwitsch*, Justice Branch sets out the legal evolution of the phrase beginning with *Taub v. Manufacturers Life Insurance Co.* (1998), 1998 CarswellOnt 5216, [1998] O.J. No. 2694 (Ct. J. (Gen. Div.)), followed by *Hollick*; (see para. 25). In doing so he notes that despite these two seminal decisions, the phrase has (unfortunately) suffered an array of reformulations, recharacterizations, and restatements that have been stapled upon the original test.

[129] At paragraph 116, he cautions when assessing the weight of evidence required, the court must keep in mind the context of the *CPA* scheme, which envisions that applications for certification will be brought at the early stages of the proceeding, normally before any merits discovery has been provided to the plaintiff; (*Mueller v. Nissan Canada Inc.*, 2022 BCCA 338, at para. 136). Further, while the defendant is entitled to respond to the plaintiff's effort to meet the test with contrary evidence, the court cannot (realistically) engage in a detailed weighing of conflicting evidence.

[130] Finally, at paragraph 216 he concludes his “some basis in fact” analysis with an extensive synonymic review of phrases which describe the sufficiency of evidence necessary to establish a plaintiff's theory. These include beyond “mere speculation”; not “unfounded or frivolous”; is “plausible”; and last, but not least, “actually exists”.

The Application of the Principle of “Some Basis in Fact” to the Record (as filed by Innu Nation and Rich, and Canada)

[131] The parties have filed an extensive array of affidavits and exhibits. Innu Nation and Rich rely primarily on the Affidavit of Dr. Adrian Tanner and the exhibits attached thereto; whereas Canada relies on a record of exhibits that includes reports, correspondence and agreements dating back to 1949.

Affidavit of Dr. Adrian Tanner

[132] Dr. Tanner is an Honorary Research Professor at Memorial University who holds graduate degrees in anthropology and has conducted extensive field research with the Innu of Labrador since the 1970's. As such, he possesses specialized historical and anthropological expertise concerning the Innu and is capable of assessing the authenticity and scholarly reliability of historical sources.

[133] Dr. Tanner was not cross-examined on his Affidavit. Therefore, the Court can rely upon his evidence for the limited certification purpose of applying the "some basis in fact" criteria.

[134] At paragraph 5 of his Affidavit, Dr. Tanner attests that he independently accessed, through Library and Archives Canada, the 1949 Report from MHA Harold Horwood to then Premier Joey Smallwood; (Exhibit B - The Horwood Report). Dr. Tanner characterizes this report as reflecting "the ignorant perspective of the Smallwood government of that time".

[135] I accept that the document is genuine and was created contemporaneously by a government official. Accordingly, it may be considered as part of my analysis of the historical record for certification purposes.

[136] The Horwood Report is useful to address the factual matrix surrounding the Crown's knowledge, governmental understanding of the Innu, historical governmental attitudes and systemic treatment claims.

[137] It suggests Newfoundland authorities knew of serious health, educational, housing, and economic deficiencies affecting Indigenous peoples in Labrador; that government policy was understood by contemporaries as promoting assimilation into white society; those policies were viewed as threatening Indigenous language, culture, and social structures; the government was specifically warned of adverse

consequences flowing from existing policies; and were presented with alternative approaches aimed at cultural preservation and community well-being.

[138] At paragraphs 6 to 10 of his Affidavit, Dr. Tanner attests he is also familiar with and reviewed a large number of reports, inquiries, government studies, academic publications, and human rights reports spanning approximately 1949 to 2021 and that he would be confident relying on them in his own academic work.

[139] Specifically, he references the following documents as being reliable: Royal Commission on Labrador (1974), (see Exhibit C-Tab 7); Royal Commission on Education (1992), (see Exhibit I -Tab 14); Gathering Voices (*Kamamuetimak: Gathering Voices*), (see Exhibit K); Ryan, *Economic Development and Innu Settlement: The Establishment of Sheshatshit*, (see Tab 11); Carol Brice-Bennett, (see Exhibit E - Tab 10); Adrian Tanner - *The Aboriginal Peoples of Newfoundland and Labrador and Confederation*, **(**see Exhibit O - Tab 20); Canadian Human Rights Commission Reports - McRae (1993), see Exhibit L-Tab 17; Backhouse & McRae (2002), (see Exhibit Q); Canadian Human Rights Commission Follow-up Report (2021), (see Exhibit S).

[140] Although Dr. Tanner does not expressly discuss common issues, the exhibits he authenticates address: (i) the Innu as a collective people; (ii) provincial and federal governmental policies; (iii) educational practices; (iv) constitutional responsibility; (v) treatment of Innu children; and (vi) human rights concerns affecting Innu communities.

[141] I find that the Tanner affidavit supplies some basis in fact and survives more than “superficial scrutiny” that the underlying evidence addresses class-wide conditions rather than individualized events; and that the challenged conduct was systemic with common historical and governmental questions that are capable of class-wide resolution.

[142] For certification purposes, this information provides some basis in fact that there is an “air of reality” and provides a “plausible foundation” for the proposition that the alleged issues are not confined to isolated incidents but are the subject of a

substantial body of historical, governmental, and scholarly analysis over many decades.

[143] Further, I find that those materials are recognized and reliable sources within the relevant academic disciplines; that the historical treatment of the Innu has been the subject of repeated governmental inquiries, scholarly studies, and human rights investigations over an extended period of time; and that allegations concern systemic and collective issues.

[144] This Court relies upon Dr. Tanner's affidavit only as evidence that a body of historical, governmental, academic and community materials exists and is capable of supporting an analysis of the proposed common issues. These materials are not being accepted as proof of the historical conclusions asserted in the Amended Statement of Claim.

The Responding Record from the AG – Canada

Tab 2 (Appendix 1) - April 14 Letter on Federal Responsibility for Indians and Eskimos in Newfoundland and Labrador

[145] This is a legal opinion from a Deputy Minister responding to a request concerning the scope of the federal government's responsibility for Indians and Eskimos (the term used in the document) residing in Newfoundland and Labrador.

[146] Of significance it notes that: (i) for purposes of the *British North America Act*, the term "Indians" includes Eskimos; (ii)Section 91(24) gives Parliament exclusive legislative authority over "Indians, and Lands Reserved for the Indians." As a result, provincial legislatures cannot enact legislation directed specifically at Indians; (iii) the federal legislative power carries with it executive responsibility and that (iv) federal government has responsibility for developing and implementing policies concerning Indians including funding and administering policies directed at Indigenous peoples.

Tab 3 (Appendix 3) - Federal-Provincial Agreement Regarding Labrador Indians and Eskimos (April 12, 1954)

[147] This is a letter from J. W. Pickersgill, Secretary of State, to Newfoundland's Minister of Public Welfare, Herbert L. Pottle, confirming Cabinet approval of a revised long-term arrangement allocating responsibilities for the Indigenous and Eskimo population of Northern Labrador.

[148] The agreement provided that Canada would assume 66⅔% of agreed capital expenditures relating to Eskimos and 100% of agreed capital expenditures relating to Indians in the fields of welfare, health, and education with the total federal expenditure was capped at $200,000.

[149] Newfoundland would assume all remaining financial and administrative responsibilities for Labrador Indians and Eskimos, including relief, except for the matters specifically assigned to Canada and generally available federal benefits such as family allowances and old age pensions.

[150] The letter concludes by proposing that the exchange of correspondence constitute a formal agreement between the governments. It characterizes the arrangement as a practical allocation of responsibilities rather than a constitutional determination.

Tab 5 (Appendix 2/E) - Department of Justice Opinion (November 23, 1964)

[151] This is a memorandum from the Department of Justice that addresses the constitutional position of Indians and Eskimos in Newfoundland.

[152] Specifically, it seems to suggest the *Indian Act* formed part of the law in force in Newfoundland after Confederation and applies in Newfoundland as elsewhere in

Canada and that the constitutional position of Indians and Eskimos did not change because the Terms of Union contained no mention of them. The absence of reference in the Terms of Union did not alter federal constitutional authority under section 91(24).

[153] These statements directly support common issues concerning Canada's obligations toward the Innu and other Indigenous peoples of Labrador and provide some basis in fact for common issues alleging that Canada accepted or recognized constitutional and administrative responsibilities toward Indigenous peoples in Labrador.

[154] Considering the record as a whole, including the Tanner Affidavit and the documentary evidence filed by Canada, I am satisfied that there is some basis in fact that the proposed claims arise from common historical, governmental, educational, and institutional circumstances.

[155] The evidence provides a sufficient factual foundation for the proposed common questions concerning governmental involvement, educational practices, institutional structures, and the alleged effects of the Innu Day Schools. Nothing more is required at the certification stage.

[156] Accordingly, I conclude that the Plaintiffs have satisfied the "some basis in fact" threshold applicable to sections 5(1)(b) through (e) of the *Class Actions Act*.

Section 5(1)(b) - Identifiable Class

The Governing Principles

[157] The identifiable-class requirement is not very onerous. The Court is not required to determine liability, causation, injury, or entitlement to damages. Rather, the Court must be satisfied that there is a class of two or more persons capable of

objective identification and that the proposed definition bears a rational relationship to the common issues and the claims advanced.

[158] The jurisprudence establishes that the class definition must identify who is in and who is out without requiring an inquiry into the merits; (see *Hollick*, at paras. 17-20; and *Western Canadian Shopping Centres Inc. v. Dutton*, at paras. 37-38).

[159] The requirement does not demand precision normally associated with a final merits determination. A class definition may be broad. It may include persons who ultimately fail on the merits. It may encompass individuals whose damages, injury, or remedies differ substantially from one another. These are not defects in the class definition; they are inevitable features of complex institutional litigation.

The Survivor Class

[160] The proposed Survivor Class is defined by objective historical criteria: attendance at specified Innu schools located in identified Innu communities during a defined class period. Membership depends upon ascertainable historical facts and not upon proof of abuse, cultural loss, negligence, fiduciary breach, Aboriginal-rights infringement, causation, or damages. A person either attended one of the identified schools during the class period, or did not.

[161] Canada and the Province suggest that the class is overbroad because some members may have suffered no abuse, no cultural loss, or no compensable injury. Canada further argues that there is little direct evidence for certain portions of the class period and certain communities with the Province emphasizing substantial variation in educational experiences over time and between communities.

[162] The question at certification is not whether every class member suffered harm or whether each class member will succeed. Rather, the relevant question is whether membership can be determined objectively and whether the proposed class is rationally connected to the litigation. The class definition satisfies that requirement.

[163] Canadian courts have repeatedly certified Indigenous education cases involving classes substantially broader, more geographically dispersed, and more temporally diverse than the present one; (see *Cloud*, *Anderson*, *Gottfriedson*, and *McLean v. Canada (Attorney General)*, 2018 FC 642 as examples). These proceedings also involved classes spanning decades, multiple institutions, differing administrative regimes, and highly individualized experiences. The fact that some class members may have stronger claims than others, or that some may ultimately fail, does not render the class definition defective.

[164] The proposed Survivor Class satisfies the section 5(1)(b) requirement.

The Government Class

[165] The collective claims advanced by the Innu Governments Class are not derivative of the individual claims. They allege distinct communal injuries affecting language, culture, governance, identity, and the intergenerational transmission of Innu traditions.

[166] The record identifies three specific entities: Innu Nation, Mushuau Innu First Nation, and Sheshatshiu Innu First Nation. Those entities are readily ascertainable, possess legal identities, and are alleged to have suffered communal harms relating to language, culture, governance, and transmission of identity.

[167] The Province argues that collective Aboriginal interests cannot properly be advanced in this manner and questions the relationship between Innu Nation and the two First Nations. Innu Nation responds to this assertion by relying on *Gottfriedson*, at paragraphs 41 to 42, saying that Canadian courts have already recognized Indigenous collectivities as appropriate class members where collective injuries are alleged.

[168] Again, whether those claims succeed remains to be determined, but their collective character does not render them unsuitable for class-wide adjudication. It

is enough that the proposed class members are objectively identifiable entities and that their claims share a rational connection with the litigation. Here, both of these requirements are met.

[169] The proposed Government Class similarly satisfies section 5(1)(b).

Section 5(1)(c) - Common Issues

Governing Principles

[170] The requirement that the claims of the class members raise common issues is directed toward the essential purpose of class proceedings, namely, the collective resolution of issues capable of advancing the litigation for all class members in a meaningful way to avoid duplication of fact-finding or legal analysis.

[171] The Court is not required to determine whether common issues predominate over individual issues, whether common issues dispose of the litigation in its entirety, or whether all class members experienced identical circumstances. It is sufficient if their resolution advances the claims of all class members in a meaningful way; (see *Dutton*, at paras. 39-40; and *Pro-Sys Consultants Ltd.*, at para. 108).

[172] As noted above, the evidentiary threshold remains the “some basis in fact” standard as described in *Hollick* and refined in *Pro-Sys Consultants Ltd.* It acts merely as a meaningful screening device. Most importantly, at this stage conflicting evidence is not resolved, credibility is not assessed, and competing historical narratives are not chosen between.

[173] Common issues need not predominate and need not determine the litigation in its entirety.

The Central Unifying Allegations

[174] Before examining the individual categories of proposed common issues, it is useful to identify the foundation upon which the litigation is based.

[175] The Amended Statement of Claim alleges that both levels of government participated, through varying combinations of authority, funding, administration, supervision, policy-making, and operational involvement, in the establishment and operation of the Innu Day Schools over an extended period. Innu Nation and Rich allege that the schools operated within a common educational framework that produced systemic effects upon Innu children and Innu communities.

[176] The proposed common issues arise from allegations of common institutional conduct rather than isolated incidents affecting particular individuals. The claims challenge governmental and institutional systems, supervisory structures, educational practices, cultural impacts, and the nature of the Crown-Innu relationship.

[177] Whether those allegations ultimately prove to be true is not the question before the Court. The relevant inquiry is whether those allegations are capable of collective adjudication. In my view, they are.

Variability Does Not Defeat Commonality

[178] Canada and the Province suggest that the proposed class period spans several decades and encompasses changing governmental policies, educational practices, administrative structures, funding arrangements, and community experiences. They argue that such variability undermines the existence of meaningful common issues.

[179] I do not agree. The jurisprudence repeatedly demonstrates that temporal, geographic, administrative, and operational variability are common features of institutional and Indigenous educational class proceedings.

[180] Similar arguments were advanced and rejected in proceedings such as *Rumley*, *Cloud*, *Anderson*, *Gottfriedson*, and *McLean*. The fact that educational practices evolved over time, or that the experiences of individual students differed, does not preclude certification where the litigation raises overarching questions concerning the character, operation, supervision, and effects of an institution.

[181] The proper focus is not whether every class member experienced the schools in precisely the same manner, but whether the challenged conduct can be examined collectively. I am satisfied that it can.

A. Negligence Common Issues

Province-Based Negligence Claims

[182] Having concluded under section 5(1)(a) that the abuse-based negligence claims against the Province disclose a reasonable cause of action, the Court must determine whether those claims generate common issues capable of collective resolution.

[183] The proposed negligence issues focus on questions such as: (i) the nature and scope of any duty of care owed by the Province; (ii) the existence and adequacy of supervisory systems; (iii) the adequacy of institutional safeguards; (iv) the existence of systemic failures in supervision and protection; and (v) the relationship between any such failures and alleged class-wide harms.

[184] These questions do not depend upon the specific experiences of individual class members. Rather, they focus upon whether the Province established and

maintained systems capable of protecting students attending the Innu Day Schools. Consequently, they are common to all members of the Survivor Class. A single answer will materially advance all claims founded upon abuse-based negligence.

Negligence Claims Not Proceeding

[185] I have already concluded that the negligence claim against Canada, and the language-and-culture negligence claims against the Province, fail to disclose a reasonable cause of action in their current form. Those claims therefore cannot support certified common issues.

[186] Accordingly, no common issues are certified in relation to those negligence theories.

B. Fiduciary Duty Common Issues

[187] The claims for breach of fiduciary duty raise a series of questions capable of common determination.

Existence of Fiduciary Relationships

[188] The Innu Nation and Rich allege that one or both governments exercised discretionary authority over interests relating to the education, welfare, language, culture, and identity of Innu children and Innu collectivities. Whether such relationships are capable of giving rise to fiduciary obligations is fundamentally a systemic question.

[189] The existence of discretionary control, vulnerability, undertakings, and the nature of the relationship between the parties do not vary from class member to class member in a manner that would require individualized determinations at this stage.

Alleged Breaches

[190] Similarly, the question whether systemic conduct is capable of constituting a breach of fiduciary obligations can be determined on a class-wide basis. The claims focus upon common governmental conduct and common institutional systems rather than individualized interactions with particular students.

Common Evidentiary Foundation

[191] The same body of historical, governmental, anthropological, educational, and institutional evidence will be relevant to all members of both proposed classes. Resolution of these issues will substantially advance the litigation and therefore satisfies the commonality requirement.

C. Aboriginal Rights Common Issues

Collective Nature of the Rights Asserted

[192] The Aboriginal-rights claims are inherently collective in nature. The pleadings allege interference with language, culture, identity, and associated traditional practices affecting the Innu people as a group. Whether such interests are capable of recognition under section 35 is not an individualized inquiry. It is a question whose answer applies equally to all class members.

Alleged Infringement

[193] The pleadings further raise common questions concerning whether the educational regime established for Innu children interfered with the exercise of any

constitutionally protected rights. Those questions concern the operation and effects of the system itself and are capable of collective determination.

Justification

[194] Should any infringement ultimately be established, the issue of justification also arises from common governmental conduct. Such analysis would focus on Crown objectives, governmental decisions, and institutional practices rather than matters unique to particular class members.

[195] I am therefore satisfied that the Aboriginal-rights claims generate common issues capable of class-wide resolution.

D. Honour of the Crown Common Issues

[196] The Honour of the Crown allegations similarly focus on systemic conduct.

[197] Innu Nation and Rich allege that Canada and the Province exercised significant authority over matters affecting the education, language, culture, and wellbeing of Innu children and Innu communities, and that this authority was exercised in a manner inconsistent with the obligations arising from the Crown-Indigenous relationship.

[198] Whether the impugned conduct engaged the Honour of the Crown, whether corresponding obligations arose, and whether any such obligations were breached are questions that depend upon common governmental conduct and common historical circumstances. Those questions are not dependent upon individual experiences and are therefore capable of collective resolution.

[199] Certification of these common issues does not constitute recognition that a breach occurred, nor does it determine what remedies, if any, may ultimately be available. Those matters remain for trial.

E. Individual Issues Do Not Defeat Certification

[200] The Court accepts the argument that numerous individualized issues will remain should the proceeding ultimately succeed on the common issues.

[201] Individual inquiries may be required regarding: (i) specific incidents of abuse; (ii) causation; (iii) the nature and extent of injury; (iv) individual cultural impacts; (v) limitation defences; (vi) damages; and (vii) individual remedies.

[202] However, the existence of individual issues does not preclude certification. The jurisprudence consistently recognizes that class proceedings may remain appropriate where common questions substantially advance the litigation, notwithstanding the need for later individual determinations.

Conclusion on Common Issues

[203] I am satisfied that the proposed common issues arise from common allegations concerning the establishment, funding, administration, supervision, operation, and effects of the Innu Day Schools and from the common relationship alleged to exist between the Defendants and the proposed classes. Their resolution will materially advance the litigation for all class members.

[204] Accordingly, I conclude that Innu Nation and Rich have established some basis in fact for the existence of common issues and that the requirement set out in section 5(1)(c) has been satisfied.

Section 5(1)(d)-Preferable Procedure

Governing Principles

[205] Section 5(1)(d) requires the Court to determine whether a class proceeding is the preferable procedure for the fair and efficient resolution of the common issues. The Court must ask itself whether a class action would provide a fair, efficient, and manageable means of advancing the litigation when compared with realistically available alternatives.

[206] The preferability analysis is informed by the three well-established objectives of class proceedings: access to justice, judicial economy, and behaviour modification. A class proceeding need not be the perfect procedure as long as it meaningfully advances the objectives of class actions legislation; (see *AIC Limited v. Fischer*, 2013 SCC 69, at paras. 21-29; *Hollick* at para. 28).

Positions of the Parties

Innu Nation and Rich

[207] Innu Nation and Rich argue that a class proceeding is the only realistic mechanism by which the proposed claims can be adjudicated. The litigation concerns systemic conduct extending over decades, involving common allegations regarding the establishment, funding, administration, supervision, and operation of the Innu Day Schools.

[208] They contend that requiring hundreds of former students and multiple Innu governments to pursue separate proceedings would create substantial barriers to justice, generate inconsistent outcomes, and require repetitive adjudication of the same historical, constitutional, and institutional issues.

Canada

[209] Canada submits that individual issues overtake any common issues that might exist. It argues that liability, causation, injury, damages, limitations, and remedies depend upon highly individualized circumstances and would require extensive individual hearings.

The Province

[210] The Province similarly submits that the abuse claims are inherently personal and should proceed through individual actions managed under a common case-management structure. It argues that such a process would better accommodate the differing experiences of former students while avoiding the complexity of a class proceeding.

Access to Justice

[211] I accept the Innu Nation and Rich's submission that access to justice considerations strongly favour certification.

[212] The proposed litigation concerns events spanning multiple decades and multiple communities. The record indicates that many proposed class members reside in remote regions, that many allegations concern historical events occurring many years ago, and that the litigation raises complex questions of constitutional, fiduciary, institutional, and historical significance.

[213] Absent certification, individual class members would be required to commence separate proceedings involving substantial legal and evidentiary expense. Many would face significant practical barriers in assembling the historical, documentary, and expert evidence necessary to prosecute such claims.

[214] The Court cannot ignore the reality that many institutional-abuse and Indigenous-school claims concern harms alleged to have occurred generations ago. Requiring each claimant to independently establish the historical operation of the educational system, governmental involvement, funding arrangements, administrative structures, and broader institutional context would create formidable barriers to meaningful access to justice.

[215] While some individual claims might proceed independently, access to justice is concerned not merely with theoretical access to the courts but with practical access to an effective remedy. In my view, a class proceeding substantially advances that objective.

Judicial Economy

[216] Judicial economy also weighs heavily in favour of certification.

[217] The proposed common issues concern matters that are inherently systemic. They include questions respecting the role played by one or both Crowns in the funding, operation, supervision, and administration of the Innu Day Schools; the existence of common duties; the character of the educational regime; alleged failures in supervision; fiduciary obligations; Aboriginal-rights allegations; and issues arising from the Honour of the Crown.

[218] Determination of those questions will require extensive historical, documentary, governmental, expert, and institutional evidence. It would be profoundly inefficient to require that evidence to be presented repeatedly in numerous individual proceedings.

Class Action v. Common Management of Individual Claims

[219] The Province proposes the alternative of individual actions subject to common case management. While coordinated individual proceedings may reduce some duplication, they do not eliminate the repeated litigation of systemic issues. Courts have repeatedly held that class proceedings are preferable in institutional abuse and Indigenous education litigation where common historical and governmental conduct is in issue: (see *Cloud* at paras. 73-75; *Rumley* at paras. 34-38).

[220] The very purpose of class proceedings is to avoid duplication of factual findings and legal analysis. A class action permits the Court to determine the common issues once for all class members and thereby promotes consistency, efficiency, and proportionality.

[221] I have specifically considered the alternative proposed by the Province, namely coordinated individual proceedings. While that approach could address certain individual abuse claims, it would not avoid repeated litigation of common historical, constitutional, fiduciary and institutional questions.

Behaviour Modification

[222] Behaviour modification carries less weight in historical institutional cases than in some modern regulatory or commercial disputes. Nevertheless, it remains a relevant objective.

[223] The allegations advanced by Innu Nation and Rich concern the manner in which governmental institutions exercised authority over the education of Indigenous children. If established, such claims engage matters of substantial public importance concerning governmental accountability, institutional practices, and Crown–Indigenous relations.

[224] The systemic examination of such allegations through a class proceeding serves the public interest by promoting accountability for institutional conduct and providing an orderly process for adjudicating claims of broad societal significance.

The Existence of Individual Issues

[225] I accept the position of Canada and the Province that substantial individualized issues will remain should the class action proceed, and that individual inquiries may ultimately be required with respect to particular allegations of physical or sexual abuse, causation, damages, limitation defences, individual remedies, and the degree of individual harm experienced by class members.

[226] However, the existence of individual issues does not preclude certification. The jurisprudence consistently recognizes that a class proceeding may be preferable even where individual assessments are required following resolution of the common issues.

[227] The relevant question is whether resolution of the common issues will materially advance the litigation notwithstanding the existence of individual inquiries. In this case, I am satisfied that it will.

Indigenous Educational Litigation

[228] It is also significant that Canadian courts have repeatedly concluded that class proceedings constitute the preferable procedure for addressing systemic allegations arising from Indigenous educational institutions and analogous institutional settings.

[229] While each certification motion must be determined on its own record, the certification of Indigenous educational cases such as *Cloud*, *Rumley*, *Anderson*, *Gottfriedson*, and *McLean* reflect the practical reality that such claims typically involve a combination of systemic and individual issues that are uniquely suited to

class-wide adjudication. The present proceeding raises many of the same institutional, historical, and collective considerations.

[230] Having considered the nature of the claims, the proposed common issues, the alternative procedures identified by Canada and the Province, and the objectives of class proceedings, I conclude that a class action is the preferable procedure for the fair, efficient, and manageable resolution of the common issues.

[231] The proposed proceeding advances access to justice, promotes judicial economy, and provides an appropriate framework for the adjudication of systemic allegations arising from the operation of the Innu Day Schools.

[232] Although individual issues will remain for later determination, those issues do not outweigh the substantial benefits achieved through the collective resolution of the common questions identified in this proceeding.

[233] Accordingly, I find that the requirement contained in section 5(1)(d) is satisfied.

Section 5(1)(e)- Representative Plaintiffs

Governing Principles

[234] Section 5(1)(e) requires the Court to be satisfied that there is a representative plaintiff who:

(a) will fairly and adequately represent the interests of the class;

(b) has produced a workable litigation plan for advancing the proceeding and notifying class members; and

(c) does not possess, on the common issues, interests that conflict with those of other class members.

[235] The purpose of this requirement is not to identify the ideal representative plaintiff. Rather, the Court must be satisfied that the proposed representatives can fairly advance the claims of absent class members and provide meaningful instructions to counsel concerning the conduct of the litigation.

[236] Once again, the Court's role is not to assess the ultimate merits of the claims, the credibility of the proposed representatives, or whether they possess detailed knowledge of every aspect of the litigation. Representative plaintiffs are expected to instruct counsel and protect the interests of the class.

[237] They need not be legally sophisticated, possess complete knowledge of the litigation, or have experienced every alleged injury. What is required is a demonstrated commitment to advancing the interests of the class and the absence of any conflicts that would compromise those interests.

The Proposed Representatives

[238] The proposed representative plaintiffs are Innu Nation Inc., Gregory Rich, Marie Martha Andrew, and Magdaline Benuen. The proposed classes consist of the Survivor Class and the Innu Governments Class.

[239] The evidentiary record establishes some basis in fact that each proposed representative possesses a genuine interest in the litigation and understands the essential nature of the claims being advanced.

[240] Gregory Rich, Marie Martha Andrew, and Magdaline Benuen are alleged former attendees of Innu Day Schools and seek to advance claims arising from the operation of those institutions on behalf of members of the Survivor Class. Their

interests are aligned with the central allegations underlying that class proceeding, namely the effects of the Innu Day School system upon former students.

[241] Innu Nation seeks to represent the interests of the proposed Government Class and advances collective claims relating to language, culture, community wellbeing, and the intergenerational effects allegedly arising from the operation of the Innu Day Schools. The pleadings allege that these claims affect Innu collectivities generally rather than any individual member alone.

Fair and Adequate Representation

[242] Canada and the Province submit that the litigation encompasses diverse experiences occurring over many decades and across multiple communities. They argue that such diversity raises concerns regarding the ability of the proposed representatives to adequately represent all class members. I do not accept that submission.

[243] Variation among class members is common in institutional and Indigenous class proceedings. The existence of differing experiences, differing injuries, or differing remedies does not, standing alone, demonstrate inadequate representation.

A Workable Litigation Plan

[244] The purpose of a litigation plan is not to provide a blueprint resolving every procedural issue that may arise throughout the proceeding. Rather, it must demonstrate a realistic and manageable method for advancing the action and communicating with class members.

[245] The proposed litigation plan contemplates certification, notice to class members, determination of common issues, mechanisms for the management of

individual issues should they arise, and procedures for ongoing communication with both individual and collective class members.

[246] Given the nature of the proceeding, it would be unrealistic to expect complete procedural certainty at this preliminary stage. Institutional class actions frequently evolve as discovery progresses and common issues are refined.

[247] The certification process requires a workable plan, not a perfect one.

[248] Having reviewed the proposed litigation plan, I am satisfied that there is some basis in fact to support the conclusion that it provides a workable framework for advancing the litigation and notifying class members.

Common issue interests that conflict with those of other class members

[249] I am also satisfied that no conflict exists between the interests of the proposed Survivor Class and those of the proposed Innu Governments Class on the common issues.

[250] Although the two classes advance claims arising from different forms of alleged harm - individual harms relating to abuse, loss of language and culture, and their consequences for former students, and collective harms relating to language, culture, identity, governance, and community wellbeing - their interests on the common issues are aligned rather than adverse.

[251] Both classes seek determination of substantially overlapping questions concerning the establishment, operation, supervision, funding, administration, purpose, and effects of the Innu Day Schools, together with the nature and extent of the Defendants' alleged obligations toward the Innu people and Innu children.

[252] Success by one class on those common questions would not diminish or undermine the interests of the other. Rather, the classes rely upon a common historical and institutional foundation and seek complementary, rather than competing, forms of relief.

[253] On the record before me, I find no actual or reasonably foreseeable conflict between the proposed representative plaintiffs and the classes they seek to represent, nor any conflict between the Survivor Class and the Innu Governments Class on the common issues. No evidence has been identified suggesting that any proposed representative seeks relief adverse to the interests of any other class member or class.

[254] Overall, the record provides some basis in fact that the proposed representatives understand the essential allegations, have actively participated in the commencement of the proceeding, and are prepared to instruct counsel throughout the litigation.

[255] I am therefore satisfied that the proposed representatives are capable of fairly and adequately representing the interests of the proposed classes and the requirements under section 5(1)(e) have been met.

CONCLUSION ON CERTIFICATION

[256] As mentioned at the outset of my decision, these reasons distinguish between the legal viability of particular causes of action and the continued relevance of the factual allegations upon which those causes of action are based.

[257] My reasons decide only whether the statutory requirements contained in section 5 of the *Class Actions Act* have been satisfied. Therefore, they must be read through the lens of certification jurisprudence. I have not accepted the Plaintiffs' historical account, rejected the Defendants' competing narrative, resolved disputes of fact, made findings concerning responsibility for the operation of the Innu Day Schools, determined the existence of Aboriginal rights, found any breach of fiduciary duty or constitutional obligation, or assessed damages.

[258] Rather, I have only determined that certain pleaded causes of action are legally arguable and that the remaining certification requirements have been met on the low evidentiary threshold prescribed by the *Class Actions Act*. I have left the substantive issues to be decided at trial on a complete evidentiary record.

DISPOSITION

[259] For the reasons set out above, I conclude that the application for certification should be granted in part.

[260] The systemic negligence claim advanced against Canada does not, in its present form, disclose a reasonable cause of action. That claim is therefore struck on a without prejudice basis, with leave to amend.

[261] The abuse-based negligence claims advanced against the Province disclose a reasonable cause of action and survive the analysis under section 5(1)(a).

[262] The negligence claim advanced against the Province relating to the alleged loss of language and culture does not, in its present form, disclose a reasonable cause of action. That claim is struck on a without prejudice basis, with leave to amend.

[263] The claims for breach of fiduciary duty disclose legally viable causes of action and survive the pleadings analysis.

[264] The claim alleging infringement of Aboriginal rights protected by section 35 of the *Constitution Act, 1982* discloses a legally viable causes of action and survives the pleadings analysis.

[265] The claim founded upon the Honour of the Crown and UNDRIP discloses a legally viable causes of action and survives the pleadings analysis.

[266] I am further satisfied that Innu Nation and Rich have established the remaining certification requirements contained in sections 5(1)(b) through (e) of the *Class Actions Act*.

[267] There is an identifiable class, the claims raise common issues, a class proceeding is the preferable procedure for the resolution of those issues, and the proposed representative plaintiffs are capable of fairly and adequately representing the interests of the proposed classes.

[268] The Survivor Class set out in Appendix “B” is hereby certified.

[269] The Innu Governments Class set out in Appendix “B” is hereby certified.

[270] The common issues identified in Appendix “A” are hereby certified, subject to the limitations described in my reasons.

[271] Gregory Rich, Marie Martha Andrew, and Magdaline Benuen are appointed representative plaintiffs for the Survivor Class.

[272] Innu Nation Inc. is appointed representative plaintiff for the Innu Governments Class.

[273] Counsel shall confer and provide to the Court, within 120 days of the release of my reasons, a draft Certification Order which includes finalized class definitions, certified common issues, and any necessary amendments arising from the disposition of the negligence claims.

[274] In the event the parties are unable to agree upon the form of the Certification Order, they may arrange a case management conference for the purpose of settling its terms.

[275] There will be no Order as to Costs.

[276] Order accordingly.

PETER N. BROWNE
Justice

APPENDIX A

CERTIFIED COMMON ISSUES

A. Negligence (Province Only – Abuse-Based Claims)

1. Did the Province owe a duty of care to members of the Survivor Class arising from its alleged role in the establishment, administration, supervision, operation, or funding of the Innu Day Schools?
2. Did the Province fail to implement reasonable systems, policies, practices, or safeguards for the supervision and protection of students attending the Innu Day Schools?
3. If so, did any such failures constitute systemic negligence?
4. Are members of the Survivor Class entitled to recover damages arising from any such negligence, and if so, what categories of damages are available?

B. Breach of Fiduciary Duty

1. Did either or both Canada and the Province owe fiduciary duties to members of the Survivor Class?
2. Did either or both owe fiduciary duties to members of the Innu Governments Class?
3. If fiduciary duties existed, were those duties breached?
4. If so, what remedies are available to the affected Class Members?

C. Aboriginal Rights – Section 35 Do the interests asserted by the Innu Nation and Rich concerning Innu language, culture, identity, and associated traditional practices constitute Aboriginal rights capable of recognition and protection under s. 35 of the *Constitution Act, 1982*?

1. Did the conduct alleged against one or both Canada and the Province interfere with any such Aboriginal rights?
2. If so, was any such interference justified in law?

3. What remedies, if any, are available arising from any infringement of Aboriginal rights?

D. Honour of the Crown and UNDRIP

1. Did the conduct alleged against one or both Canada and the Province engage obligations arising from the Honour of the Crown and UNDRIP?
2. If so, were those obligations breached?
3. If a breach is established, what remedies, if any, are available?

E. General and Collective Issues

1. Did one or both Canada and the Province exercise authority, control, supervision, administration, funding responsibility, or operational responsibility in relation to the Innu Day Schools during the Class Period?
2. Did the operation of the Innu Day Schools have common effects upon members of the Survivor Class and/or the Innu Governments Class?
3. Are any issues relating to aggregate damages, declaratory relief, equitable relief, or systemic remedies capable of determination on a class-wide basis?

APPENDIX B

CLASS DEFINITIONS

Survivor Class

All persons who attended one or more Innu Day Schools located in Labrador during the Class Period and who allege that they suffered harm arising from the establishment, administration, supervision, operation, funding, or effects of the Innu Day Schools.

For greater certainty, membership in the Survivor Class is determined by attendance at an identified Innu Day School during the Class Period and does not depend upon proof of abuse, negligence, cultural loss, fiduciary breach, constitutional infringement, causation, or damages.

Innu Governments Class

The following Indigenous collectivities:

1. Innu Nation Inc.;
2. Mushuau Innu First Nation; and
3. Sheshatshiu Innu First Nation.

The Innu Governments Class advances claims relating to alleged collective injuries including:

- loss of language;
- loss of culture;
- disruption of identity;
- impairment of governance and community wellbeing; and
- interference with the intergenerational transmission of Innu traditions.