

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION (GENERAL)

BETWEEN:

CAROL ANDERSON, ALLEN WEBBER  
and JOYCE WEBBER

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*, S.N.L. 2001, C. C-18.1

AND BETWEEN:

TOBY OBED, WILLIAM ADAMS and MARTHA BLAKE

2007 01T5423 CP

- and -

THE ATTORNEY GENERAL OF CANADA

SELMA BOASA and REX HOLWELL

2008 01T0844 CP

- and -

THE ATTORNEY GENERAL OF CANADA

SARAH ASIVAK and JAMES ASIVAK

2008 01T0845 CP

- and -

THE ATTORNEY GENERAL OF CANADA

EDGAR LUCY and DOMINIC DICKMAN

2008 01T0846 CP

- and -

THE ATTORNEY GENERAL OF CANADA

INTERLOCUTORY APPLICATION

(INTER PARTES)

SUMMARY OF CURRENT DOCUMENT	
Court File Number(s):	2007 01T4955 CP 2007 01T5423 CP 2008 01T0844 CP 2008 01T0845 CP 2008 01T0846 CP
Date of Filing Document:	December 21, 2012
Name of Filing Party or Person:	Anderson, et al. (Applicant)
Application to which Documents being filed relates:	Application under Rules 7.07 and 29 to replace representative plaintiff in Court File No. 2008 01T0844 CP
Statement of purpose in filing:	Applicant seeks to replace representative plaintiff in Court File No. 2008 01T0844 CP
Court Sub-File, if any:	N/A

**THE PLAINTIFFS** will bring an application to the Honourable Justice Butler at a date and time to be determined by the Court, at Trial Division (General), Supreme Court of Newfoundland and Labrador, 309 Duckworth Street, St. John's, NL A1C 1G9, for the replacement of Ms. Selma Boase as the Survivor Class representative plaintiff in Court File No. 2008 01T0844CP, pursuant to Rules 7.07 and 29 of the *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D.

**THE APPLICATION** shall be heard in writing.

**THE APPLICATION IS FOR** an order on the following terms:

- (a) the replacement of Ms. Selma Boase (incorrectly named in the title of proceedings as Selma Boasa) as the Survivor Class representative plaintiff in Court File No. 2008 01T0844CP;
- (b) the plaintiffs shall not be entitled to, nor subject to, any costs on the application; and,
- (c) any further and other relief that counsel may advise and this Honourable Court may permit.

**GROUNDS FOR THE APPLICATION:**

- (a) the certified common issues in these actions pertain to claims in both negligence and breach of fiduciary duty based on the manner in which The Attorney General of Canada ("Canada") participated in the operation, funding, oversight and control (or its failure to properly operate and oversee) of five residential schools for aboriginal children following Confederation in 1949;


- (b) Ms. Selma Boase is currently the Survivor Class representative plaintiff in Court File No. 2008 01T0844 CP, one of the class actions in these consolidated proceedings;
- (c) Ms. Boase was to attend for an examination for discovery as representative plaintiff of the Survivor Class on September 12, 2012 in St. John's, Newfoundland and was unable to do so due to poor health;
- (d) at a case conference in these consolidated proceedings on October 30, 2012, it was agreed by counsel for the parties that Ms. Boase's examination for discovery would proceed by November 30, 2012 at a location and date to be determined by the parties;
- (e) counsel for the parties subsequently agreed that Ms. Boase's examination for discovery would take place at the R.C.M.P. office in Hopedale on November 26, 2012, so as to ease Ms. Boase's travel concerns;
- (f) Ms. Boase agreed to attend for her discovery at this time but later advised on the morning of November 26, 2012 that she was feeling unwell and was unable to attend;
- (g) further attempts were made to contact Ms. Boase and reschedule her discovery but she advised that she was not well enough to proceed with the discovery;
- (h) Ms. Boase has refused to discuss this matter further with counsel for the plaintiffs;
- (i) Ms. Boase is no longer able to fulfill her obligations as a representative plaintiff of the Survivor Class due to illness and the inability of counsel to receive instructions from Ms. Boase;
- (j) the defendant shall not suffer any prejudice in the replacement of Ms. Boase as a representative plaintiff of the Survivor Class as Ms. Rosina Holwell has agreed to replace Ms. Boase and shall be examined for discovery by January 31, 2013;
- (k) Ms. Holwell is a former student of the St. Anthony School;
- (l) Ms. Holwell is aware of her obligations as a proposed representative plaintiff and has agreed to assume these obligations;
- (m) Ms. Holwell shall produce any relevant documents related to this action before her examination for discovery;
- (n) the replacement of Ms. Boase as representative plaintiff of the Survivor Class will not result in any delay in the prosecution of this class proceeding;
- (o) Rules 7.07 of the *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Sch D;
- (p) The *Class Actions Act*, SNL 2001, c C-18.1; and,

- (q) such further and other grounds as counsel may advise and this Honourable Court may permit or deem appropriate.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the return of the application;

- (a) affidavit of Rhelda Gautreau, sworn November 30, 2012;  
(b) affidavit of Rosina Holwell, sworn December 20, 2012;  
(c) the pleadings and proceedings in this action; and,  
(d) such other and further materials as counsel may advise and this Honourable Court may permit.

**DATED** at St. John's, Newfoundland and Labrador, this 2<sup>nd</sup> day of January, 2013.

  
CHES CROSBIE BARRISTERS  
Co-counsel for the Plaintiffs  
169 Water Street, 4<sup>th</sup> Floor  
St. John's, NL A1C 1B1  
*Attention: Chesley F. Crosbie, Q.C.*

TO: DEPARTMENT OF JUSTICE  
CANADA  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, NS B3J 1P3  
*Attention: Jonathan D. N. Tarlton*

**ISSUED** at St. John's, Newfoundland and Labrador, this 3<sup>rd</sup> day of January, 2013.

(Agd)   
Margaret Williams  
Jural Co-Ordinator

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DEFENDANT

BROUGHT UNDER THE *CLASS ACTIONS ACT*, S.N.L. 2001, C. C-18.1  
BEFORE THE HONOURABLE MADAM JUSTICE BUTLER  
CASE MANAGEMENT JUDGE

**AND BETWEEN:**

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**AFFIDAVIT**

I, Chesley F. Crosbie, Q.C., of St. John's, in the Province of Newfoundland and Labrador, solicitor for the Plaintiffs, make oath and say as follows:

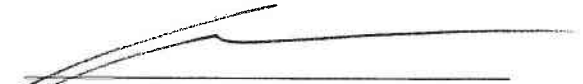
1. THAT I have read and I understand the foregoing application.
2. THAT the facts contained therein are true to the best of my knowledge, information and belief.

3. THAT I make this Affidavit in support of the Plaintiffs' application of even date.

**SWORN TO** at the City of St. John's, in the Province of Newfoundland and Labrador, this 2<sup>nd</sup> day of January, 2013, before me:

  
\_\_\_\_\_

**SHERI GEEHAN**  
A Commissioner for Oaths in and for  
the Province of Newfoundland and Labrador.  
My commission expires on December 31, 2016.

  
\_\_\_\_\_

**CHESLEY F. CROSBIE, Q.C.**

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**NOTICE TO THE PARTIES**

You are hereby notified that the foregoing application will be heard on *Thursday*, the  
*21<sup>st</sup>* day of *March*, 2013, at the hour of ten o'clock in the  
forenoon or so soon thereafter as the application can be heard.

TO: DEPARTMENT OF JUSTICE  
CANADA  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, NS B3J 1P3  
*Attention: Jonathan D. N. Tarlton*

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**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_, of \_\_\_\_\_ make oath and say as follows:

**(Personal Service)**

1. On \_\_\_\_\_, at \_\_\_\_\_, I served with the \_\_\_\_\_ by leaving a copy with him (or her) at \_\_\_\_\_



2. I was able to identify the person by means of

**(Service by leaving a copy with an adult person in the same household as an alternative to personal service)**

1. I served \_\_\_\_\_ with the \_\_\_\_\_ by leaving a copy on \_\_\_\_\_ at \_\_\_\_\_, with a person, \_\_\_\_\_, who appeared to be an adult member of the same household in which \_\_\_\_\_ is residing, at \_\_\_\_\_, and by sending a copy by regular lettermail (or registered or certified mail) on \_\_\_\_\_ to \_\_\_\_\_ at the same address.

2. I ascertained that the person was an adult member of the household by means of

3. Before serving the documents in this way, I made an unsuccessful attempt to serve \_\_\_\_\_ personally at the same address on \_\_\_\_\_. (If more than one attempt has been made, add: and again on \_\_\_\_\_.)

**(Service by registered mail as an alternate to personal service)**

1. On \_\_\_\_\_, I sent to \_\_\_\_\_ by registered mail with Canada Post Corporation item # \_\_\_\_\_ attached to the envelope, a copy of the

2. Attached is the confirmation of delivery receipt obtained from Canada Post Corporation for item # \_\_\_\_\_ showing the envelope was delivered to \_\_\_\_\_ on

3. The item # on the confirmation of delivery receipt is identical to the item number on the registered mail receipt obtained from Canada Post Corporation for the envelope sent to

**(Service by certified mail as an alternative to personal service)**

1. On \_\_\_\_\_, I sent to \_\_\_\_\_ by certified mail a copy of the

2. I received the attached receipt card from Canada Post Corporation which indicates the documents were received on \_\_\_\_\_ and which bears a signature that purports to be the signature of

**(Service by regular lettermail as an alternative to personal service)**

1. On \_\_\_\_\_, I sent to the \_\_\_\_\_ by regular lettermail a copy of the \_\_\_\_\_ together with an acknowledgment of receipt form.

2. On \_\_\_\_\_, I received the attached acknowledgment of receipt form bearing a signature that purports to be the signature of \_\_\_\_\_

**SWORN TO** before me at the City of \_\_\_\_\_, in the Province of \_\_\_\_\_, this day of \_\_\_\_\_, 2013.

\_\_\_\_\_

\_\_\_\_\_