

**2007 01 T 4955 CP**  
**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**

**AND:**

Her Majesty In Right of Newfoundland and Labrador                      **THIRD PARTY**

**2008 01 T 0845 CP**

**BETWEEN:**

Sarah Asviak and James Asivak    **PLAINTIFFS**

**AND:**

The Attorney General of Canada    **DEFENDANT**

**AND:**

Her Majesty In Right of Newfoundland and Labrador                      **THIRD PARTY**

**2008 01 T 0844 CP**

**BETWEEN:**

Selma Boasa and Rex Holwell    **PLAINTIFFS**

**AND:**

The Attorney General of Canada    **DEFENDANT**

**AND:**

Her Majesty In Right of Newfoundland and Labrador                      **THIRD PARTY**

**2008 01 T 0846 CP**

**BETWEEN:**

Edgar Lucy and Dominic Dickman    **PLAINTIFFS**

**AND:**

The Attorney General of Canada    **DEFENDANT**

**AND:**

Her Majesty In Right of Newfoundland and Labrador                      **THIRD PARTY**

**2007 01 T 5423 CP**

**BETWEEN:**

Tony Obed, William Adams and Martha Blake                                      **PLAINTIFFS**

**AND:**

The Attorney General of Canada    **DEFENDANT**

**AND:**

Her Majesty in Right of Newfoundland and Labrador                      **THIRD PARTY**

Brought under the *Class Actions Act* SNL 2001, c. C-18.1  
Before the Honourable Madame Justice Butler, Case Management Judge

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**DEFENCE**

Of the Third Party,  
Her Majesty in Right of Newfoundland and Labrador

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01. The Third Party Defendant, (hereafter the Province), admits paragraphs 1 and 2 of the Third Party Statement of Claim, dated 16 November 2012, (hereafter the Statement of Claim).
02. As to paragraph 3 of the Statement of Claim, while it is correct to say that the International Grenfell Association, (the IGA), the Moravian Church and the Labrador and Western School Boards, (the Boards), *by their purpose operation and management created and ran schools*, this is not correct in respect of the Province and the Province denies this.
03. As to paragraph 4 of the Statement of Claim:
  - i) The Province denies the first sentence of paragraph 4 of the Statement of Claim and repeats paragraph 2 herein;
  - ii) As to the balance of paragraph 4 of the Statement of Claim the Province notes that the Federal Government also had jurisdiction by virtue of s. 91(24) of the **Constitution**;
  - iii) Otherwise, the Province admits paragraph 4 of the Statement of Claim.
04. As to paragraph 5 and 6 of the Statement of Claim the Province admits that Canada from time to time provided funding for education in the Province, and that, dependent on the circumstances, the provision of funding may not give rise to a cause of action, but otherwise denies these paragraphs and repeats paragraph 03(ii) herein.
05. As to paragraphs 5 to 10 of the Statement of Claim:
  - i) the Province notes that the basis of the Plaintiffs' claim against Canada is the allegation that the Plaintiffs breached a non-delegable fiduciary duty towards the Plaintiffs in moving the Plaintiffs to, and maintaining their attendance at residential schools. The Plaintiffs alleges that their cause of action stems from

duties assumed by Canada at the time of Newfoundland and Labrador's entry into Confederation. The Plaintiffs further allege that the *British North America Act*, and the *Terms of Union* are the source of Canada's non-delegable fiduciary duty and therefore that Canada is exclusively liable;

- ii) The nature of the claim as formulated by the Plaintiffs is not one which lends itself to a third party action by Canada against the Province as the liability alleged by the Plaintiffs is uniquely and solely Canada's as a result of Canada's duties, constitutional and otherwise;
- iv) While the foundation for the Plaintiffs claim is not financial Canada submits in the alternative that if liable because of the provision of funding (or otherwise) then it is entitled to contribution and indemnification from the Province. The Province denies this, repeats paragraphs paragraph 5(ii) herein and states that the payment of money by Canada to the Province toward education does not, under the circumstances, give rise to a cause of action against the Province. The Province states that Canada should seek contribution and indemnification from the IGA, the Moravians and the Boards who managed the day to day operations of the subject schools.

06. The Province denies paragraph 11 of the Statement of Claim and states that with the exception of curriculum the activities listed relate to day to day running of the schools which was the responsibility of the Boards, the IGA, and the Moravians.

07. The Province denies paragraph 12 of the Statement of Claim and states that it was the Boards, the IGA and the Moravians who were the employers of staff at the schools and who must therefore be liable, vicariously or otherwise, for the acts and omissions of their employees.

08. The Province denies that Canada is entitled to the relief claimed in paragraph 13 of the Statement of Claim.

09. As to Statement of Claim as a whole:

- i) The Province denies the allegations contained therein and puts Canada to the strict proof thereof;

- ii) The Province further denies the allegations contained in the Statement of Claim as between the Class Action(s) and Canada;
- iii) The nature of the claim as formulated by the Plaintiffs is not one which lends itself to a third party action by Canada against the Province as the liability alleged by the Plaintiffs is uniquely and solely Canada's as a result of Canada's duties, constitutional and otherwise;
- iv) While the foundation for the Plaintiffs claim is not financial Canada submits in the alternative that if liable (solely) because of its financial contributions to education in the Province then it is entitled to contribution and indemnification from the Province. The Province denies this and states that the payment of money by Canada to the Province which then funded activities of IGA, the Moravians and the Boards does not, under the circumstances, give rise to a cause of action. The Province states that Canada should seek contribution and indemnification from the IGA, the Moravians and the Boards who managed the day to day operations of the subject schools.
- v) The Boards, the IGA and the Moravians were the employers of staff at the schools and it's those entities who ultimately would be liable, vicariously or otherwise, for the acts and omissions of their employees.
- vi) The Province's duties and responsibilities as defined by the Common Law and statute applicable during the relevant time were discharged in a non-negligent manner consistent with the common law and the applicable statutory law.
- vii) The claims of the class members to the extent that they allege mental, physical and emotional abuse, as opposed to sexual abuse, are in any event statute barred.

10. The Province seeks the dismissal of this Statement of Claim.

DATED at the City of St. John's, in the Province of Newfoundland and Labrador, this 31<sup>st</sup> day of January 2013.



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