

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION

BETWEEN:

SARAH ASIVAK, and DELANO FLOWERS

Plaintiffs

AND:

THE ATTORNEY GENERAL OF CANADA

Defendant

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

**ORDER**

*HEARING*

UPON READING the Consent of the Parties, filed, IT IS HEREBY ORDERED  
THAT:

1. the Plaintiff Delano Flowers be removed as plaintiff to this action and be replaced with the plaintiff James Asivak,
2. the Plaintiff be granted leave to file an Amended Statement of Claim in the form attached as Schedule "A",
3. ~~the Plaintiff be granted leave to file a fresh as amended Statement of Claim in the form attached as Schedule "B",~~
4. this Order is made on a without costs basis.

DATED AT St. John's, Newfoundland and Labrador, this \_\_\_\_ day of March, 2009.

*Darlene Wells*  
Senior Deputy Registrar

Filed	March 26/09	<i>[Signature]</i>
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2007 01T0845CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**BETWEEN:**

**SARAH ASIVAK and ~~DELANO FLOWERS~~  
JAMES ASIVAK**

**PLAINTIFFS**

**AND:**

**THE ATTORNEY GENERAL OF CANADA**

**DEFENDANT**

Brought under the *Class Actions Act*, S.N.L. 2001, c. C-18.1

**AMENDED STATEMENT OF CLAIM**

**A. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA**

1. The Representative Plaintiffs, on their own behalf, and on behalf of the members of the Survivor Class and Family Class claim:

- (a) an Order certifying this proceeding as a Class Action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1 and appointing Sarah Asivak and ~~Delano Flowers~~ James Asivak as Representative Plaintiff for the Survivor Class and Family Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Nain Boarding School in Nain, Labrador (the "School");
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;

- (d) a Declaration the Canada was or is in breach of its fiduciary obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members, to obligatory attendance at the School;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the *Indian Act*, R.S.C. 1985, c. I-5 (the "Act") and its Treaty obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;
- (f) a Declaration that the School caused cultural, linguistic and social damage and irreparable harm to the Survivor Class;
- (g) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;
- (h) non-pecuniary general damages for negligence, loss of language and culture, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of \$500 million or such other sum as this Honourable Court finds appropriate;
- (i) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties of \$500 million or such other sum as this Honourable Court deems just;
- (j) punitive damages of \$100 million or such other sum as this Honourable Court deems just;
- (k) damages in the amount of \$100 million or such other sum as this Honourable Court deems just, pursuant to the *Family Law Act*, R.S.N., 1990, and its predecessors;
- (l) prejudgment and postjudgment interest pursuant to the provisions of the *Judicature Act*, R.S.N. 1990, c. J-4 ; and
- (m) the costs of this action on a substantial indemnity scale.

**B. DEFINITIONS**

2. The following definitions apply for the purposes of this Claim:

- (a) "Aboriginal", "Aboriginal People(s)" or "Aboriginal Person(s)" means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule "B" to the *Canada Act, 1982* (U.K.), 1982. c. 11;
- (b) "Aboriginal Right(s)" means rights recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule "B" to the *Canada Act, 1982* (U.K.), 1982. c. 11;
- (c) "Agents" mean the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of the School;
- (d) "Canada" means Her Majesty the Queen in Right of Canada, as represented in this proceeding by the Attorney General of Canada;
- (e) "Class" or "Class Members" means all members of the Survivor Class and the Family Class;
- (f) "Class Period" means March 31, 1949 to December 31, 1996;
- (g) "Excluded Persons" means all persons who attended an Eligible Indian Residential School as defined by the Indian Residential Schools Settlement Agreement dated May 10, 2006 (the "Agreement") and all persons who are otherwise eligible, pursuant to the Agreement, to receive a Common Experience Payment or pursue a claim through the Individual Assessment Process, as defined by the Agreement;
- (h) "Family Class" means:
  - (i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (ii) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (iii) a former spouse of a Survivor Class Member;
  - (iv) a child or other lineal descendent of a grandchild of a Survivor Class Member;

- (v) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;
  - (vi) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;
  - (vii) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death;
- (i) "School" means the Nain Boarding School, located in Nain, Newfoundland and Labrador;

- (j) "Survivor Class" means:

All persons who attended the School between March 31, 1949 and December 31, 1996.

## C. THE PARTIES

### i. Proposed Representative Plaintiffs

3. The Plaintiff, Sarah Asivak ("Asivak"), resides in Goose Bay, Newfoundland and Labrador ("Newfoundland") is an Inuit. Asivak attended the School in Nain, Newfoundland for one (1) year between 1958 and 1959. Asivak is a proposed representative plaintiff for the Survivor Class.

4. The Plaintiff, ~~Delano Flowers~~ James Asivak ("~~Flowers James~~") resides in Goose Bay, Newfoundland and is an Inuit. James Flowers was born on May ~~13~~ 15, ~~1962~~ 1943 and his ~~mother wife, Emily Dickman~~ Sarah Asivak, the other named plaintiff, attended the School in Nain, Newfoundland for one (1) year between ~~1949~~ 1958 and 1959. Flowers James is a proposed representative plaintiff for the Family Class.

5. The proposed Representative Plaintiffs do not purport to advance claims on behalf of any persons who are otherwise entitled to compensation pursuant to the terms of the Agreement.

6. Neither the proposed Representative Plaintiffs' claim nor the classes they propose to represent overlap with the terms of the order issued by Regional Senior Justice Winkler of the Ontario Superior Court of Justice, dated March 8, 2007.

ii. The Defendant

7. The Defendant, Her Majesty the Queen in Right of Canada, is represented in this proceeding by the Attorney General of Canada ("Canada"). Canada represents the interests of the Minister of the Department of Indian Affairs Canada, who was, at all material times, responsible for the maintenance and operation of the School, either on its own or in combination with other of its governmental agents or servants.

**D. RESIDENTIAL SCHOOL SYSTEM – OPERATION OF THE SCHOOL**

i. Background - Residential School History Generally

8. Residential Schools were established by Canada as early as 1874, for the education of Aboriginal children. These children were taken from their homes and their communities and transported to Residential Schools where they were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them.

9. Commencing in 1911, Canada entered into formal agreements with various Churches and other philanthropic organizations (collectively the "Churches") for the operation of such schools. Pursuant to these agreements, Canada controlled, regulated,

supervised and directed all aspects of the operation of the Residential Schools. The Churches assumed the day-to-day operation of the Residential Schools under the control, supervision and direction of Canada, for which the Canada paid the Churches a per capita grant calculated to cover part of the cost of the Residential School operation.

10. As of 1920, the Residential School Policy included compulsory attendance at Residential Schools for all Aboriginal children aged 7 (seven) to 15 (fifteen). This approach to the control and operation of the Residential Schools system continued until April 1, 1969, at which time Canada assumed the sole operation and administration of the Residential Schools from the Churches, excepting certain cases where Churches continued to act as agents of Canada.

11. Canada removed Aboriginal Persons, usually young children, from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. Canada controlled all aspects of the admission of Aboriginal Persons to the Residential Schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools.

12. The same Residential School policy was implemented and effected in Newfoundland, which joined Canada on March 31, 1949. Accordingly, the claim against Canada is limited temporally to the time when the Canada became responsible for Aboriginal Persons residing in Newfoundland, or 1949, and beyond.

13. Aboriginal Persons were often taken from their families without the consent of their parents or guardians. While the stated purpose of the Residential Schools from their

inception was the education of Aboriginal children, their true purpose was the complete integration and assimilation of Aboriginal children into mainstream Canadian society and the obliteration of their traditional language, culture and religion. Many children attending Residential Schools were also subject to repeated and extreme physical, sexual and emotional abuse, all of which continued until the year 1996, when the last Residential School operated by Canada was closed.

14. During the Class Period, children at the school were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in the School and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

15. The accommodation was crowded, cold, and sub-standard. Aboriginal children were underfed and ill nourished, forbidden to speak their native languages or to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. Aboriginal children were also subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

ii. Canada's Operation of the School in Newfoundland

16. The School was located in Nain, Newfoundland. It was first established in the 1950's and ceased operation as a residential school for Aboriginal children in the 1970's.

17. The purpose of the School was to provide education to Aboriginal children between the ages of 6 and 16 years who attended the School from various First Nations



bands and communities in Newfoundland. The School eventually became a vehicle for assimilating Aboriginal children through the eradication of their native languages, cultures and spiritual beliefs.

18. The School was initially founded and established by the Moravian Mission. At all material times, the staff members at the School were employees, servants and/or agents of Canada. The funding provided by Canada was inadequate to meet the costs of operating and maintaining the School, and in particular, to meet the daily and educational needs of the students at the School. As a result, the care provided to the students and the conditions at the School were poor, the staff hired were unskilled and/or unsuitable for dealing with children and the conditions at the School were unsuitable and inappropriate for an educational facility for children.

19. In many cases, the Aboriginal children were forced to attend the School by representatives, agents or servants of Canada. The Aboriginal children who attended the School were separated from their families, uprooted and taken to the School, where they were placed within the control of Canada. For all intents and purposes, the children who attended the School, were wards of the School and Canada.

20. Canada carried out that operation and administration of the School until the late 1970's. These operative and administrative responsibilities, carried out on behalf of Canada by its agents included:

- (a) the operation and maintenance of the School during the Class Period;
- (b) the care and supervision of all members of the Survivor Class, and for supplying all the necessities of life to Survivor Class members *in loco parentis*;

- (c) the provision of educational and recreational services to the Survivor Class while in attendance at the School and control over all persons allowed to enter the School premises at all material times;
- (d) the selection, supply and supervision of teaching and non-teaching staff at the School and reasonable investigation into the character, background and psychological profile of all individuals employed to teach or supervise the Survivor Class;
- (e) inspection and supervision of the School and all activities taking place therein, and for full and frank reporting to Canada respecting conditions in the School and all activities taking place therein;
- (f) transportation of Survivor Class members to and from the School; and
- (g) communication with and reporting to the Family Class respecting the activities and experiences of Survivor Class members while attending the School.

21. Attempts to provide educational opportunities to children confined in the School were ill-conceived and poorly executed by inadequately trained teaching staff. The result was to effectively deprive the Aboriginal children of any useful or appropriate education. Very few survivors of the School went on to any form of higher education.

22. The conditions and abuses in the School during the Class Period were well-known to Canada.

#### **E. CANADA'S BREACHES OF DUTIES TO THE CLASS MEMBERS**

23. Canada has a fiduciary relationship with Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the School during the Class Period.

24. Canada, and its respective servants and agents compelled members of the Survivor Class to leave their homes, families and communities, and forced members of the Survivor Class to attend (and sometimes live in) the School, all without lawful

authority or the permission and consent of Survivor Class members or that of their parents. Such confinement was wrongful, arbitrary and for improper purposes.

25. Survivor Class members were systematically subjected to the institutional conditions, regime and discipline of the School without the permission and consent of Survivor Class members or that of their parents, and were also subjected to wrongful acts at the hands of Canada while confined therein.

26. In particular, Asivak experienced abuse during her time at the School by teachers, "caregivers" and other students. Many of the children at the School also experienced sexual, physical and verbal abuse, perpetrated against them by teachers, adults in positions of authority or from other students.

27. Flowers James, as a member of the Family Class, has experienced emotional abuse due to his ~~mother's~~ wife's inability to participate in normal family life as result harm she suffered during her attendance at the School.

28. All persons, including Asivak, who attended the School did so as wards of Canada, with Canada as their guardian, and were persons to whom Canada owed the highest non-delegable, fiduciary, moral, statutory and common law duties, which included, but were not limited to, the duty to ensure that reasonable care was taken of the Survivor Class while at the School, the duty to protect the Survivor Class while at the School and the duty to protect the Survivor Class from intentional torts perpetrated on them while at the School. These non-delegable and fiduciary duties were performed negligently and tortiously by Canada, in breach of its special responsibility to ensure the safety of the Survivor Class while at the School.

29. Canada was responsible for:
- (a) the administration of the Act and its predecessor statutes as well as any other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
  - (b) the promotion of the health, safety and well being of Aboriginal Persons in Newfoundland during the Class Period;
  - (c) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor ministries and departments during the Class Period;
  - (d) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development and, its employees, servants, officers and agents in Canada during the Class Period;
  - (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the School and for the creation, design and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
  - (f) the selection, control, training, supervision and regulation of the designated operators and their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons confined in the Residential School during the Class Period;
  - (g) the provision of all educational services and opportunities to the Survivor Class members, pursuant to the provisions of the Act and any other statutes relating to Aboriginal Persons during the Class Period;
  - (h) transportation of Survivor Class Members to and from the School and to and from their homes while attending the School during the Class Period;
  - (i) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
  - (j) the care and supervision of all members of the Survivor Class while they were in attendance at the School during the Class Period and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*, during the Class Period;

- (k) the provision of educational and recreational services to the Survivor Class while in attendance at the School during the Class Period;
- (l) inspection and supervision of the School and all activities that took place therein during the Class Period and for full and frank reporting to Canada and to the Family Class Members with respect to conditions in the School and all activities that took place therein during the Class Period; and
- (m) communication with and reporting to the Family Class with respect to the activities and experiences of Survivor Class Members while attending the School during the Class Period.

30. During the Class Period, male and female Aboriginal children, including Asivak, were subjected to gender specific, as well as non-gender specific, systematic child abuse, neglect and maltreatment. They were forcibly confined in the School and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

31. At all material times, the children who attended the School were within the power and control of Canada and were subject to the unilateral exercise of Canada's power or discretion. By virtue of the relationship between the children and Canada, being one of trust, reliance and dependence, by the Aboriginal children, Canada owed a fiduciary obligation to ensure that the students who attended the School were treated fairly, respectfully, safely and in all other ways, consistent with the obligations of a parent or guardian to a child under its care and control.

32. At all material times, Canada owed a fiduciary obligation to the students who attended the School to act in the best interests of those students and to protect them from any abuse, be it mental, emotional, physical, sexual or otherwise. The children at the School relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

33. Through its servants, officers, employees and agents, Canada was negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty of Canada include the following:

- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others;
- (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to the School;
- (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the Act or any other statutes relating to Aboriginal Persons as:
  - (i) said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
  - (ii) the conduct of Canada in placing the Aboriginal children in the School, confining them therein, and treating or permitting them to be treated there as set forth herein was in breach of Canada's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and
  - (iii) Canada routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in the School, which confinement was wrongful.
- (d) it delegated to and contracted with the Churches and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control the School and its agents operating same under its jurisdiction;

- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the School or of any adequate education;
- (h) it designed, constructed, maintained and operated the School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of the School that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;
- (j) it failed to respond appropriately or at all to disclosure of abuses in the School during the Class Period;
- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the School during the Class Period;
- (l) it assaulted and battered the Survivor Class Members and permitted them to be assaulted and battered during the Class Period;
- (m) it permitted an environment which permitted and allowed student-upon-student abuse;
- (n) it forcibly confined the Survivor Class Members and permitted them to be forcibly confined during the Class Period;
- (o) it was in breach of its fiduciary duty to its Wards the Survivor Class Members by reason of the misfeasances, malfeasances and omissions set out above;
- (p) it failed to inspect or audit the School adequately or at all;
- (q) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the School during the Class Period;
- (r) it failed to periodically reassess its regulations, procedures and guidelines for the School when it knew or ought to have known of serious systemic failures in the School during the Class Period;
- (s) it failed to close the School and otherwise protect and care for those persons confined therein when it knew or ought to have known that it was appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;

- (t) it delegated, attempted to delegate, continued to delegate and improperly delegated its non delegable duties and responsibility for the Survivor Class when it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;
- (u) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (v) it undertook a systematic program of forced integration and assimilation of the Aboriginal Persons through the institution of the School when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period; and
- (w) it was in breach of its obligations to the Survivor Class Members and Family Class Members as set out in the Act and its Treaties with various First Nations providing a right to education at a school to be established and maintained by Canada and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life.

34. Canada, through its employees, agents or representatives also breached its duty of care to protect the Survivor Class Members from sexual abuse by the student perpetrators while those particular Plaintiffs and the Survivor Class Members were attending and residing at the School with the result that the student perpetrators did in fact commit sexual abuse upon certain Plaintiffs and the Survivor Class Members.

35. Canada breached its fiduciary duties to the Plaintiffs and the Class and their families by failing to take any steps to protect the Survivor Class Members from sexual abuse.

36. In breach of its ongoing fiduciary duty to the Class, Canada failed and continues to fail, to adequately remediate the damage caused by its failures and omissions set out herein. In particular, Canada has failed to take adequate measures to ameliorate the



cultural, linguistic and social damage suffered by the class, and further has failed to provide compensation for the physical, sexual and emotional abuse suffered by the Class.

37. The Plaintiffs plead that Canada was in breach of its various treaty obligations set out through the establishment and operation of the School and are liable for such breaches. In contravention of the Treaties between the Government and First Nations and in contravention of the *United Nations Genocide Convention*, particularly Article 2(e) thereof to which Canada is a signatory, the Plaintiffs and other Aboriginal children were to be systemically assimilated into white society. In pursuance of that plan, they were forced to attend the School and contact with their families was restricted. Their cultures and languages were taken from them with sadistic punishment and practices.

38. The systemic child abuse, neglect and maltreatment sustained by the children at the School during the Class Period, the effect and impact of which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the *United Nations Convention on the Rights of the Child*, adopted by the United Nations in 1989, and ratified by Canada in December of 1991.

#### **F. DAMAGES SUFFERED BY CLASS MEMBERS**

39. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, the Survivor Class Members, including Asivak, suffered injury and damages including:

- (a) isolation from family and community;

- (b) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (c) forced confinement;
- (d) assault and battery;
- (e) sexual abuse;
- (f) emotional abuse;
- (g) psychological abuse;
- (h) deprivation of the fundamental elements of an education;
- (i) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (j) a propensity to addiction;
- (k) an impaired ability to participate in normal family life;
- (l) alienation from family, spouses and children;
- (m) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (n) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the School experience;
- (o) depression, anxiety and emotional dysfunction;
- (p) suicidal ideation;
- (q) pain and suffering;
- (r) deprivation of the love and guidance of parents and siblings;
- (s) loss of self-esteem and feelings of degradation;
- (t) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (u) loss of ability fulfill cultural duties;
- (v) loss of ability to live in community; and
- (w) constant and intense emotional, psychological pain and suffering.

40. The foregoing damages resulted from Canada's breach of fiduciary duty, negligence, assault, battery and/or breach of Aboriginal treaty rights.

41. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, the Family Class Members, including Flowers James, suffered injury and damages including:

- (a) they were separated and alienated from Survivor Class Members for the duration of their confinement in the School;
- (b) their relationships with Survivor Class Members were impaired, damaged and distorted as the result of the experiences of Survivor Class members in the School;
- (c) they suffered abuse from Survivor Class members as a direct consequence of their School experience;
- (d) they were unable to resume normal family life and experience with Survivor Class Members after their return from the Schools;
- (e) their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members into non-aboriginal culture through the School.

42. Canada knew, or ought to have known, that as a consequence of its mistreatment of the children at the School, these Plaintiffs and class members would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and their communities. In fact, one of the purposes behind the operation of the School was to eliminate and damage relationships within families and communities with a view to promoting the assimilation of Aboriginal children into non-Aboriginal society.

## G. PUNITIVE AND EXEMPLARY DAMAGES

43. The Plaintiffs plead that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class Members which were occurring at the School during the Class Period. Despite this knowledge, Canada continued to operate the School and permit the perpetration of grievous harm to the Survivor Class Members.

44. In addition, Canada deliberately planned the eradication of the language, religion and culture of Survivor Class Members and Family Class Members. Their actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

45. Full particulars respecting the daily care, operation and control of the School are within the Defendant's knowledge, control and possession.

46. The Plaintiffs plead and rely upon the following:

*Canadian Charter of Rights and Freedoms*, ss. 7, 15 and 24;

*Class Actions Act*, S.N.L. 2001, c. C-18.1.

*Constitution Act, 1982*, s. 35(1), being Schedule "B" to the *Canada Act, 1982* (U.K.), c. 11.

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

*The Indian Act*, S.C. 1951, c. 29, ss. 113-118;

*The Indian Act*, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122.

*The Newfoundland Act, 1949* (U.K.), c. 22.

47. The Plaintiffs propose this action be tried in the City of St. John's, in the Province of Newfoundland.

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Date

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Issued at St. Johns, this 13<sup>th</sup> day of February, 2008.

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Court Officer

2007 01T0845CP

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
TRIAL DIVISION**

**B E T W E E N :**

**SARAH ASIVAK and JAMES ASIVAK**

**PLAINTIFFS**

**AND:**

**THE ATTORNEY GENERAL OF CANADA**

**DEFENDANT**

Brought under the *Class Actions Act*, S.N.L. 2001, c. C-18.1

**STATEMENT OF CLAIM**

**A. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA**

1. The Representative Plaintiffs, on their own behalf, and on behalf of the members of the Survivor Class and Family Class claim:

- (a) an Order certifying this proceeding as a Class Action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1 and appointing Sarah Asivak and James Asivak as Representative Plaintiff for the Survivor Class and Family Class and any appropriate subgroup thereof;
- (b) a Declaration that Canada owed and was in breach of non-delegable, fiduciary, statutory and common law duties to the Plaintiffs and the other Survivor Class Members in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the Nain Boarding School in Nain, Labrador (the "School");
- (c) a Declaration that Canada was negligent in the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;

- (d) a Declaration the Canada was or is in breach of its fiduciary obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members, to obligatory attendance at the School;
- (e) a Declaration that Canada was or is in breach of its statutory duties pursuant to the *Indian Act*, R.S.C. 1985, c. I-5 (the "Act") and its Treaty obligations to the Plaintiffs and the other Survivor Class Members as a consequence of its establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;
- (f) a Declaration that the School caused cultural, linguistic and social damage and irreparable harm to the Survivor Class;
- (g) a Declaration that Canada is liable to the Plaintiffs and other Survivor Class Members for the damages caused by its breach of non delegable, fiduciary, statutory and common law duties and for negligence in relation to the establishment, funding, operation, supervision, control maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and support of the School;
- (h) non-pecuniary general damages for negligence, loss of language and culture, breach of non-delegable, fiduciary, statutory, treaty and common law duties in the amount of \$500 million or such other sum as this Honourable Court finds appropriate;
- (i) pecuniary general damages and special damages for negligence, loss of income, loss of earning potential, loss of economic opportunity, breach of non delegable fiduciary, statutory, treaty and common law duties of \$500 million or such other sum as this Honourable Court deems just;
- (j) punitive damages of \$100 million or such other sum as this Honourable Court deems just;
- (k) damages in the amount of \$100 million or such other sum as this Honourable Court deems just, pursuant to the *Family Law Act*, R.S.N., 1990, and its predecessors;
- (l) prejudgment and postjudgment interest pursuant to the provisions of the *Judicature Act*, R.S.N. 1990, c. J-4 ; and
- (m) the costs of this action on a substantial indemnity scale.

**B. DEFINITIONS**

2. The following definitions apply for the purposes of this Claim:

- (a) "Aboriginal", "Aboriginal People(s)" or "Aboriginal Person(s)" means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule "B" to the *Canada Act, 1982* (U.K.), 1982. c. 11;
- (b) "Aboriginal Right(s)" means rights recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule "B" to the *Canada Act, 1982* (U.K.), 1982. c. 11;
- (c) "Agents" mean the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of the School;
- (d) "Canada" means Her Majesty the Queen in Right of Canada, as represented in this proceeding by the Attorney General of Canada;
- (e) "Class" or "Class Members" means all members of the Survivor Class and the Family Class;
- (f) "Class Period" means March 31, 1949 to December 31, 1996;
- (g) "Excluded Persons" means all persons who attended an Eligible Indian Residential School as defined by the Indian Residential Schools Settlement Agreement dated May 10, 2006 (the "Agreement") and all persons who are otherwise eligible, pursuant to the Agreement, to receive a Common Experience Payment or pursue a claim through the Individual Assessment Process, as defined by the Agreement;
- (h) "Family Class" means:
  - (i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (ii) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
  - (iii) a former spouse of a Survivor Class Member;
  - (iv) a child or other lineal descendent of a grandchild of a Survivor Class Member;



- (v) a person of the same or opposite sex to a Survivor Class Member who cohabited for a period of at least one year with that Survivor Class Member immediately before his or her death;
  - (vi) a person of the same or opposite sex to a Survivor Class Member who was cohabiting with that Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;
  - (vii) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death;
- (i) "School" means the Nain Boarding School, located in Nain, Newfoundland and Labrador;
  - (j) "Survivor Class" means:  

All persons who attended the School between March 31, 1949 and December 31, 1996.

## C. THE PARTIES

### i. Proposed Representative Plaintiffs

3. The Plaintiff, Sarah Asivak ("Asivak"), resides in Goose Bay, Newfoundland and Labrador ("Newfoundland") is an Inuit. Asivak attended the School in Nain, Newfoundland for one (1) year between 1958 and 1959. Asivak is a proposed representative plaintiff for the Survivor Class.

4. The Plaintiff, James Asivak ("James") resides in Goose Bay, Newfoundland and is an Inuit. James was born on May 15, 1943 and his wife, Sarah Asivak, the other named plaintiff, attended the School in Nain, Newfoundland for one (1) year between 1958 and 1959. James is a proposed representative plaintiff for the Family Class.

5. The proposed Representative Plaintiffs do not purport to advance claims on behalf of any persons who are otherwise entitled to compensation pursuant to the terms of the Agreement.

6. Neither the proposed Representative Plaintiffs' claim nor the classes they propose to represent overlap with the terms of the order issued by Regional Senior Justice Winkler of the Ontario Superior Court of Justice, dated March 8, 2007.

ii. The Defendant

7. The Defendant, Her Majesty the Queen in Right of Canada, is represented in this proceeding by the Attorney General of Canada ("Canada"). Canada represents the interests of the Minister of the Department of Indian Affairs Canada, who was, at all material times, responsible for the maintenance and operation of the School, either on its own or in combination with other of its governmental agents or servants.

**D. RESIDENTIAL SCHOOL SYSTEM – OPERATION OF THE SCHOOL**

i. Background - Residential School History Generally

8. Residential Schools were established by Canada as early as 1874, for the education of Aboriginal children. These children were taken from their homes and their communities and transported to Residential Schools where they were confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and a culture alien to them.

9. Commencing in 1911, Canada entered into formal agreements with various Churches and other philanthropic organizations (collectively the "Churches") for the operation of such schools. Pursuant to these agreements, Canada controlled, regulated,

supervised and directed all aspects of the operation of the Residential Schools. The Churches assumed the day-to-day operation of the Residential Schools under the control, supervision and direction of Canada, for which the Canada paid the Churches a per capita grant calculated to cover part of the cost of the Residential School operation.

10. As of 1920, the Residential School Policy included compulsory attendance at Residential Schools for all Aboriginal children aged 7 (seven) to 15 (fifteen). This approach to the control and operation of the Residential Schools system continued until April 1, 1969, at which time Canada assumed the sole operation and administration of the Residential Schools from the Churches, excepting certain cases where Churches continued to act as agents of Canada.

11. Canada removed Aboriginal Persons, usually young children, from their homes and Aboriginal communities and transported them to Residential Schools which were often long distances away. Canada controlled all aspects of the admission of Aboriginal Persons to the Residential Schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools.

12. The same Residential School policy was implemented and effected in Newfoundland, which joined Canada on March 31, 1949. Accordingly, the claim against Canada is limited temporally to the time when the Canada became responsible for Aboriginal Persons residing in Newfoundland, or 1949, and beyond.

13. Aboriginal Persons were often taken from their families without the consent of their parents or guardians. While the stated purpose of the Residential Schools from their

inception was the education of Aboriginal children, their true purpose was the complete integration and assimilation of Aboriginal children into mainstream Canadian society and the obliteration of their traditional language, culture and religion. Many children attending Residential Schools were also subject to repeated and extreme physical, sexual and emotional abuse, all of which continued until the year 1996, when the last Residential School operated by Canada was closed.

14. During the Class Period, children at the school were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in the School and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

15. The accommodation was crowded, cold, and sub-standard. Aboriginal children were underfed and ill nourished, forbidden to speak their native languages or to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. Aboriginal children were also subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

ii. Canada's Operation of the School in Newfoundland

16. The School was located in Nain, Newfoundland. It was first established in the 1950's and ceased operation as a residential school for Aboriginal children in the 1970's.

17. The purpose of the School was to provide education to Aboriginal children between the ages of 6 and 16 years who attended the School from various First Nations

bands and communities in Newfoundland. The School eventually became a vehicle for assimilating Aboriginal children through the eradication of their native languages, cultures and spiritual beliefs.

18. The School was initially founded and established by the Moravian Mission. At all material times, the staff members at the School were employees, servants and/or agents of Canada. The funding provided by Canada was inadequate to meet the costs of operating and maintaining the School, and in particular, to meet the daily and educational needs of the students at the School. As a result, the care provided to the students and the conditions at the School were poor, the staff hired were unskilled and/or unsuitable for dealing with children and the conditions at the School were unsuitable and inappropriate for an educational facility for children.

19. In many cases, the Aboriginal children were forced to attend the School by representatives, agents or servants of Canada. The Aboriginal children who attended the School were separated from their families, uprooted and taken to the School, where they were placed within the control of Canada. For all intents and purposes, the children who attended the School, were wards of the School and Canada.

20. Canada carried out that operation and administration of the School until the late 1970's. These operative and administrative responsibilities, carried out on behalf of Canada by its agents included:

- (a) the operation and maintenance of the School during the Class Period;
- (b) the care and supervision of all members of the Survivor Class, and for supplying all the necessaries of life to Survivor Class members *in loco parentis*;

- (c) the provision of educational and recreational services to the Survivor Class while in attendance at the School and control over all persons allowed to enter the School premises at all material times;
- (d) the selection, supply and supervision of teaching and non-teaching staff at the School and reasonable investigation into the character, background and psychological profile of all individuals employed to teach or supervise the Survivor Class;
- (e) inspection and supervision of the School and all activities taking place therein, and for full and frank reporting to Canada respecting conditions in the School and all activities taking place therein;
- (f) transportation of Survivor Class members to and from the School; and
- (g) communication with and reporting to the Family Class respecting the activities and experiences of Survivor Class members while attending the School.

21. Attempts to provide educational opportunities to children confined in the School were ill-conceived and poorly executed by inadequately trained teaching staff. The result was to effectively deprive the Aboriginal children of any useful or appropriate education. Very few survivors of the School went on to any form of higher education.

22. The conditions and abuses in the School during the Class Period were well-known to Canada.

#### **E. CANADA'S BREACHES OF DUTIES TO THE CLASS MEMBERS**

23. Canada has a fiduciary relationship with Aboriginal People in Canada. Canada created, planned, established, set up, initiated, operated, financed, supervised, controlled and regulated the School during the Class Period.

24. Canada, and its respective servants and agents compelled members of the Survivor Class to leave their homes, families and communities, and forced members of the Survivor Class to attend (and sometimes live in) the School, all without lawful

authority or the permission and consent of Survivor Class members or that of their parents. Such confinement was wrongful, arbitrary and for improper purposes.

25. Survivor Class members were systematically subjected to the institutional conditions, regime and discipline of the School without the permission and consent of Survivor Class members or that of their parents, and were also subjected to wrongful acts at the hands of Canada while confined therein.

26. In particular, Asivak experienced abuse during her time at the School by teachers, "caregivers" and other students. Many of the children at the School also experienced sexual, physical and verbal abuse, perpetrated against them by teachers, adults in positions of authority or from other students.

27. James, as a member of the Family Class, has experienced emotional abuse due to his wife's inability to participate in normal family life as result harm she suffered during her attendance at the School.

28. All persons, including Asivak, who attended the School did so as wards of Canada, with Canada as their guardian, and were persons to whom Canada owed the highest non-delegable, fiduciary, moral, statutory and common law duties, which included, but were not limited to, the duty to ensure that reasonable care was taken of the Survivor Class while at the School, the duty to protect the Survivor Class while at the School and the duty to protect the Survivor Class from intentional torts perpetrated on them while at the School. These non-delegable and fiduciary duties were performed negligently and tortiously by Canada, in breach of its special responsibility to ensure the safety of the Survivor Class while at the School.

## 29. Canada was responsible for:

- (a) the administration of the Act and its predecessor statutes as well as any other statutes relating to Aboriginal Persons and all Regulations promulgated under these Acts and their predecessors during the Class Period;
- (b) the promotion of the health, safety and well being of Aboriginal Persons in Newfoundland during the Class Period;
- (c) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor ministries and departments during the Class Period;
- (d) decisions, procedures, regulations promulgated, operations and actions taken by the Department of Indian Affairs and Northern Development and, its employees, servants, officers and agents in Canada during the Class Period;
- (e) the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the School and for the creation, design and implementation of the program of education for Aboriginal Persons confined therein during the Class Period;
- (f) the selection, control, training, supervision and regulation of the designated operators and their employees, servants, officers and agents, and for the care and education, control and well being of Aboriginal Persons confined in the Residential School during the Class Period;
- (g) the provision of all educational services and opportunities to the Survivor Class members, pursuant to the provisions of the Act and any other statutes relating to Aboriginal Persons during the Class Period;
- (h) transportation of Survivor Class Members to and from the School and to and from their homes while attending the School during the Class Period;
- (i) preserving, promoting, maintaining and not interfering with Aboriginal Rights, including the right to retain and practice their culture, spirituality, language and traditions and the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities;
- (j) the care and supervision of all members of the Survivor Class while they were in attendance at the School during the Class Period and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*, during the Class Period;



- (k) the provision of educational and recreational services to the Survivor Class while in attendance at the School during the Class Period;
- (l) inspection and supervision of the School and all activities that took place therein during the Class Period and for full and frank reporting to Canada and to the Family Class Members with respect to conditions in the School and all activities that took place therein during the Class Period; and
- (m) communication with and reporting to the Family Class with respect to the activities and experiences of Survivor Class Members while attending the School during the Class Period.

30. During the Class Period, male and female Aboriginal children, including Asivak, were subjected to gender specific, as well as non-gender specific, systematic child abuse, neglect and maltreatment. They were forcibly confined in the School and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual abuse by those who were responsible for their well being.

31. At all material times, the children who attended the School were within the power and control of Canada and were subject to the unilateral exercise of Canada's power or discretion. By virtue of the relationship between the children and Canada, being one of trust, reliance and dependence, by the Aboriginal children, Canada owed a fiduciary obligation to ensure that the students who attended the School were treated fairly, respectfully, safely and in all other ways, consistent with the obligations of a parent or guardian to a child under its care and control.

32. At all material times, Canada owed a fiduciary obligation to the students who attended the School to act in the best interests of those students and to protect them from any abuse, be it mental, emotional, physical, sexual or otherwise. The children at the School relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

33. Through its servants, officers, employees and agents, Canada was negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty of Canada include the following:

- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others;
- (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to the School;
- (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the Act or any other statutes relating to Aboriginal Persons as:
  - (i) said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
  - (ii) the conduct of Canada in placing the Aboriginal children in the School, confining them therein, and treating or permitting them to be treated there as set forth herein was in breach of Canada's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and
  - (iii) Canada routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in the School, which confinement was wrongful.
- (d) it delegated to and contracted with the Churches and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control the School and its agents operating same under its jurisdiction;

- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the School or of any adequate education;
- (h) it designed, constructed, maintained and operated the School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of the School that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;
- (j) it failed to respond appropriately or at all to disclosure of abuses in the School during the Class Period;
- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the School during the Class Period;
- (l) it assaulted and battered the Survivor Class Members and permitted them to be assaulted and battered during the Class Period;
- (m) it permitted an environment which permitted and allowed student-upon-student abuse;
- (n) it forcibly confined the Survivor Class Members and permitted them to be forcibly confined during the Class Period;
- (o) it was in breach of its fiduciary duty to its Wards the Survivor Class Members by reason of the misfeasances, malfeasances and omissions set out above;
- (p) it failed to inspect or audit the School adequately or at all;
- (q) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the School during the Class Period;
- (r) it failed to periodically reassess its regulations, procedures and guidelines for the School when it knew or ought to have known of serious systemic failures in the School during the Class Period;
- (s) it failed to close the School and otherwise protect and care for those persons confined therein when it knew or ought to have known that it was appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;

- (t) it delegated, attempted to delegate, continued to delegate and improperly delegated its non delegable duties and responsibility for the Survivor Class when it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;
- (u) it failed to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (v) it undertook a systematic program of forced integration and assimilation of the Aboriginal Persons through the institution of the School when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period; and
- (w) it was in breach of its obligations to the Survivor Class Members and Family Class Members as set out in the Act and its Treaties with various First Nations providing a right to education at a school to be established and maintained by Canada and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life.

34. Canada, through its employees, agents or representatives also breached its duty of care to protect the Survivor Class Members from sexual abuse by the student perpetrators while those particular Plaintiffs and the Survivor Class Members were attending and residing at the School with the result that the student perpetrators did in fact commit sexual abuse upon certain Plaintiffs and the Survivor Class Members.

35. Canada breached its fiduciary duties to the Plaintiffs and the Class and their families by failing to take any steps to protect the Survivor Class Members from sexual abuse.

36. In breach of its ongoing fiduciary duty to the Class, Canada failed and continues to fail, to adequately remediate the damage caused by its failures and omissions set out herein. In particular, Canada has failed to take adequate measures to ameliorate the

cultural, linguistic and social damage suffered by the class, and further has failed to provide compensation for the physical, sexual and emotional abuse suffered by the Class.

37. The Plaintiffs plead that Canada was in breach of its various treaty obligations set out through the establishment and operation of the School and are liable for such breaches. In contravention of the Treaties between the Government and First Nations and in contravention of the *United Nations Genocide Convention*, particularly Article 2(e) thereof to which Canada is a signatory, the Plaintiffs and other Aboriginal children were to be systemically assimilated into white society. In pursuance of that plan, they were forced to attend the School and contact with their families was restricted. Their cultures and languages were taken from them with sadistic punishment and practices.

38. The systemic child abuse, neglect and maltreatment sustained by the children at the School during the Class Period, the effect and impact of which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the *United Nations Convention on the Rights of the Child*, adopted by the United Nations in 1989, and ratified by Canada in December of 1991.

#### **F. DAMAGES SUFFERED BY CLASS MEMBERS**

39. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, the Survivor Class Members, including Asivak, suffered injury and damages including:

- (a) isolation from family and community;

- (b) prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- (c) forced confinement;
- (d) assault and battery;
- (e) sexual abuse;
- (f) emotional abuse;
- (g) psychological abuse;
- (h) deprivation of the fundamental elements of an education;
- (i) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (j) a propensity to addiction;
- (k) an impaired ability to participate in normal family life;
- (l) alienation from family, spouses and children;
- (m) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (n) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the School experience;
- (o) depression, anxiety and emotional dysfunction;
- (p) suicidal ideation;
- (q) pain and suffering;
- (r) deprivation of the love and guidance of parents and siblings;
- (s) loss of self-esteem and feelings of degradation;
- (t) fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (u) loss of ability fulfill cultural duties;
- (v) loss of ability to live in community; and
- (w) constant and intense emotional, psychological pain and suffering.

40. The foregoing damages resulted from Canada's breach of fiduciary duty, negligence, assault, battery and/or breach of Aboriginal treaty rights.

41. As a consequence of the negligence and breach of duty and breach of a non-delegable or fiduciary duty and intentional infliction of harm by Canada and its agents, for whom Canada is vicariously liable, the Family Class Members, including Flowers James, suffered injury and damages including:

- (a) they were separated and alienated from Survivor Class Members for the duration of their confinement in the School;
- (b) their relationships with Survivor Class Members were impaired, damaged and distorted as the result of the experiences of Survivor Class members in the School;
- (c) they suffered abuse from Survivor Class members as a direct consequence of their School experience;
- (d) they were unable to resume normal family life and experience with Survivor Class Members after their return from the Schools;
- (e) their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members into non-aboriginal culture through the School.

42. Canada knew, or ought to have known, that as a consequence of its mistreatment of the children at the School, these Plaintiffs and class members would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and their communities. In fact, one of the purposes behind the operation of the School was to eliminate and damage relationships within families and communities with a view to promoting the assimilation of Aboriginal children into non-Aboriginal society.

## G. PUNITIVE AND EXEMPLARY DAMAGES

43. The Plaintiffs plead that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses of Survivor Class Members which were occurring at the School during the Class Period. Despite this knowledge, Canada continued to operate the School and permit the perpetration of grievous harm to the Survivor Class Members.

44. In addition, Canada deliberately planned the eradication of the language, religion and culture of Survivor Class Members and Family Class Members. Their actions were deliberate and malicious and in the circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

45. Full particulars respecting the daily care, operation and control of the School are within the Defendant's knowledge, control and possession.

46. The Plaintiffs plead and rely upon the following:

*Canadian Charter of Rights and Freedoms*, ss. 7, 15 and 24;

*Class Actions Act*, S.N.L. 2001, c. C-18.1.

*Constitution Act, 1982*, s. 35(1), being Schedule "B" to the *Canada Act, 1982 (U.K.)*, c. 11.

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, ss. 3, 21, 22, and 23;

*The Indian Act*, S.C. 1951, c. 29, ss. 113-118;

*The Indian Act*, R.S.C. 1985, ss. 2(1), 3, 18(2), 114-122.

*The Newfoundland Act, 1949 (U.K.)*, c. 22.



47. The Plaintiffs propose this action be tried in the City of St. John's, in the Province of Newfoundland.

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Date

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Issued at St. Johns, this 13<sup>th</sup> day of February, 2008.

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Court Officer