

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

THE HONOURABLE MR. JUSTICE) MONDAY THE 7TH
)
ROBERT A. FOWLER) DAY OF JUNE, 2010

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
BEFORE THE HONOURABLE JUSTICE ROBERT A. FOWLER,
CASE-MANAGEMENT JUDGE

RF
June 24/10

ORDER

THIS APPLICATION, brought by the Plaintiffs for an order certifying this action as a class action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1, and other ancillary orders, was heard June 1, 2 and 3, 2009, at St. John's, Newfoundland and Labrador, with written reasons released June 7, 2010.

RF

ON READING the affidavits filed ⁱⁿ support of this application by the plaintiffs and in response by the defendant, the facts of the parties, filed, and on hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class action pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1.

Filed June 24, 2010 *Gr*

2. **THIS COURT ORDERS AND DECLARES** that:

(a) The "Survivor Class" shall be defined as:

(i) All persons who attended the Nain Boarding School, located in Nain, Newfoundland and Labrador, between March 31, 1949 and the date of closure of the Nain Boarding School.

(b) The "Family Class" shall be defined as:

(i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

(ii) a former spouse of a Survivor Class Member;

(iii) a child or other lineal descendent of a grandchild of a Survivor Class Member;

(iv) 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;

(v) 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; or

(vi) 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.

RM
June 24/10

3. **THIS COURT ORDERS AND DECLARES** that Sarah Asivak and James Asivak be and are hereby appointed as the representative plaintiffs for the Classes and that Koskie

Minsky LLP and Ahlstrom Wright Oliver & Cooper LLP be and hereby are appointed as class counsel ("Class Counsel").

4. **THIS COURT ORDERS** that within 45 days of the date of this Order, the defendant shall make its best efforts to deliver to Class Counsel a list of all known members of the Survivor Class and Family Class, including their last known addresses and contact information.

5. **THIS COURT ORDERS AND DECLARES** that the claims asserted on behalf of the Classes to be breach of fiduciary duty and negligence.

6. **THIS COURT ORDERS AND DECLARES** that the relief sought by Class are issues of the defendant's liability and damages, specifically:

- (a) declarations with respect to breaches of fiduciary duty and/or negligence;
- (b) general damages in the amount of \$500,000,000;
- (c) special damages in an amount of \$500,000,000;
- (d) exemplary and punitive damages in the amount of \$100,000,000;
- (e) damages in the amount of \$100,000,000, on behalf of the Family Class;
- (f) prejudgment and postjudgment interest pursuant to the provisions of the *Judicature Act*, R.S.N. 1990, c. J-4 ; and
- (g) costs of this action.

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7. **THIS COURT ORDERS AND DECLARES** that the common issues for the Class are:

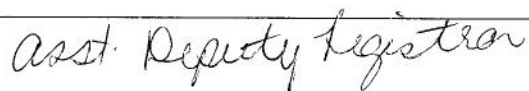
- (a) by its operation or management of the Nain Boarding School did the defendant breach a duty of care owed to the students of the Nain Boarding School to protect them from actionable physical or mental harm?;
- (b) by its purpose, operation or management of the Nain Boarding School, did the defendant breach a fiduciary duty owed to the students of the Nain Boarding School to protect them from actionable physical or mental harm?;

- (c) by its purpose, operation or management of the Nain Boarding School, did the defendant breach a fiduciary duty owed to the families and siblings of the students of the Nain Boarding School;
- (d) if the answer to any of the above common issues is “yes”, can the court make an aggregate assessment of the damages suffered by all class members as part of the common issues trial?;
- (e) if the answer to any of these common issues is “yes”, was the defendant guilty of conduct that justifies an award of punitive damages?; and
- (f) if the answer to common issue (e) is “yes”, what amount of punitive damages ought to be awarded?

8. **THIS COURT ORDERS** that further orders shall be issued, and a time and place be scheduled for a hearing, to be heard by September 30, 2010, to determine the issues, relating to notice to the Class, opting out and such other matters as may be appropriate under the *Class Actions Act*, and in particular:

- (a) the form and content of notice to the Classes;
- (b) the appropriate method of dissemination of such notice;
- (c) the liability for the cost of the dissemination of such notice;
- (d) the form, content, and method for Class Members to opt out;
- (e) a deadline for Class Members to opt out of the class action; and
- (f) the form, content, method and deadline for Class Members who are not residents of the Province of Newfoundland and Labrador to opt in to the class action.

9. **THIS COURT ORDERS** that costs of the certification application may be spoken to at a time to be arranged between counsel and this court.


Asst. Deputy Registrar


June 24/10

SARAH ASIVAK et al
Plaintiffs

and
ATTORNEY GENERAL OF CANADA
Defendant

Court File No: 2007 01T0845 CP

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

Proceeding commenced at the City of St. John's

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

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June 24/10