

200701T4955CCP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION

BETWEEN:

CAROL ANDERSON and ALLEN WEBBER

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA

DEFENDANT

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

FRESH AS AMENDED STATEMENT OF CLAIM

(Amended pursuant to the *Rules of the Supreme Court, 1986*
by Order of Mr. Justice Stack this 25th day of November, 2015)

1. This action was certified as a class action by Order of Justice Fowler dated June 7, 2010 pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1.

A. RELIEF SOUGHT BY THE PLAINTIFFS AGAINST CANADA

2. The Plaintiffs seek, on their own behalf, and on behalf of the members of the Survivor Class:

- (a) a Declaration that Canada owed an exclusive fiduciary duty to the Plaintiffs and the other Survivor Class members in relation to the funding, oversight, operation, supervision, control, maintenance, and support of the Lockwood School in Cartwright, Labrador (the "School");
- (b) a Declaration that Canada was or is in breach of its fiduciary duty to the Plaintiffs and the other Survivor Class members as a consequence of its funding, oversight, operation, supervision, control, maintenance, and support of the School;

Filed	Nov 15/15	mt
-------	-----------	----

- (c) a Declaration that Canada is liable to the Plaintiffs and the other Survivor Class members for the damages caused by its breach of fiduciary duty in relation to the funding, oversight, operation, supervision, control, maintenance, and support of the School;
- (d) non-pecuniary general damages for breach of fiduciary duty in the amount this Honourable Court finds appropriate;
- (e) pecuniary general damages and special damages for breach of fiduciary duty in the amount this Honourable Court finds appropriate;
- (f) exemplary and punitive damages in the amount this Honourable Court finds appropriate;
- (g) disgorgement of monetary benefits wrongfully acquired on account of Canada's breach of fiduciary duty in the amount this Honourable Court finds appropriate;
- (h) prejudgment and postjudgment interest, including compound interest if appropriate; and
- (i) the costs of this action.

B. DEFINITIONS

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

- (a) "Agents" mean the servants, contractors, agents, officers and employees of Canada and the operators, managers, administrators and teachers and staff of the School;
- (b) "Canada" means Her Majesty the Queen in Right of Canada, as represented in this proceeding by the Attorney General of Canada;
- (c) "Survivor Class" or "Class Members" means all persons who attended the School between March 31, 1949 and the date of the closure of the School.
- (d) "Class Period" means March 31, 1949 and the date of closure of the School;
- (e) "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;

(f) "School" means the Lockwood School, located in Cartwright, Labrador

C. THE PARTIES

i. Plaintiffs

4. The Plaintiff, Carol Anderson ("Anderson"), resides in Goose Bay, Newfoundland and is a Metis First Nation. Anderson attended the School in Cartwright between 1958 and 1959. Anderson is a representative plaintiff for the Survivor Class.

5. The Plaintiff, Allen Webber ("Webber"), resides in Goose Bay, Newfoundland and is a Metis First Nation. Webber attended the School in Cartwright between 1958 and 1959. He is a representative plaintiff for the Survivor Class.

6. The 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.

7. Neither the Plaintiffs' claim, nor the Survivor Class represented, overlaps 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

8. 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, or ought to have been, at all material times, responsible for the maintenance, funding, oversight, support and management of the School.

9. Once the Province of Newfoundland and Labrador entered Confederation in 1949, Canada assumed and possessed exclusive legislative and executive responsibility over Aboriginal persons, including the Survivor Class. As Aboriginal persons in the "new" province in 1949 were legally "Indians" for the purposes of section 91(24) of the *British North America Act, 1867*, they were proper subjects of federal jurisdiction and responsibility.

10. The Plaintiffs allege that Canada's participation, or lack thereof, in the School was in breach of its fiduciary and other equitable obligations owed to Aboriginal persons. Canada exercised control, funding, auditing, visitation, oversight, decision-making and monitoring of the School for several decades. Even if Canada did not materially operate or manage the School, it breached its duties to the students by failing to do so in a meaningful or effective way as it alone possessed singular and exclusive jurisdiction and responsibility over Aboriginal persons in Canada.

D. CANADA'S ASSUMPTION OF DUTIES WHEN NEWFOUNDLAND JOINED CONFEDERATION IN 1949

11. At the time of Confederation, two separate legal opinions commissioned by the Federal Department of Justice confirmed that the Federal Crown possessed exclusive legislative jurisdiction and responsibility in relation to Aboriginal persons, including the Inuit and Eskimo, living in Newfoundland and Labrador.

12. At that same time, Canada was well aware of the failings of Indian Residential Schools operating across the rest of the country. Prior to Confederation, a Special Joint Committee of the Senate and the House of Commons heard testimony and considered reports which concerned Residential Schools throughout Canada and the failure of their

underlying policies. While the stated purpose of these 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.

13. The records of the Federal departments, agencies, ministers and bureaucrats responsible for negotiating the *Terms of Union* show that from 1946 the Federal Government recognized that under the terms of the *British North America Act, 1867*, section 91(24), it would have to assume full responsibility for the native people of the new province.

14. As Canada's fiduciary responsibility to Aboriginals was constitutional in nature, it was prohibited from attempting to cede or delegate such duties to any other entity, including the Province itself. Given the broad duties owed by Canada to Aboriginal persons, the welfare and education of Aboriginal children cannot be said to have resided with the Province of Newfoundland after March 31, 1949.

15. The entry of Newfoundland and Labrador into Confederation brought its Aboriginal population fully within exclusive federal jurisdiction. At the time of Confederation, Canada was aware that any union with Newfoundland and Labrador would have had an Aboriginal component and legal responsibility associated with it.

16. In 1947, in advance of preparing for the *Terms of Union* negotiations, the Federal Government prepared detailed documents for the Newfoundland delegation known as the Black Books, which outlined the nature of Federal jurisdiction and responsibility in nearly the whole field of relations after Confederation with Newfoundland, including the nature of Federal involvement with and for Aboriginal peoples.

17. Federal officials summarized the Black Books in a 28-page document referred to as the Grey Book, which was transmitted to the National Convention. In one of the drafts of the Grey Book, Federal officials penciled out express provision for Aboriginals. The final version was transmitted to the National Convention, and as a result, the *Terms of Union*, contained no express provision with respect to Aboriginal peoples.

18. At that time, the function of the Indian Affairs Branch was described as administering the "affairs of the Indians of Canada [which] included the control of their education". The Federal Department of Mines and Resources stated that the Dominion assumes full responsibility for the welfare, including education, of Indians and Eskimos, a response which went on at length to describe the day and residential school system.

19. In and around the time of Confederation, a number of Federal legal opinions on the question were prepared, most of them acknowledging exclusive federal jurisdiction and responsibility for Newfoundland's Aboriginal people. Under Term 3 of the *Terms of Union*, for matters not specifically referred to, things were deemed to be as if Newfoundland had joined under the terms of the *Constitution Act, 1867*.

20. When Canada sent its official version of the proposed *Terms of Union* to the National Convention in Newfoundland in October 1947, it had already acknowledged

that under the terms of the *British North America Act* it had exclusive jurisdiction in the area of Aboriginal peoples. By deleting the reference to native people in the proposed draft *Terms of Union* and writing in Federal responsibility, as outlined in the *British North America Act*, the Federal Government acknowledged *de facto* jurisdiction for the Indians, Inuit and Eskimos of Newfoundland and Labrador.

21. In 1949, Labrador's representative in the House of Assembly, Harold A. Horwood, addressed the Legislature about the school system operating in Labrador and advocated government assumption of the operation of schools from the Moravian mission and the International Grenfell Association.

22. Following Confederation, in December 1949, Canada established an Interdepartmental Committee on Labrador Indians and Eskimos which requested another legal opinion from the Justice Department. In an opinion dated April 14, 1950, Deputy Minister of Justice Varcoe confirmed that the Federal Crown possessed exclusive legislative and executive jurisdiction and responsibility in relation to Aboriginal persons, including the Inuit and Eskimo, living in Newfoundland and Labrador:

“...the federal Parliament has exclusive legislative authority in relation to Indians ... which, of course, means that the provincial legislature has no authority to enact legislation directed at or dealing with [matters] in relation to Indians.... It is the responsibility of the federal government to formulate and carry out all policies that are directed at dealing with Indian or Indian problems. Such policy is to be formulated by Parliament and the executive. This responsibility carries with it the responsibility or providing money to be devoted to the carrying of our policies in relation to the Indians.”

23. This opinion was confirmed as not to be doubted by law officers for Canada in subsequent legal opinions, including one by Deputy Minister of Justice Driedger dated November 23, 1964.

24. This April 14, 1950 opinion provided by the Justice Department is consistent with the assumptions made during the pre-Confederation talks: Aboriginal persons, pursuant to the *British North America Act*, were Canada's responsibility. Even before Newfoundland's entry into Confederation, various federal departments had included in their departmental estimates sizeable amounts towards relief, services and expenditures for the native populations in Newfoundland and Labrador. This demonstrates that the federal government believed it had a responsibility to fulfill in regard to the Eskimo and Inuit in Labrador and that it would be called upon to provide programs and assistance, funding, oversight and implementation of certain programs, including education.

25. The *Terms of Union* indirectly provided that the then Aboriginal population in Newfoundland fell under federal jurisdiction. Section 3 of the *Terms of Union* affirms that: "[t]he *Constitution Acts, 1867 to 1940* apply to the Province of Newfoundland in the same way, and to the like extent as they apply to the provinces heretofore comprised in Canada".

26. The *Constitution Act, 1867* itself states that "the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say ... Indians, and Lands reserved for the Indians".

27. Following Confederation in 1949, and by 1951, Canada had agreed to pay the bills submitted by Newfoundland for "Indians and Eskimos" for the period 1949-1950. At that same time, Newfoundland also provided Canada with an estimate of provincial expenditures with respect to Eskimo and Inuit in Labrador for which it expected payment.

28. A 1951 memorandum prepared by the Chairman of the Inter-departmental Committee on Newfoundland Indians and Eskimos formed the basis of much of Canada's position for the future:

"Section 3 of the *Terms of Union* stipulates that the provisions of the *BNA Act* shall apply to Newfoundland except insofar as varied by the Terms. Since the *Terms of Union* do not refer to Indians and Eskimos and since head 24 of section 91 of the *BNA Act* places 'Indians and lands reserved for Indians' exclusively under Federal jurisdiction, it seems clear that the Federal Government is responsible for the native population resident in Labrador."

29. By 1954, Newfoundland requested that Canada provide both operating and capital expenditures towards education for Eskimos and Inuit. The 1954 Agreement between Newfoundland and Canada stipulated that Canada would assume 66% of capital expenditures on behalf of Eskimos in Newfoundland and 100% of capital expenditures on behalf of Indians in the fields of health, welfare and education.

30. Just four years into this Agreement, Newfoundland requested further funds from Canada to provide education and housing for both Indians and Inuit. In 1959, Newfoundland requested an additional grant on the basis that it was not being treated the same as other provinces in the Dominion.

31. Around the same time, it was publicly acknowledged that "the money spent by the Federal Government on Eskimos in Labrador, in the Province of Newfoundland, was only a fraction of that which the Federal Government has spent on Eskimos in other parts of Canada."

32. Shortly thereafter, by letter dated March 16, 1964, J.W. Pickersgill, Newfoundland's representative in the Federal cabinet, coached Newfoundland Premier

Joey Smallwood on the legal issue respecting jurisdiction and responsibility for Aboriginals and provided a draft letter to Prime Minister Pearson, which Premier Smallwood sent under his signature dated March 23, 1964. Canada was asked *inter alia* to increase funding to the level of support being provided by Canada to other provinces.

33. At the same time, the Pearson government requested a second legal opinion from the Justice Department. On November 23, 1964, the Deputy Attorney General provided that opinion and determined that:

"...there is no provision in the *Indian Act* excluding any portion of Canada from its application. Mr. Varcoe's opinion [the 1950 Justice Department opinion] as to the constitutional position is, in my opinion, correct. The fact that there is no mention of Eskimos or Indians in the *Terms of Union* means only that the constitutional position with respect thereto has not changed with regard to Newfoundland."

34. As a result, by 1965, Canada had agreed to provide the same resources and programs to Indians, Inuit and Eskimos in Labrador as were provided to similar groups elsewhere in Canada. The proposed agreements were to be: (a) renegotiated and reviewed every five years; (b) a Federal-Provincial committee was to be established to monitor expenditures and propose budgets for approval by both governments; (c) Newfoundland would be reimbursed for 90% of the Provinces' capital expenditures for Indians and Eskimos for the period 1954 – 1964; and (d) the agreement was to be administered by an inter-governmental committee comprised of representatives of both governments. But this never materialized. Funding at levels commensurate with other provinces was never on par.

35. A Royal Commission on Labrador was convened in 1973 with a mandate to conduct a full inquiry into the economic and sociological conditions in Labrador. In

addition to recommending to Newfoundland that it immediately renegotiate its funding agreements with Canada, given that amounts paid thereunder were inadequate and insufficient, the Commission also made the following determination:

"The Commission finds itself unable to determine a sound rationale for the practice under this Agreement of having the Province pay a percentage of cost for services to Indians and Eskimos. This is not the practice in other parts of Canada. In the view of the Commission, the Federal Government, as it does elsewhere, should be prepared to accept full fiscal responsibility unless the Province wishes to ensure its continued direct involvement in the program for Indians and Eskimos through sharing part of the cost..."

36. The Commission also publicly released, for the first time, legal opinions by federal Deputy Ministers of Justice Varcoe (April 14, 1950) and Driedger (November 23, 1964) advising that jurisdiction and responsibility for Aboriginals in Labrador were exclusively Federal matters. Federal ministers had knowingly failed to disclose to provincial ministers, the legal position as to jurisdiction over and responsibility for Aboriginals in Labrador.

37. Some of the recommendations of the Royal Commission were implemented through the Federal-Provincial funding agreements which were ratified in the years following publication of the Commission Report. For example, an interim agreement was in place between 1976 and 1981 and funded projects which were valued at \$22 million in Labrador. Negotiations between the Province and Federal government led to the signing of two agreements in July 1981:

- (i) Canada-Newfoundland Community Development Subsidiary Agreement, valued at \$38,996,000.00, payable by the Federal government; and
- (ii) Native Peoples of Labrador Agreement, valued at \$38,831,00.00 federal payments/contributions.

38. Funding and inspection continued, but at inadequate levels, until the School was closed. At all times, Canada was aware of its inadequate funding.

39. Fiduciary obligations are and were owed by Canada to Aboriginal persons, who include the Indian, Inuit and Metis. This fiduciary relationship between Canada and Aboriginal persons was and is *sui generis* in nature. Accordingly, a fiduciary duty between Canada and Aboriginal persons in Newfoundland and Labrador arose at the moment of Confederation in 1949.

40. Canada has acknowledged its own exclusive jurisdiction and responsibility over Indians and Inuit in Newfoundland and Labrador by accepting its obligation to financially assist or contribute. Canada was entitled to reporting, inspections and audits of how its funds were spent.

41. In any event, Canada has always assumed some level of legal responsibility for Aboriginal persons in Newfoundland and Labrador.

42. Canada had the ability to and actively did inquire, discuss and consider the size of class rooms, those attendant costs, the suitability of living quarters at the Schools, per capita pupil budgeting, the costs of transportation of students, amongst other things.

43. Canada visited the coastal Schools and reported back to the Federal-Provincial Committee regarding the design and adequacy of the Schools.

44. Canada had the ability to, and did, approve the building of new Schools, the costs of same and also formulated and implemented policies associated with 'Indian' education.

45. Canada discussed, formulated and implemented policies concerning segregated education and the location of Schools and dormitories.

46. Canada assumed discretionary control over the specific Aboriginal interest of education by funding the Schools and preserving for itself the right to make decisions over those Schools, including rights to inspect and approve, or monitor and audit, the use of the funds it allocated. Accordingly, having undertaken discretionary control over a cognizable Indian interest, a fiduciary duty existed between Canada and the Survivor Class in these circumstances.

47. As the nature of Canada's relationship with Aboriginal persons gives rise to a fiduciary duty to preserve, protect and promote welfare and education of Aboriginal children, the responsibility for its execution rested solely with Canada.

48. In the alternative, if Canada failed to properly assume those fiduciary and constitutional obligations, it breached its fiduciary duties owed to the Survivor Class by failing to do so.

ii. Canada's Operation of the School in Newfoundland

49. The School was located in Cartwright, Labrador. It was first established in 1949 and ceased operation in 1964.

50. 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.

51. Canada coerced Aboriginal persons to attend the School by, *inter alia*, threatening to withhold family allowance payments in event of non-attendance.

52. The School was initially founded and established by the International Grenfell Association. Once Confederation occurred in March 1949 and Newfoundland joined Canada, the International Grenfell Association began limiting its involvement, funding and role in the School. The funding provided by Canada following Confederation 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.

53. Canada participated in the funding, oversight, operation, supervision, control, maintenance, and/or support of the School.

54. 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

55. Canada has a fiduciary relationship with Aboriginal People in Canada. Canada funded, oversaw, operated, supervised, controlled, maintained, and/or supported the School, and knew of failures at the School.

56. Survivor Class members were systematically subjected to the institutional conditions, regime and discipline of the School and were also subjected to wrongful acts at the hands of Canada while confined therein.

57. In particular, Anderson experienced severe physical abuse and verbal abuse during her time at the School by teachers, "caregivers" and other students. Anderson was

hospitalized for a period of two (2) weeks during her residence at the School due to her kidney ailments as a child, exacerbated by the substandard care, poor nutrition and abuse. Webber also suffered from serious physical and mental abuse during his time at the School from both teachers and 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.

58. All persons, including Anderson and Webber, who attended the School, were persons to whom Canada owed a fiduciary duty to act in their best interests at all times.

59. Canada was responsible for:

- (a) the promotion of the health, safety and well being of Aboriginal Persons in Newfoundland during the Class Period;
- (b) the management, operation and administration of the Department of Indian Affairs and Northern Development and its predecessor ministries and departments during the Class Period;
- (c) 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;
- (d) overseeing 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;
- (e) 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 wellbeing of Aboriginal persons confined in the School during the Class Period;
- (f) 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;

- (g) 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;
- (h) the provision of educational and recreational services to the Survivor Class while in attendance at the School during the Class Period;
- (i) 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 with respect to conditions in the School and all activities that took place therein during the Class Period; and

60. During the Class Period, male and female Aboriginal children, including Anderson and Webber, were subjected to gender-specific, as well as non-gender specific, systematic child abuse, neglect and maltreatment. They 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.

61. 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 vulnerable children at the School relied upon Canada, to their detriment, to fulfill its fiduciary obligations.

62. Canada was in breach of its fiduciary duty to the Survivor Class during the Class Period. Particulars of the breach of fiduciary duty of Canada include the following:

- (a) it failed to properly monitor and properly oversee the provision of funding it made to the Province with respect to the Schools, knowing that the operation of those Schools was in conflict with its fiduciary duty to protect the safety and cultural identity of the class members;

- (b) it failed to take proper steps to ameliorate the harmful effects of the Schools to which it funded and did nothing to stop the Province and other entities from operating the Schools in the manner they did;
- (c) it failed to adequately supervise and control the School and its agents operating same under its jurisdiction;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) it failed to respond appropriately or at all to disclosure of abuses in the School during the Class Period;
- (h) it permitted Survivor Class members to be assaulted and battered during the Class Period;
- (i) it permitted an environment which permitted and allowed student-upon-student abuse;
- (j) it failed to inspect or audit the School adequately or at all;
- (k) 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;
- (l) 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;
- (m) 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 Class Members.

63. Canada, through its employees, agents or representatives, also breached its fiduciary duties to the Plaintiffs and the Survivor Class by failing to take any steps to

protect the Survivor Class Members from sexual abuse that was perpetrated upon certain Plaintiffs and Survivor Class Members while attending and residing at the School.

64. Canada knowingly deprived the School and students of similar funding on a pro rata basis as those provided to others across Canada, and by doing so, it permitted a harmful environment to persist, exposing vulnerable Aboriginal children to the enhanced risk of harm.

65. By failing to take appropriate steps within its mandate and ability to oversee, fund and audit the Schools to protect the Survivor Class members and their cultural identity, Canada's acts and omissions were fundamentally disloyal and betrayed the Survivor Class members. By failing to act when it should have done so, Canada breached its fiduciary duties.

66. In breach of its ongoing fiduciary duty to the Survivor Class, Canada failed and continues to fail, to adequately remediate the damage caused by its failures and omissions set out herein.

F. DAMAGES SUFFERED BY CLASS MEMBERS

67. As a consequence of the breach of fiduciary duty by Canada, the Survivor Class members, including Anderson and Webber, suffered injury and damages including:

- (a) isolation from family and community;
- (b) assault and battery;
- (c) sexual abuse;
- (d) emotional abuse;
- (e) psychological abuse;

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

68. Canada knew that as a consequence of its mistreatment of the children at the School, the Survivor Class members would suffer significant mental, emotional, psychological and spiritual harm which would adversely affect their relationships with their families and their communities.

G. PUNITIVE AND EXEMPLARY DAMAGES

69. 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.

H. DISGORGEMENT

70. For decades, funding and inspection continued at inadequate levels, until the School was closed. Canada provided insufficient funding for the School, measurable in comparison to that afforded to other provinces, where the same fiduciary duty was and is owed by Canada to Aboriginal persons.

71. From 1949 to 1980, Newfoundland and Labrador received less than the per capita share in support from Canada to provide services to its Aboriginal peoples as compared to that received elsewhere in Canada

72. Given the above, Canada should be required to disgorge monetary benefits that it inequitably acquired on account of its breach of fiduciary duty, estimated at some \$92 million in 2014 dollars, plus compound interest. This amount represents an equalization, not a windfall, equating to amounts that other similarly situated persons were receiving from Canada as beneficiaries during the same time frame.

73. The Plaintiffs plead and rely upon the following:

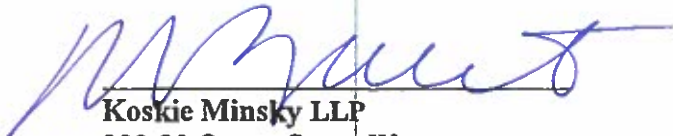
Class Actions Act, S.N.L. 2001, c. C-18.1.

The Constitution Act, 1867 (U.K.), 30 & 31 Victoria, c. 3

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

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

Dated at St. John's, in the Province of Newfoundland and Labrador, this 25th day of November, 2015.



Koskie Minsky LLP
900-20 Queen Street West
Toronto, ON M5H 3R3

Kirk Baert LSUC# 30942Q

Tel: 416-595-2117

Fax: 416-204-2889

David Rosenfeld LSUC#: 51143A

Tel: 416-595-2700

Fax: 416-204-2984

Ahlstrom Wright Oliver & Cooper LLP

Suite 200, 80 Chippewa Road,
Sherwood Park, AB T8A 4W6

Steven L. Cooper

Tel: 780-464-7477

Fax: 780-467-6428

Ches Crosbie Barristers

169 Water Street
St. John's, NL A1C 1B1

Chesley F. Crosbie

Tel: 709-579-4000

Fax: 709-579-9671

Solicitors for the Plaintiffs

TO: THE DEFENDANT

Attorney General of Canada
Department of Justice Canada
Suite 1400, Duke Tower
5251 Duke Street
Halifax, NS B3J 1P3

Jonathan Tarlton
Tel: 902-426-5959
Fax: 902-426-8796

Mark S. Freeman
Tel: 902-426-5761
Fax: 902-426-2329

Solicitors for the Defendant