Court File No.: T-2044-19

FEDERAL COURT

PROPOSED CLASS PROCEEDING

GREGORY CHARLES COLLINS

Plaintiff

and

ATTORNEY GENERAL OF CANADA and THE FEDERATION OF NEWFOUNDLAND INDIANS

Defendants

STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: DEC 18 2019

Issued by: THERRY ALLY
(Registry Officer) AGENT DU GREFFE

Address of local office: 200-180 Queen St. W.
Toronto, ON M5V 3L6

TO: **DEPARTMENT OF JUSTICE CANADA CIVIL LITIGATION SECTION**
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Lawyers for the Defendant, The Attorney General of Canada

AND TO: **COX & PALMER**
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Lawyers for the Defendant, The Federation of Newfoundland Indians

CLAIM

1. The Plaintiff claims:

(a) an order consolidating the within action and the judicial review application commenced under Court File No. T-300-17;

(b) an order directing that the decision of the Federal Court of Appeal in Court File No. T-300-17 dated November 4, 2019 is applicable to the consolidated proceeding;

(c) a declaration that the Defendant, the Attorney General of Canada ("Canada"), acted contrary to the principles of natural justice and procedural fairness pursuant to section 18.1(4) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, by reason of the events described in this action;

(d) an order quashing or setting aside the Enrolment Committee's rejection of the Plaintiff's application, and the rejection of all other Class Members' applications, in the Qalipu Band membership determination process under the *Supplemental Agreement for the Recognition of the Qalipu Mi'kmaq Band* and granting membership to the Plaintiff and Class Members pursuant to *Agreement for the Recognition of the Qalipu Mi'kmaq Band* or establishing a process pursuant to Rule 334.26 of the *Federal Courts Rules* to do so;

(e) in the alternative, an order setting aside the Enrolment Committee's rejection of the Plaintiff's application, and the rejection of all Class Members' applications, in the Qalipu Band membership determination process under the *Supplemental Agreement for the Recognition of the Qalipu Mi'kmaq Band* and referring the process back to the Enrolment Committee for determination of the applications in accordance with:

(i) the requirements of the *Agreement for the Recognition of the Qalipu Mi'kmaq Band* only; or

(ii) such directions as this Honourable Court considers to be appropriate;

(f) a declaration that Canada breached its fiduciary duties to the Plaintiff and the Class by reason of the events described in this action;

(g) a declaration that Canada breached its duties under section 15 of the *Canadian Charter of Rights and Freedoms* (**"*Charter*"**) owed to the Plaintiff and the Class by reason of the events described in this action;

(h) a declaration that the Canada was unjustly enriched by reason of the events described in this action;

(i) damages against Canada for breach of fiduciary duty in the amount of $500 million or any such amount that this Honourable Court deems appropriate;

(j) punitive damages against Canada of $100 million or such other sum as this Honourable Court may find appropriate;

(k) damages or such other remedy against Canada as this Honourable Court may consider just and appropriate pursuant to section 24 of the *Charter*;

(l) in the alternative, a disgorgement of all cost savings realized by Canada as a result of its breaches of fiduciary duties and unjust enrichment, and a declaration that such funds are subject to a constructive trust in favour of Class members;

(m) pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;

(n) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;

(o) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and

(p) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

FACTS GIVING RISE TO THIS ACTION

2. When Newfoundland joined Confederation in 1949, Mi'kmaq communities that had lived in Newfoundland for generations were not recognized as Bands under the *Indian Act*, R.S.C. 1985, c. I-5. Their legal status was uncertain.

3. To this day, the Mi'kmaq First Nation remains the second largest First Nation by population in Canada.

2008 Agreement

4. On June 23, 2008, the Federal Crown ("**Canada**") and the Federation of Newfoundland Indians ("**FNI**") entered into the *Agreement for the Recognition of the Qalipu Mi'kmaq Band*

("**2008 Agreement**") to create the Qalipu Mi'kmaq First Nation ("**Band**"). FNI membership ratified the 2008 Agreement with a vote.

5. In short, the 2008 Agreement listed the following central requirements to be a Band member:

(a) Canadian Indian ancestry;

(b) self-identification as a member of the Mi'kmaq Group of Indians of Newfoundland; and

(c) acceptance by the Mi'kmaq Group of Indians of Newfoundland.

6. Other pertinent characteristics of the 2008 Agreement included the following:

(a) the Qalipu Mi'kmaq First Nation was declared a band for the purposes of the *Indian Act*;

(b) there is to be no land reserve for the Band;

(c) Band members are entitled to "Indian" status under the *Indian Act*;

(d) Band members were entitled to significant benefits from Canada;

(e) applicants need not be resident in Newfoundland or be a member of the FNI to be considered for membership;

(f) Canada had the ultimate final say on membership in relation to ancestry;

(g) the 2008 Agreement may only be amended by ratification by the members of the FNI;

(h) the 2008 Agreement may be terminated by either party should there be a continuing failure to comply with the agreement by the Enrollment Committee or Appeal Master; and

(i) all enrolment decisions of the Enrolment Committee can be appealed.

Enrolment process

7. The 2008 Agreement provided for a two-stage enrolment process to assess applications for membership in the Band, to be assessed by an Enrolment Committee composed of an equal number of representatives from Canada and the FNI and a jointly appointed independent chair.

8. Phase one of the enrolment process occurred from November 30, 2008 to November 30, 2009. During this period, approximately 23,877 applicants were found eligible for membership pursuant to the terms of the 2008 Agreement and approximately 3,000 applicants were rejected.

9. The 23,877 accepted applicants in phase one thereby constituted the founding members list for the Band. These 23,877 Band members were also provided with status pursuant to the *Indian Act*, whereby an individual is recognized by the federal government as being registered as a "Registered Indian" (commonly referred to as a "Status Indian"), and thereby entitled to a wide range of programs and services offered by federal agencies and provincial governments.

10. Phase two of the enrolment process occurred from November 30, 2009 to November 30, 2012. It was intended that all applications submitted during phase two were to be considered pursuant to the terms of the 2008 Agreement.

11. In the middle of phase two, on September 22, 2011, the Qalipu Mi'kmaq First Nation was officially created as a "band" under the *Indian Act* by an Order in Council, the *Qalipu Mi'kmaq First Nation Band Order*, SOR/2011-180 as a result of the applications reviewed and approved in phase one. Thereafter, applications for Band membership in phase two increased markedly.

12. By the phase two application deadline of November 30, 2012, more than 70,000 applications were received, bringing the combined total number of applications received in phase one and phase two to over approximately 104,000. The enrolment process was effectively halted

at this time, which left tens of thousands of submitted applications not reviewed under the terms of the 2008 Agreement, contrary to what had been anticipated by the applicants.

2013 Supplemental Agreement

13. Following the phase two application deadline of November 30, 2012 and the halting of the initial enrolment process, Canada altered the requirements of the 2008 Agreement to include significantly more stringent evidentiary requirements and burdens for membership, as provided in a *Supplemental Agreement for the Recognition of the Qalipu Mi'kmaq Band*, entered into on July 4, 2013 ("**2013 Supplemental Agreement**").

14. Contrary to what occurred with respect to the 2008 Agreement, there was no ratifying vote by the FNI membership prior to entering into the 2013 Supplemental Agreement.

15. Canada indicated that the 2013 Supplemental Agreement was necessitated by, *inter alia*, what it deemed to be an unreasonably high number of applications received, stating that:

> It was neither reasonable nor credible to expect that more than 101,000 individuals would become members of the First Nation, particularly given that approximately two-thirds of the applicants did not reside in any of the Mi'kmaq communities targeted for recognition in this initiative, but elsewhere in Canada.

16. The Preamble to the 2013 Supplemental Agreement indicates, *inter alia*, that the number of applications received factored significantly in the advent of the 2013 Supplemental Agreement, stating:

> AND WHEREAS the volume of applications submitted by individuals seeking membership in the band far exceeded the reasonable expectations of the Parties so as to overtake the capacity of the enrolment process established pursuant to the Agreement to assess the applications received within the timeframes set out in the Agreement.

17. Canada insisted the enrolment criteria in the 2008 Agreement did not change as a result of the 2013 Supplemental Agreement and that only minor revisions were made to clarify the process. However, the 2013 Supplemental Agreement constituted a remarkable and retroactive departure from the 2008 Agreement in terms of who could demonstrate they were a Band member and the extent and/or nature of proof required to meet the new membership criteria.

18. The terms of the 2013 Supplemental Agreement constituted significant changes and restrictive interpretations to the original 2008 Agreement, which had already been successfully applied to the 23,877 applicants accepted in phase one to determine their Band membership and concordant status under the *Indian Act*.

19. The 2013 Supplemental Agreement provided the following changes or restrictive interpretations including, but not limited, to the following:

(a) certain appeal rights for certain Enrolment Committee decisions were removed;

(b) restrictions and thresholds were placed on how and when the following could be demonstrated or resolved:

(i) connection to the Mi'kmaq community;

(ii) connection with one's own family members;

(iii) geographical residence in or around the Mi'kmaq Group of Indians of Newfoundland;

(iv) non-residency and frequency of visits and communications with the Mi'kmaq Group of Indians of Newfoundland;

(v) a current and substantial connection to, and maintenance of, the Mi'kmaq culture and way of life; and

(vi) the type, nature, quantity, and quality of evidence that could be used to substantiate the above.

20. The 2008 Agreement provided that it could only be amended by the parties, *inter alia*, to address inconsistencies or conflicts within the 2008 Agreement or to extend deadlines

thereunder. The 2013 Supplemental Agreement was not created in accordance with paragraph 2.15 of the 2008 Agreement. There were no inconsistencies or conflicts, or any issue, which necessitated the advent of the 2013 Supplemental Agreement. The 2013 Supplemental Agreement is therefore invalid as a result.

Review of applications under the 2013 Supplemental Agreement

21. The Defendants mandated that all applications, except for the approximately 3,000 applications already assessed and rejected pursuant to the terms of the 2008 Agreement in phase one, would be reviewed in accordance with the new terms of the 2013 Supplemental Agreement.

22. Such a review included a retroactive application of the 2013 Supplemental Agreement to the applications of the 23,877 individuals already registered as founding members of the Band under the 2008 Agreement as a result of phase one, whom had also been provided with status and benefits under the *Indian Act* as a result.

Enrolment decisions under the 2013 Supplemental Agreement on January 31, 2017

23. The review process under the 2013 Supplemental Agreement was completed and decisions on Band membership were mailed out to applicants on or around January 31, 2017.

24. As a result of the January 31, 2017 decisions, out of the approximately 104,000 total applicants in phase one and phase two combined, ultimately, only 18,044 applicants were accepted for founding membership in the Band. Approximately 68,134 applications were rejected pursuant to the terms of the 2013 Supplemental Agreement.

25. Of those rejected under the 2013 Supplemental Agreement, 10,512 applicants who were originally accepted in phase one under the terms of the 2008 Agreement were now rejected under

the heightened enrolment criteria set by the 2013 Supplemental Agreement, after it that had been retroactively applied to their previously successful applications.

26. Applicants were rejected because they were deemed not to have provided sufficient evidence of their self-identification as a member of the of Mi'kmaq communities and/or did not live in Newfoundland and could not demonstrate they still have a sufficient connection to Mi'kmaq communities, as required by the 2013 Supplemental Agreement. This is despite the fact that those applicants who submitted applications before September 22, 2011 were not required to meet the onerous evidentiary requirements of self-identification in the 2013 Supplemental Agreement, and, with respect to the geographic restrictions imposed by the 2013 Supplemental Agreement, that the Qalipu Band was created as a landless band. Acceptance or rejection under the 2013 Supplemental Agreement has now been grounded in discriminatory and overly restrictive self-identification requirements and geographical ties, and not in blood relations and/or traditional self-identity.

27. In accordance with the removal of certain appeal rights under section 6(2) of the 2013 Supplemental Agreement, some applicants denied after January 31, 2017 were not permitted a right to appeal their enrolment decision. Their decision was final. Others who submitted internal appeals had those appeal denied in January 2018.

Consequences of rejection

28. In the circumstances of the Qalipu Band membership process, Band membership equates to a granting of "Indian" status under the *Indian Act* if the applicant does not already have said status.

29. As a result, the Band and its members will be eligible for certain federal programs, including but not limited to: post-secondary student support; Band support funding; Band

employee benefits; community economic development organizations; community support services; community economic opportunities; and non-insured health benefits.

30. Consequently, a rejection for Band membership in these circumstances constitutes a denial of "Indian" status and a deprivation of these otherwise available benefits, leading to serious and detrimental effects upon rejected applicants.

31. A rejection from Band Membership pursuant to the 2013 Supplemental Agreement is also a rejection of the applicant's cultural heritage, cultural practices, cultural self-identification and honesty.

THE PARTIES

32. The Plaintiff, Gregory Charles Collins, currently resides in Ontario. He was born on April 27, 1961 in Corner Brook, Newfoundland. Mr. Collins is considered an elder in his community.

33. He submitted his application to become a founding member in the Band on February 1, 2009, during phase one of the enrolment process. By letter dated May 29, 2009, Mr. Collins' application was accepted and he became a founding member of the Band.

34. By letter dated January 31, 2017, Mr. Collins was notified of the following:

(a) that his application for Band membership was reviewed by the Enrolment Committee;

(b) that his previously accepted application for Band membership was rejected;

(c) that he was rejected because he did not meet the requirements for community acceptance pursuant to the 2013 Supplemental Agreement; and

(d) that he had the right to appeal the Enrolment Committee's decision to reject his application by no later than March 17, 2017.

35. The Defendant, Her Majesty the Queen in Right of Canada, is named in these proceedings pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and is represented by the Attorney General of Canada.

36. The Defendant, the FNI, is an organization representing affiliated Mi'kmaq bands based in Newfoundland. The FNI does not represent all Mi'kmaq bands, communities or people in Newfoundland.

THE CLASS

37. On November 4, 2019 the Federal Court of Appeal certified this proceeding as a class proceeding and defined the class as follows:

> All individuals whose applications for Qalipu Band membership were rejected in accordance with the 2013 Supplemental Agreement (the "**Class**" or "**Class Members**").

CANADA'S UNFAIR CONDUCT TOWARDS THE CLASS

38. By virtue of the Plaintiff's rejection, and the rejection of all other Class Members' applications, under the retroactively applied 2013 Supplemental Agreement, Canada:

(a) invalidly and unlawfully established and applied the 2013 Supplemental Agreement;

(b) failed to apply the 2008 Agreement fairly, appropriately, or at all;

(c) established and applied the 2013 Supplemental Agreement for improper purposes;

(d) excluded material evidence submitted from consideration that otherwise would have been considered under the 2008 Agreement;

(e) failed to give appropriate consideration to material evidence submitted that otherwise would have been considered under the 2008 Agreement;

(f) failed to adequately, properly, and effectively consider all applications pursuant to the 2008 Agreement;

(g) failed to accord with procedural fairness by denying certain persons an opportunity to appeal, which had previously been granted under the 2008 Agreement;

(h) failed to accord with procedural fairness and principles of natural justice by revoking Indian status under the *Indian Act* from certain applicants to whom it had been previously granted; and

(i) fettered the discretion of the Enrolment Committee by virtue of the 2013 Supplemental Agreement.

39. In respect of all rejections rendered under the 2013 Supplemental Agreement, including the Plaintiff's rejection, Canada:

(a) failed to accord with the principles of natural justice;

(b) mandated the Enrolment Committee to act without jurisdiction, act beyond its jurisdiction, or refuse to exercise its jurisdiction accordingly;

(c) mandated the Enrolment Committee to base its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it; and

(d) erred at law by implementing and requiring the implementation of the 2013 Supplemental Agreement.

40. As a result of the above, it is alleged that Canada acted contrary to section 18.1 of the *Federal Courts Act*.

CANADA OWED AND BREACHED FIDUCIARY DUTIES TO THE CLASS

41. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal peoples in Canada.

42. Canada has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 91(24) of the *Constitution Act, 1867*, the common law, and court rulings of high and binding authority.

43. By virtue of its constitutional obligations, Canada has an ongoing duty to Aboriginal persons on matters relevant to Aboriginal interests. There is an express and implied undertaking by Canada to protect the best interests of Aboriginal persons at all times.

44. Canada's constitutional obligations, in conjunction with the quasi-constitutional *Indian Act* and related legislation and policies, the common law, the honour of the Crown, and the 2008 Agreement, bestow a discretionary control requiring Canada to take steps to monitor, influence, safeguard, secure, and otherwise protect the vital interests of Aboriginal persons, and in particular, their cultural, social, and spiritual identity, which is fundamental to the security, welfare and survival of Aboriginal persons, as well as to safeguard their benefits derived from their rightful status as Aboriginals.

45. Canada's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued, and continues, notwithstanding any bilateral agreements between Canada and the FNI or otherwise.

46. Canada undertook to act in the best interests of the alleged beneficiaries in negotiating the terms of entitlement to membership in a "band" (as defined in the Indian Act) and resulting status under the *Indian Act* when it negotiated the 2008 Agreement with the FNI. Canada undertook to recognize and determine the sufficiency of an Aboriginal peoples' cultural self-identification, cultural practices and cultural interests by establishing the 2008 Agreement.

47. The Class was directly subject to the control and discretion of Canada in relation to the administration of the 2008 Agreement and the implementation of the 2013 Supplemental Agreement as they were not involved in nor parties to the agreements.

48. The legal or substantial practical interests at issue include, but are not limited to: (i) acceptance and recognition of their cultural heritage and identification by the Federal Government; (ii) acceptance and recognition of their Aboriginal ancestry by the Federal Government; and (iii) the entitlement to programs and benefits provided by Canada pursuant to Chapter 5 of the 2008 Agreement and otherwise as being registered pursuant to the *Indian Act*.

49. In light of Canada's unfair conduct described above, leading to the rejection of tens of thousands of Class Members for Band membership and concordant "status" pursuant to the *Indian Act*, Canada breached its fiduciary duty owed to the Class Members by the following acts or omissions, including but not limited to:

(a) Canada illegitimately delegated its non-delegable duties in respect of the Class Members;

(b) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own family members by instituting improper thresholds for requisite participation in cultural and social life and a travel record thereof;

(c) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own community by instituting improper thresholds for requisite geographical residence in or around the Mi'kmaq Group of Indians of Newfoundland, despite the creation of a landless Band;

(d) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own community by improperly requiring unreasonable evidentiary requirements to establish the Class Member's *bona fide* direct involvement with the community;

(e) Canada illegitimately prescribed the type, nature, quantity, and quality of evidence that could be used to substantiate the above, contrary to the notion of Aboriginal self-identification; and

(f) Canada was careless, reckless, wilfully blind, deliberately accepting of, or was actively promoting, a policy of rejection of Aboriginal self-identification.

50. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to act in the best interests of the Class Members vulnerable to its control. It did not. Instead, Canada considered its interests above those of the Class Members. As Canada knew, the 2013 Supplemental Agreement did not provide protection for, and indeed actively sought to curtail, the cultural, social, and spiritual identity, as well as other related status and rights, of the vulnerable Class Members.

51. The actions and omissions of Canada, as described herein, were acts of fundamental disloyalty, betrayal and dishonesty to the Plaintiff and the Class Members.

52. Canada turned a blind eye to the Class Members, when it knew, or reasonably should have known, that the Class Members would thereby individually and collectively be rejected in the application process under the 2013 Supplemental Agreement, and in effect, lose or be prevented from enjoying their social, cultural, and spiritual identity, as well as other related status, monetary, and non-monetary benefits, and would suffer other harms described herein.

CANADA OWED AND BREACHED *CHARTER* DUTIES TO THE CLASS

53. The conditions particularized above violate the basic and fundamental human rights of the Class Members and, as such, constitute a violation of their equality rights and freedoms under section 15 of the *Charter*.

54. Section 15(1) of the *Charter* guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, or other related recognizable grounds.

55. As a government actor, Canada owed, and continues to owe, duties under the *Charter* to the Class Members herein.

56. Canada's conduct, including the agreement and implementation of the 2013 Supplemental Agreement, the retroactive application of the 2013 Supplemental Agreement, its discriminatory requirements for Band membership, and its consequent rejection of tens of thousands of applications for Band membership, has negatively treated the prospective applicants for the Qalipu Band based on enumerated grounds, differently than other Aboriginal persons in Canada.

57. The Class was discriminated against on the basis of arbitrary criteria: i) the date of their applications; and ii) living outside of a listed community or off the island of Newfoundland.

58. Canada treated the applications of Class Members differently based on the date of the application. Pursuant to the 2013 Supplemental Agreement, those who submitted an application before the date of the formal creation of the Band would have their statements of self-identification accepted at face value and those who submitted applications after that time would have those same statements of self-identification rejected.

59. Canada established rules and restrictions that only applied to those applicants who resided and practiced their culture outside of the listed communities and outside of Newfoundland. Despite there being no reserve lands set aside for the Band, Canada made a distinction between those who practice their culture as "residents" and those who practice their culture as "non-residents".

60. The Class Members have been discriminated against based on, *inter alia*, their race, national origin, and ethnic origin. Canada's conduct is discriminatory on its face, in its effect, and in its application. In particular, such actions included but are not limited to:

(a) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own family members by instituting improper thresholds for requisite participation in cultural and social life and a travel record thereof;

(b) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own community by instituting improper thresholds for requisite geographical residence in or around the Mi'kmaq Group of Indians of Newfoundland, despite the creation of a landless Band;

(c) Canada illegitimately restricted the ability of a Class Member to substantiate his or her connection with, and self-identify with, his or her own community by improperly requiring unreasonable evidentiary requirements to establish the Class Member 's *bona fide* direct involvement with the community;

(d) Canada illegitimately prescribed the type, nature, quantity, and quality of evidence that could be used to substantiate the above, contrary to the notion of Aboriginal self-identification; and

(e) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of rejection of Aboriginal self-identification.

61. There is no justification in a free and democratic society for said discrimination under section 1 of the *Charter*.

62. The impact of the differential treatment was to devalue the honesty, integrity and dignity of the Class Members.

THE PLAINTIFF'S EXPERIENCES

63. The Representative Plaintiff, Gregory Charles Collins, resides in the Community of Rockland, Ontario. He was born on April 27, 1961 in Corner Brook, Newfoundland.

64. Mr. Collins joined the Canadian Armed Forces Reserves in Corner Brook in September 1979. In March 1981, he left Newfoundland for the mainland Regular Forces and did not return to live there.

65. Mr. Collins' First Nation heritage comes from his mother's side of the family. Mr. Collins' Mi'kmaq identity has always been very important to him. He recognizes and celebrates his heritage through hunting, fishing, berry picking, drum making, painting, and taking part in First Nation community events.

66. Mr. Collins is considered an elder in his community.

67. Mr. Collins is certified to teach the Mi'kmaq language.

68. Prior to submitting his application for Band membership, Mr. Collins was a member of the Corner Brook Indian Band, and a member of the FNI.

69. On July 12, 2017, Mr. Collins was honoured to receive the Canadian Aboriginal War Veteran Medal.

70. Mr. Collins learned of the formal recognition of the Qalipu Band through his brother who still lives in Corner Brook. Mr. Collins submitted his application for Band membership on February 1, 2009 ("**Application**"), well prior to the November 30, 2009 deadline for phase one submissions and strictly under an intention to apply pursuant to the terms of the 2008 Agreement.

71. Included with Mr. Collins' Application were:

(a) The birth certificate of his mother;

(b) The marriage certificate of his parents;

(c) Affidavits of his brother and sister-in-law, swearing that he keeps in touch with them through phone calls and visits home to Corner Brook; and

(d) A certificate of his standing with the Corner Brook Indian Band and the Federation of Newfoundland Indians dated February 1, 2009.

72. By letter dated May 29, 2009, the Enrolment Committee Chair, Thomas G. Rideout, informed Mr. Collins that he met the criteria for Band membership and that his Application to become enrolled as a founding member had been approved.

73. After the application of the 2013 Supplemental Agreement, the Enrolment Committee Chair advised Mr. Collins in February 2017 that they had now rejected his previously accepted Application for Band membership, stating:

> The Enrolment Committee has reached a decision to deny your application on the grounds that you **did not meet** the requirements for acceptance by the Mi'kmaq Group of Indians of Newfoundland as a Member of that Group as indicated in section 4.1(d)(ii) of the Agreement.
>
> Specifically,
>
> ☒ You did not meet the requirements of residency in or around a geographic location of the Mi'kmaq Group of Indians on the Island of Newfoundland as set out in the Agreement, sections 25 - 27 of the Guidelines, and Annex A to the 2013 Supplemental Agreement.
>
> Where you did not apply or qualify as a resident in or around a geographic location of the Mi'kmaq Group of Indians on the island of Newfoundland, the documentation in support of your acceptance by the Mi'kmaq Group of Indians of Newfoundland was assessed based on a Point System as set out in Annex A to the 2013 Supplemental Agreement. The Enrolment Committee determined that you:
>
> ☒ Did not obtain the minimum of one (1) point required for frequent visits and/or communications under Annex A to the 2013 Supplemental Agreement.
>
> ☒ Did not obtain the minimum of thirteen (13) points required under Annex A to the 2013 Supplemental Agreement to establish acceptance based on frequent visits, communications and maintenance of the Mi'kmaq culture or way of life.

74. The Enrolment Committee Assessment enclosed with the letter stated that Mr. Collins met the self-identification criteria for Band membership because he was named on a pre-approved membership list.

75. Mr. Collins was shocked when his application was rejected. Mr. Collins had visited Corner Brook annually since 2004 when he retired from the military, and whenever possible when he was in the military.

76. Mr. Collins tried to plan his visits to Corner Brook to coincide with Mi'kmaq community events and Powwows. He did not include evidence of his trips to Corner Brook, beyond the affidavits of his brother and sister-in-law, in his Application because he did not keep copies of plane tickets or gas receipts.

77. Mr. Collins communicates with his family in Corner Brook almost every day. They Facetime and message. His family is very important to him.

78. Mr. Collins was devastated to learn that his Application had been rejected. The rejection of his Application felt like a rejection of his Mi'kmaq identity. He felt confused that many members of his family in Newfoundland had been recognized as Qalipu Band members and that he had not been recognized. He felt hurt and removed from his recognized family members.

79. In accordance with the letter dated January 31, 2017, Mr. Collins appealed the Enrolment Committee's rejection of his Application. By letter dated December 29, 2017, Mr. Collins was informed that his appeal was denied.

80. Mr. Collins subsequently received a letter from the Indian Registrar dated June 1, 2018, informing him that effective August 31, 2018 he would lose his status as a Registered Indian under the *Indian Act*.

81. In addition to the loss of benefits, Mr. Collins is concerned his identity will be seen as invalid and he will be isolated from his community as a result of Canada refusing to recognize his Mi'kmaq identity. He is worried that his daughter and he will be denied the opportunity to engage fully with Mi'kmaq culture, customs, traditions, language, spirituality and community.

DAMAGES SUFFERED BY CLASS MEMBERS

82. As a consequence of the breach of fiduciary duty and discrimination by Canada and its agents, for whom the Canada is vicariously liable, the Class Members, including the Plaintiff, suffered injury and damages, including but not limited to:

(a) mental, emotional, and spiritual harm and suffering;

(b) deprivation of recognition of Aboriginal culture, customs, traditions, language, and spirituality;

(c) deprivation of recognition of Aboriginal identity;

(d) deprivation of status and related monetary and non-monetary benefits for Band members;

(e) deprivation of ability to join an Aboriginal community;

(f) forced cultural assimilation;

(g) deprivation of family and familial relations;

(h) deprivation of one's ability to pass one's culture and identity on to one's children;

(i) loss of self-esteem and self-worth;

(j) social dysfunctionality and alienation from family, spouses and children; and

(k) pain and suffering.

PUNITIVE AND EXEMPLARY DAMAGES

83. The Plaintiff pleads that Canada, including its senior officers, directors, bureaucrats, ministers and executives, had specific and complete knowledge of the wrongs, or potential therefore, perpetrated upon Class Members. Despite this knowledge, Canada promoted, entered into, and actively directed the retroactive application of the 2013 Supplemental Agreement to all applications in an irresponsible and indifferent fashion and permitted the perpetration of harm to the Class Members.

84. The high-handed and callous conduct of Canada warrants the condemnation of this Honourable Court. Canada conducted its affairs with wanton and callous disregard for the Class Members' Aboriginal interests, identities, and *Charter* rights.

85. Full particulars respecting Class composition and the effects of the application of the 2013 Supplemental Agreement on the Class Members are within Canada's knowledge, control and possession.

DAMAGES UNDER THE *CHARTER*

86. In the circumstances of the aforementioned breaches, the Plaintiff and the Class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the Class Members' rights and freedoms in order to:

(a) compensate them for their suffering and loss of dignity;

(b) vindicate their fundamental rights; and

(c) deter systemic violations of a similar nature.

87. There are no countervailing considerations that render damages inappropriate or unjust in this case.

UNJUST ENRICHMENT AND DISGORGEMENT

88. In the alternative, as described above, Canada has realized cost savings from its misconduct, including deprivation of Band membership and concordant *Indian Act* status and retention of related benefits to those Class Members improperly rejected under the 2013 Supplemental Agreement ("**Unjust Gains**").

89. Canada realized the Unjust Gains by acting contrary to the principles of natural justice and procedural fairness, and by breaching its fiduciary and *Charter* duties to Class Members.

90. The Class Members have suffered a corresponding loss when their applications where rejected pursuant to the 2013 Supplemental Agreement and they were deprived of Band membership and concordant *Indian Act* status, in relation to Canada's benefit. There is no juridical reason to justify Canada's Unjust Gains.

91. Canada must account to the Class and disgorge the Unjust Gains. The Class is entitled to a constructive trust over these monies.

LEGISLATION RELIED UPON

92. The Plaintiff pleads and relies upon the:

(a) *Federal Courts Rules*, SOR/98-106;

(b) *Federal Courts Act*, R.S.C., 1985, c. F-7; and

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

93. The Plaintiff proposes that this action be tried at Toronto, Ontario.

DATED at Toronto, Ontario, this 17th day of December, 2019.

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Lawyers for the Plaintiff

Court File No.

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

GREGORY CHARLES COLLINS

Applicant

and

ATTORNEY GENERAL OF CANADA and THE FEDERATION OF NEWFOUNDLAND INDIANS

RespondentS

STATEMENT OF CLAIM TO THE DEFENDANTS

(Filed this day of December, 2019)

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____ day of _____ A.D. 20 ____

Dated this _____ day of _____ 20____

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