

**2024 01G CP 0064
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:

**INNU NATION INC., GREGORY RICH,
MARIE MARTHA ANDREW, AND
MAGDALINE BENUEN**

**PROPOSED REPRESENTATIVE
PLAINTIFFS**

AND:

ATTORNEY GENERAL OF CANADA

FIRST DEFENDANT

AND:

**HIS MAJESTY THE KING IN RIGHT OF
THE PROVINCE OF NEWFOUNDLAND
AND LABRADOR**

SECOND DEFENDANT

Brought under the *Class Actions Act*, SNL 2001, c C-18.1

BEFORE THE HONOURABLE JUSTICE BROWNE, THE CASE MANAGEMENT JUDGE

CERTIFICATION BRIEF OF THE PROPOSED REPRESENTATIVE PLAINTIFFS

Application Hearing Dates: March 17-20, 2026

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PART I - OVERVIEW AND BACKGROUND FACTS

1. This is a motion for certification of an Innu Day Schools Class Action against the Federal government and the government of Newfoundland and Labrador (the “Province”). This class action is the latest in a long string of class actions aimed at addressing harms and abuses caused by the Crown’s disastrous and assimilationist approach to education for Indigenous children which sought to “kill the Indian in the child.”

2. The devastation caused by the Crown’s policy is beyond measure. The harm caused to the Innu has been compounded by the fact that Innu survivors have been left behind and forgotten. Despite suffering the same harms and abuses as other Indigenous children, survivors of Innu Day Schools have not had their suffering acknowledged or remedied. This class action seeks to remedy this continuing injustice.

3. This class action, like those that came before it, seeks to address the twin harms of the Crown using education as a tool of assimilation to destroy language and culture, and of creating, funding, and supervising institutions that enabled and permitted abuse. This lawsuit follows in the footsteps of the Indian Residential Schools Class Actions, the *McLean* Indian Day School Class Action, the *Gottfriedson* Day Scholars Class Action (both the survivor and band classes), and the *Anderson* Newfoundland Residential Schools Class Action. Just like Indian Residential Schools, Indian Day Schools and Newfoundland Residential Schools, the purpose and effect of Innu Day Schools was to assimilate children with the dominant culture by fundamentally disrupting the transmission of language and culture. Just like Indian Residential Schools, Newfoundland Residential Schools and Indian Day Schools, Innu Day Schools were rife with physical, psychological, emotional and sexual violence, torment and abuse.

4. The Plaintiffs seek to certify claims on behalf of two classes. First, a Survivor Class consisting of individuals who attended Innu Day Schools who bring claims regarding loss of language and culture and abuse suffered by them at Innu Day Schools. Second, an Innu Governments Class consisting of the Innu First Nations and their governments who bring claims regarding a communal loss of language and culture caused by Innu Day Schools. Both classes assert claims against the federal and provincial Crowns in negligence, breach of fiduciary duty and breach of constitutional rights including Aboriginal rights and the honour of the Crown.

5. This class action is no different than past class actions that successfully secured remedies for survivors of schools intended to assimilate Indigenous children where abuse was common. All were certified as class actions – often on consent – and all settled. Each one involved almost identical common issues as those proposed in this class action. In each case, a court concluded that the five part certification test was met, and that a class action was an appropriate vehicle to resolve the claims of survivors. Likewise, in *Gottfriedson*, the court held that a class action was an appropriate vehicle to resolve claims of a band class for harm to the Indigenous collective as a result of loss of language and culture caused by Indian Residential Schools. Canada has acknowledged that each of these past certified Indigenous education class actions involved larger and more diverse classes, spanned larger geographic areas and involved longer class periods than the Innu Day School class action currently before the court.¹ The Innu survivors are a vulnerable group. This class action provides the only realistic avenue for justice to them.

¹ Transcript of the Cross-Examination of Kimberlee Ford, held October 29, 2025 (“Ford Cross-Examination”) at p 21, ll 2-22.

6. The Innu Day Schools class action must be certified. The test for certification is amply met and certification must be granted to allow the Innu to take the next steps toward justice and reconciliation.

A. The Parties

7. The Defendants are the Attorney General of Canada (“Canada”) and the Province of Newfoundland and Labrador.

8. Gregory Rich is a Proposed Representative Plaintiff for the Survivor Class. He was born on December 25, 1968, and is a member and former Chief of Mushuau Innu First Nation. He attended the Innu Day School in Davis Inlet/Utshimassits for approximately 11 years, beginning in 1973 or 1974, at age 5 or 6.² He is also a former Grand Chief of Innu Nation.³

9. Marie Martha Andrew is a Proposed Representative Plaintiff for the Survivor Class. She is a member of Sheshatshiu Innu First Nation. She was born on October 15, 1960 in Sheshatshiu.⁴ She attended the Innu Day School in Sheshatshiu for approximately 10 years, beginning in 1965, at age 5.⁵

10. Magdaline Benuen is a Proposed Representative Plaintiff for the Survivor Class. She was born on October 20, 1962 in Sheshatshiu. She is a member of Sheshatshiu Innu First Nation, and attended the Innu Day School in Sheshatshiu for approximately 8 years, beginning in 1969, at age 6.⁶

² Affidavit of Gregory Rich, sworn June 17, 2024 (“Gregory Rich Affidavit”) at paras 9–22, **Plaintiffs’ Application Record (“AR”)**.

³ Gregory Rich Affidavit at paras 6–7, **AR**.

⁴ Affidavit of Marie Martha Andrew, sworn July 2, 2024 (“Andrew Affidavit”) at para 3, **AR**.

⁵ Andrew Affidavit at para 4, **AR**.

⁶ Affidavit of Magdaline Benuen, sworn June 24, 2024 (“Benuen Affidavit”) at paras 3 and 5, **AR**.

11. Innu Nation Inc. (“Innu Nation”) is the Proposed Representative Plaintiff for the Innu Governments Class. This Class is made up of Innu Nation, Sheshatshiu Innu First Nation, whose members primarily reside in Sheshatshiu, and Mushuau Innu First Nation, whose members now primarily reside in Natuashish. Innu Nation is the governing body of the Innu of Labrador, and is organized as a not-for-profit corporation.⁷

12. Innu Nation is authorized to protect, promote, and advance the rights of the Innu of Labrador, including their legal, constitutional, and Aboriginal rights, among other things. It represents the Innu of Labrador in land claim and self-government negotiations with the Defendants.⁸

13. The Mushuau Innu First Nation and Sheshatshiu Innu First Nation have acted as Innu government organizations for many generations, and since 2002 both have capacity as Bands under the *Indian Act*.⁹

14. The Innu of Labrador, as represented by the Innu Nation, Mushuau Innu First Nation and Sheshatshiu Innu First Nation, are an Aboriginal people under s. 35 of the *Constitution Act, 1982*, and an Indigenous people under the *United Nations Declaration on the Rights of Indigenous Peoples* (“*UNDRIP*”).¹⁰

B. The Plaintiffs’ Affiants, Certification Record, and Supplemental Record

15. The Proposed Representative Plaintiffs and two additional members of the Survivor Class have each sworn affidavits that set out their experiences at the Innu Day Schools, some of the

⁷ Affidavit of Prote Poker, sworn June 27, 2024 (“Poker Affidavit”) at paras 15-17, **AR**.

⁸ Poker Affidavit at paras 15–16, **AR**.

⁹ *Indian Act*, RSC 1985, c I-5, Tab 119 of Plaintiffs’ Book of Authorities (“BoA”).

¹⁰ Poker Affidavit at para 17, **AR**.

abuse they suffered and witnessed during their attendance, and the enduring harm caused by their time at Innu Day Schools.

16. George Rich is a lands rights negotiator for Innu Nation. He is a member and former Chief of Mushuau Innu First Nation and former Vice President/Deputy Grand Chief of Innu Nation. He was born in 1962. He attended the Innu Day School in Davis Inlet beginning in 1967 until he obtained his Grade 8 education.¹¹

17. Prote Poker is an advisor for Innu Nation. He was born in 1962, and he attended the Innu Day School in Davis Inlet during approximately the late 1960s through the 1970s, until he completed grade 8. He is a member and former Chief of Mushuau Innu First Nation, and a former Grand Chief of Innu Nation.

18. Evidence from survivors regarding their experiences at Innu Day Schools was not shaken on cross-examination and is not contradicted by any evidence tendered by the Defendants.

19. In support of their application for certification, the Plaintiffs have tendered a 27-tab supplemental record consisting of reliable historical and other documents regularly relied upon by Canadian Courts to establish a basis in fact for proposed class proceedings. These documents consist of public government records and reports, reports issued by or prepared for official Commissions of Inquiry, reports issued by the Canadian Human Rights Commission, reports issued by the Innu Nation, transcripts of witness testimony by members of the Mushuau and Sheshatshiu Innu First Nations before the ongoing Inquiry Respecting the Treatment, Experiences and Outcomes of the Innu in the Child Protection System, and academic articles which themselves

¹¹ Affidavit of George Rich, sworn June 12, 2024, (“George Rich Affidavit”) at paras 6–22, **AR**.

reproduce statements by public officers and survivors of the Innu Day Schools. The specific basis for the admissibility of each item in the Supplemental Record is canvassed below, at Part III, C.(i).

C. The Innu of Labrador Before European Contact and After the Terms of Union

(i) The Innu of Labrador's traditional territory and way of life

50. The Innu of Labrador have occupied and used their traditional territory within what is now known as the Quebec-Labrador Peninsula since time immemorial and for thousands of years before settlers arrived in Canada. This land is known as *Nitassinan* in Innu-aimun, the language of the Innu of Labrador.¹²

51. The Innu of Labrador are a small pair of communities that numbered less than 3000 individuals during the Class Period. Historically, the Innu of Labrador lived throughout *Nitassinan*, following and harvesting caribou herds.

52. Since time immemorial, the Innu have cultivated a special relationship with their land, *Nitassinan*, and followed seasonal migration patterns. Innu families spent long periods travelling in *nutshimit* (on the land), engaging in traditional Innu practices such as hunting and fishing. Traditionally, the Innu would migrate to the coast during the summer months and would hunt in the interior of *Nitassinan* at other times. Sheshatshiu and Old Davis Inlet were the traditional locations on the coast to which the Innu would gather in the summer.¹³ This traditional lifestyle

¹² Procter at 385, Exhibit "R" to the Affidavit of Dr. Adrian Tanner ("Tanner Affidavit"), sworn March 6, 2025, **Plaintiffs' Supplemental Application Record ("SAR"), Tab 24.**

¹³ Donald M McRae, *Report on the Complaints of the Innu of Labrador to the Canadian Human Rights Commission* (18 August 1993) ("McRae") at 6, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17.**

continued until 1940-1960, when Catholic priests and the provincial government forced the Innu to settle in costal communities.¹⁴

53. While traveling on the land, Innu families shared traditional knowledge, cultural practices and language with their children. These traditional practices are detailed in the 1995 report, “Gathering Voices”.¹⁵ George Rich remembered how, while travelling on the land, his father taught him about traditional Innu tools, such as snowshoes and sleds, and how to craft them. He also learned many of the Innu names of pre-colonized lands in Labrador, which hold great cultural significance for the Innu, who are land-based people.¹⁶ Prote Poker recalled that he learned most of his knowledge of Innu practices, history and traditions from family and Elders.¹⁷

(ii) Canada’s Constitutional Obligation for the Innu at Confederation

54. Following Confederation, Canada had the constitutional duty to legislate in the interests of the Innu. Section 91(24) of the *Constitution Act, 1867* vested Parliament with “exclusive Legislative Authority” over “all Matters” pertaining to “Indians, and Lands reserved for the Indians.”

55. Canada’s senior officials charged with Indian affairs understood that, with the entry of Newfoundland into Confederation, Canada had the legislative authority and legal duty to address

¹⁴ Poker Affidavit at para 3, **AR**; George Rich Affidavit at para 4, **AR**; Andrew Affidavit at para 3, **AR**; Innu Nation and Mushuau Innu Band Council, *Gathering Voices: Finding Strength to Help Our Children (Mamunitau Staianimuau: Ntuapatetau Tshetshi Uitshiakuts Stuassiminuts)*, ed by Camille Fouillard (Vancouver: Douglas & McIntyre, 1995) (“Innu Nation and Mushuau Innu Band Council”), p 65 and 67, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**; McRae, p 6, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**; Andrea Procter, *A Long Journey: Residential Schools in Labrador and Newfoundland* (St. John’s: ISER, 2020) chapter 13, (“Procter”), at 383, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**; Adrian Tanner, “The Aboriginal Peoples of Newfoundland and Labrador and Confederation” (1998) 14:2 *Newfoundland Studies* 238 (“Tanner”), at 243, Exhibit “O” to the Tanner Affidavit, **SAR, Tab 20**.

¹⁵ George Rich Affidavit at para 11, **AR**; Innu Nation and Mushuau Innu Band Council, at 65 and 67, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁶ George Rich Affidavit at para 11, **AR**.

¹⁷ Poker Affidavit at para 9, **AR**.

the Innu of Labrador's issues. In 1950, Canada requested a legal opinion from the Department of Justice to clarify Canada's legal responsibility for "Indians and Eskimos" in Newfoundland and Labrador. F.P. Varcoe, Deputy Minister of Justice, confirmed that Canada bore this legal responsibility, in a memo dated April 14, 1950. His memo concluded:

The federal Parliament has exclusive legislative authority in relation to "Indians, and Lands Reserved for the Indians" under head 24 of Section 91 of the British North America Act which, of course, means that the provincial legislature has no authority to enact legislation directed at dealing with or "in relation to" Indians. Legislative authority in relation to Indians carries with it for the federal government the exclusive authority 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 [*sic*] or Indian problems. Such policy is to be formulated by Parliament and the executive. This responsibility carries with it the responsibility of providing money to be devoted to the carrying out of policies in relation to the Indians.¹⁸

56. This conclusion was reaffirmed in a second legal opinion from the Department of Justice dated November 23, 1964 confirming Canada's legal responsibility for "Indians and Eskimos" in the Province.¹⁹

57. Despite this obligation, Canada failed to clearly delineate its responsibility for the Innu of Labrador in the Terms of Union governing Newfoundland's accession to Confederation. Canada's officials initially represented to the Province that Canada would bear responsibility for "Indians and Eskimos" in Newfoundland following Confederation. In 1947, a federal representative stated

¹⁸ FP Varcoe, Deputy Minister, Justice Department, Legal Opinion to Secretary to Cabinet (14 April 1950), Ottawa, National Archives of Canada (MG 31-D163, vol 23, file 23-3) ("Varcoe"), **SAR, Tab 2**.

⁴⁸ The memo stated, "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 was not changed with regard to Newfoundland." Department of Justice 204595 Re: Indians and Eskimos in Newfoundland (23 November 1964), Ottawa, National Archives of Canada (MG 31-D163, vol 23, file 23-3) ("DOJ Re: Indians and Eskimos"), Exhibit "A" to the Faisal affidavit, **SAR, Tab 5**.

that “the Dominion assumes full responsibility for the welfare, including the education, of Indians and Eskimos and has the control and management of their lands and property.”²⁰

58. However, the Terms of Union signed on December 11, 1948²¹ do not mention services for “Indians and Eskimos,”²² and instead simply states that the *British North America Act* “shall 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.”²³ This includes responsibility of the welfare, including education, of all Indigenous peoples including the Innu.

59. Throughout the Class Period, Canada failed to uphold its “responsibility” to “formulate and carry out all policies that are directed at dealing with... Indian Problems.” It failed to legislate in the Innu’s interests or to pursue policies that would address their problems. At times, it formally denied any “legal” responsibility for the Innu.²⁴ The Innu were excluded from federal statutes of general application purportedly intended to ameliorate the problems faced by Canada’s Indigenous peoples, such as the *Indian Act*.²⁵

60. Statutes like the *Indian Act* were colonial, assimilative and harmful. However, including the Innu of Labrador under these regimes would at least have resulted in better funding for Innu services, as the Report of the Royal Commission on Labrador concluded in 1974: “the Indian and Eskimo people of Labrador are not now receiving anything like the benefits which would be

²⁰ Edward Tompkins, *Pencilled Out: Newfoundland and Labrador’s Native People and Canadian Confederation, 1947–1954*, Report prepared for Jack Harris, MP (31 March 1988) (“Tompkins”) at 10, Exhibit “G” to the Tanner Affidavit, **SAR, Tab 12**.

²¹ Tompkins at 24-25, Exhibit “G” to the Tanner Affidavit, **SAR, Tab 12**.

²² Tompkins at 17, Exhibit “G” to the Tanner Affidavit, **SAR, Tab 12**.

²³ *Terms of Union of Newfoundland with Canada*, s 3, being Schedule to *The Newfoundland Act, 1949* (UK), 12 & 13 Geo VI, c 22, Tab 123 of BOA..

²⁴ McRae, at 13, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

²⁵ Tanner at 20, Exhibit “O” to the Tanner Affidavit, **SAR, Tab 20**.

available to them under Federal Government financing elsewhere in Canada.”²⁶ Professor McRae, the Canadian Human Rights Commission’s (“CHRC’s”) Special Investigator, reached a similar conclusion in his 1992 report.²⁷

61. Rather than accepting its obligations in respect of the Innu of Labrador, Canada made a series of ad hoc agreements with the Province in respect of Innu affairs. Through these agreements, Canada understood and agreed that Innu children would be subject to mandatory schooling in the Innu Day Schools, the construction and operations of which were funded by Canada and supervised through the joint federal-provincial committees created by the ad hoc agreements. Through these agreements, Canada retained authority to impose conditions relating to education, including the right to supervise and inspect schools.²⁸ These agreements are described below.

62. The Sheshatshiu Innu First Nation and Mushuau Innu First Nation received belated formal recognition from Canada as First Nations in 2002. Prior to that time, both Canada and Newfoundland failed to uphold their constitutional, statutory, and fiducial obligations by failing to recognize the Innu as an Indigenous people, and rights-bearing First Nations.

(iii) The Defendants’ Failed Program to Assimilate the Innu of Labrador

63. Until very late in the Class Period, Canada pursued a nationwide policy of assimilation towards Indigenous peoples, including the Innu of Labrador. Education was a central plank of this

²⁶ McRae, at 24, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

²⁷ Celeste McKay Consulting Inc & Donald McRae, *Follow-up Report to the Canadian Human Rights Commission on the Human Rights of the Innu of Labrador* (9 August 2021), (“McKay & McRae”), at 6, Exhibit “S” to the Tanner Affidavit, **SAR, Tab 25**.

²⁸ Transcript of the Cross-Examination of Dr Leonard Wade Locke, held October 22, 2025 (“Locke Cross-Examination”), pp 15-18.

assimilationist policy. The purpose of this national policy was stated succinctly by the Truth and Reconciliation Commission of Canada in its Final Report, issued in 2015:

For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal peoples to cease to exist as distinct legal, social, cultural, religious, and racial entities in Canada. The establishment and operation of residential schools were a central element of this policy, which can best be described as "cultural genocide".²⁹

64. The Innu were targeted by this assimilationist policy by both Canada and the Province, with Innu Day Schools forming the central element of the assimilation policy.

65. In the early 20th century, conflicts with European settlers, dispossession of their traditional harvesting range and caribou depopulation led the Innu to spend more time at their seasonal coastal trading posts. By the start of the Class Period, Canada and the Province had determined to sedentarize and assimilate the Innu of Labrador by compelling their year-round occupation at Sheshatshiu and Old Davis Inlet.³⁰

66. The Province's commitment to the objective of assimilation was captured in Harold Horwood, M.H.A.'s 1949 Report on the Natives of Northern Labrador, commissioned by Premier Smallwood. Horwood characterized the government's policy as an effort to "make white men" of the "Indians"³¹ and commented that, for the Innu, the policy was "monstrous but necessary, from the standpoint of Commission Government."³²

²⁹ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* at 1, quoted in [Tk'emlúps te Secwépemc First Nation v Canada](#), 2023 FC 327 at para 7, Tab 1 of Book of Authorities [BoA].

³⁰ McRae, at 6-7, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17**.

³¹ Harold Horwood, *Report on the Natives of Northern Labrador* (October 1949), Ottawa, National Archives of Canada (RG 85-D-1-A, vol 2079, file 1006-5, pt 2) ("Horwood"), at 3, Exhibit "B" to the Tanner Affidavit, **SAR, Tab 1**.

³² Horwood at 5-6, Exhibit "B" to the Tanner Affidavit, **SAR, Tab 1**.

67. Since the start of this program of sedentarization and assimilation, Sheshatshiu has remained as the year-round, purpose-built community for the members of the Sheshatshiu Innu First Nation.

68. The Mushuau Innu First Nation were first forced by Canada and the Province to locate at Old Davis Inlet. In 1967, the Province relocated the Mushuau Innu, without consulting them, from Old Davis Inlet to a site on Iluikoyak Island, known as Davis Inlet or Utshimassits (“Davis Inlet”).³³ Since Davis Inlet was on an island, the Mushuau Innu were cut off from their traditional hunting grounds for most of the year.³⁴ In the early 2000s, the Mushuau Innu First Nation’s members moved again from Davis Inlet to the new, purpose-built community of Natuashish.

69. The program to assimilate and sedentarize the Innu of Labrador was a failure. A trio of reports published by the Canadian Human Rights Commission concerning the Innu in 1993, 2002 and 2021 summarized Innu and academic opinion which “identified the establishment of permanent coastal settlements in the mid-20th Century as a source of severe social strain and widespread ill-health among the Innu.”³⁵

70. Conditions in Sheshatshiu and Old Davis Inlet/Davis Inlet/Natuashish were deplorable throughout the Class Period. The plight of the Innu of Labrador was the subject of numerous provincial and federal inquiries. As just one example, the 1996 Report of the Royal Commission

³³ McRae at iii and 41, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

³⁴ McRae at 42, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

³⁵ McKay & McRae at 5, Exhibit “S” to the Tanner Affidavit, **SAR, Tab 25**.

on Aboriginal Peoples described the conditions in Innu Labrador communities “as akin to conditions in the poorest of developing countries.”³⁶

71. More recent data suggests living conditions in Sheshatshiu and Natuashish continue to be difficult as a result of the historic and continuing legacy of colonialism. The Court is able to take judicial notice of the Newfoundland and Labrador Statistics Agency’s statistics for median age of death in Sheshatshiu and Natuashish.³⁷ These statistics are reported through the agency’s online Community Accounts portal. For the period from 2018 to 2022, the median age of death in Sheshatshiu and Natuashish is reported as 59 years and 43 years, respectively.³⁸ These numbers are shockingly low, and compare unfavourably to the “provincial indicator value” of median age of death, which is 77 years.

D. The Innu Day Schools

72. The Innu Day Schools were understood and intended by the Defendants to be the exclusive and sole source of education for Innu children in their purpose-built communities. The Innu Day Schools were a key part of the Defendants’ program to assimilate the Innu of Labrador and eliminate their traditional land-based way of life, language, culture and social organization.

³⁶ Report of the Royal Commission on Aboriginal Peoples, vol. 3 (Ottawa: Public Works and Government Services Canada, 1996), at 177–178, quoted in Constance Backhouse & Donald McRae, *Report to the Canadian Human Rights Commission on the Treatment of the Innu of Labrador by the Government of Canada* (26 March 2002), (“Backhouse & McRae”), at 27, Exhibit “Q” to the Tanner Affidavit, **SAR, Tab 23**.

³⁷ Numerous authorities have recognized that the Court is entitled to take judicial notice of statistics promulgated by government statistics offices, such as Statistics Canada. See, e.g., *Warkentin Building Movers Virden Inc v LaTrace*, 2021 ABCA 333 at paras 29-34, Tab 2 of BoA; *Beniey v Canada (Border Services Agency)*, 2025 FC 1445 at para 13, Tab 3 of BoA.

³⁸ Newfoundland and Labrador Statistics Agency, “Comparison with All Communities”, *Sheshatshiu Well-Being Indicator Chart (online)*, [https://nl.communityaccounts.ca/charts_indicator_wb.asp?_vcTKnZOWgYmgzLOXS6rCvKGej6.Yirq4t4itv5yqjL.0oJmAvMmTtpDKZby6w5RcfXacuaORvpG0w9NyoJuSmKiOnsSo]; Newfoundland and Labrador Statistics Agency, “Comparison with All Communities”, *Natuashish Median Age of Death (online)*, [https://nl.communityaccounts.ca/table.asp?_vb7En4WVgaauzXFoV1nXxaGduraUiL2UvYioxpKjlb.3lZLIuLuNpY7Cjbq-vg_].

73. The Innu Day School in Sheshatshiu began operating in 1952.³⁹ The Innu Day School in Old Davis Inlet began operating in 1953.⁴⁰ These Innu Day Schools continued to operate, in various forms and locations, through the Class Period.⁴¹

74. After decades of advocacy by Innu leaders, Canada agreed to devolve responsibility for Innu education to the Innu.⁴² In 2009, Innu Nation established Mamu Tshishkutamashutau Innu Education, an Innu school board, and the Innu took over the delivery of K–12 education in their communities.⁴³ This marks the end of the Class Period.

75. The Defendants understood and intended that the Innu Day Schools were to assimilate Innu children and discourage their traditional land-based way of life, their use of Innu-Aimun, and their traditional culture.⁴⁴ W.G. Rockwood, the Director of the provincial Division of Northern Labrador Affairs from 1952-1964,⁴⁵ repeatedly articulated this assimilationist view. He asserted in a 1955 Memorandum on General Policy in Respect to Indians and Eskimos of Northern Labrador:

The Indian may be an excellent hunter, and more inclined when game resources permit to live off in the country, [but]...in view of the scarcity of game and the low prices for produce, these occupations alone can no longer provide even a bare existence.... The needs

³⁹ Professor Andrea Procter, an historical anthropologist and adjunct professor at the Memorial University of Newfoundland, identifies 1952 as the date when Father Pirson, an Oblate priest, arrived in Sheshatshiu and began teaching and serving as the Province's local agent in the community. See Andrea Procter, *A Long Journey: Residential Schools in Labrador and Newfoundland* (St. John's: ISER, 2020) chapter 13 ("Procter") at 386, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

⁴⁰ Professor Procter identifies 1953 as the date when Father Cyr, an Oblate priest, arrived in Old Davis Inlet and began teaching and serving as the Province's local agent in the community. See Procter, at 393, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

⁴¹ Proposed Second Amended Statement of Claim at para 12.

⁴² Colin Samson, "Teaching Lies: The Innu Experience of Schooling" (2000) 16 *London Journal of Canadian Studies* 89, ("Samson"), at 106, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**; McRae at 9, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17**.

⁴³ McKay & McRae at 66, Exhibit "S" to the Tanner Affidavit, **SAR, Tab 25**; Gregory Rich Affidavit at para 43, **AR**; Affidavit of Jean Pierre Morin at para 45, **Responding Record of the Defendant, Canada ("RRDC")**.

⁴⁴ Samson at 91, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**; McRae, p .6, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17**.

⁴⁵ Samson at 90, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**.

of the Indian are the same as for the Eskimo, namely a vigorous Health, Education, and Welfare programme to fit him for the society of the future.”⁴⁶

76. In a 1959 memorandum, he stated:

The Montagnais and Nascaupi Indians, very largely because of the efforts of the Oblates and the Grenfell Mission, have even given up their propensity to die out. The correct solution, and it is a long term one, is to prepare them for the kind of world they must live in, and this must begin with children. Or, to quote from a report on the Greenland administration, published by the Royal Danish Ministry for Foreign Affairs in 1952: ‘The foundation of any social evolution truly democratic in character, in Greenland or anywhere else, is public education’⁴⁷

77. In 1960, Rockwood argued that Innu were not hired at military construction projects in Labrador because they had no formal education and could not speak or write English.⁴⁸ He asserted, in the 1963-4 Annual Report of the Department of Public Welfare, that the solution was schooling: “The Indians must be taught the 3 R’s, and will also need vocational training, but it would be naïve to think that this will automatically solve all the problems overnight. As with the Indians elsewhere there are deeply rooted psychological attitudes to be overcome before the process of integration is complete.”⁴⁹

78. Anna Hammond, who began teaching at the Sheshatshiu Innu Day School in 1960, was interviewed in the 1980s by Brian William Vardy as part of his Masters thesis work. Mr. Vardy reproduced Ms. Hammond’s reflection on the assimilative purpose of the Innu Day Schools:

Ms. Hammond admits that the main thrust of education was toward assimilating the Indian child and therefore his culture into the dominant society – that is, teaching the Indian student so that he/she is able to become able to part of the world outside his

⁴⁶ W.G. Rockwood, as quoted in Procter at 387, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**.

⁴⁷ W.G. Rockwood, as quoted in Samson at 91-92, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

⁴⁸ W.G. Rockwood, as quoted in Procter at 394, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**; Samson at 90, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

⁴⁹ W.G. Rockwood, as quoted in Procter at 394, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**; Samson at 90, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

immediate milieu.⁵⁰

79. The Gathering Voices reports, published by Innu Nation in 1993 and 1995, recorded Innu participants' experience and understanding that the Innu Day Schools were essentially assimilative throughout the Class Period.⁵¹ As participant Tanien Ashini, a member of Sheshatshiu Innu Nation, stated, "[s]chool educated us about the *akaneshau* [Anglo-white] way of life and taught us to feel that our own way of life was inferior or not worth living."⁵²

80. In a similar vein, the 1992 "Our Children Our Future" report of the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education noted that, "for all natives, the status quo cannot be tolerated", and summarized the concerns of Innu informants to the Royal Commission about the assimilative nature of education in the province:

Native people and others have for many years expressed concern that the education system does not adequately recognize native culture in the school curriculum, does not emphasize native language and has a predominance of non-native teachers in native schools. This has led some to argue for greater native control over education for native people. The objective presented to the Commission, was to provide a means to influence the curriculum, to preserve or revive the native languages, to develop in children a sense of native history and the values associated with that history, and generally to develop an education system for native children that reflects the native culture.⁵³

⁵⁰ Anna Hammond, as quoted in Brian William Vardy, *An Examination of English Language Teaching Practices in an Innu Setting from 1951 to 1982* (MEd Thesis, Memorial University of Newfoundland, 1983), chapter II ("Vardy"), at 21, Exhibit "D" to the Tanner affidavit, **SAR, Tab 9**.

⁵¹ Innu Nation, *Kamamuetimak: Tshentusentimak Nte Steniunu Utat, Nitshish, Kie Nte Nikan (Gathering Voices: Discovering our Past, Present and Future)* (Ottawa: Royal Commission on Aboriginal Peoples, 1993) ("Innu Nation"), at 29-30, 43-47, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

⁵² Innu Nation at 43, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

⁵³ Newfoundland and Labrador Department of Education, *Our Children Our Future: Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education* (St. John's: 1992) chapter 10 ("NF DOE"), at 251, Exhibit "I" to the Tanner Affidavit, **SAR, Tab 14**.

81. The Royal Commission concluded that the “problems of native education in coastal Labrador” were “clearly unacceptable.”⁵⁴

82. Writing in 2000, Professor Samson reported interviews with young Innu persons who had recently completed their schooling. One stated that “he got the distinct impression at the school that the Innu way of life was hardly worth living and that it was much better to stay in the community than in the country.”⁵⁵ Professor Samson summarized that “[t]he sense of losing something of one’s history and identity that can never be reclaimed was an overwhelming sentiment among the people that we interviewed in Sheshatshiu.”⁵⁶ Professor Samson also reported a 1995 interview with Cynthia Fleet, one of the Province’s witnesses on this motion, who was principal of the school in Sheshatshiu at the time. Samson recounted that Fleet had referred to the school as “the white man’s culture”, recognizing that it was alien to the Innu parents.⁵⁷ In cross-examination, Fleet affirmed her recognition at that time that the school was part of the white man’s culture,⁵⁸ and noted that she had heard people in the community say that “they had to go to... a white man’s school.”⁵⁹

83. In 2004, Dr. David Philpott reported on a two-year process he and a team of researchers from Memorial University conducted to assess the school aged population of Innu youth in Labrador.⁶⁰ Dr. Philpott found that “the school system as it exists at present is failing Innu

⁵⁴ NF DOE, at 253, Exhibit “I” to the Tanner Affidavit, **SAR, Tab 14**.

⁵⁵ Samson at 99, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

⁵⁶ Samson at 99, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

⁵⁷ Samson at 99, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

⁵⁸ Transcript of the cross-examination of Cynthia Fleet, held October 23, 2025 (“Fleet Cross-Examination”) at 45-46.

⁵⁹ Fleet Cross-Examination at 45.

⁶⁰ David Philpott et. al., “An Educational Profile of the Learning Needs of Innu Youth: Confidential Final Report”, (2004), (“Philpott 2004 Final Report”), Exhibit 31 to the affidavit of Jean-Pierre Morin, at p 1, **RRDC, Tab B, p 1532**.

youth.”⁶¹ Dr. Philpott also found that “[u]nder the current system, the school is viewed by many in the community as a foreign enclave that is irrelevant to their futures, and is a threat to their culture.”⁶² Dr. Philpott’s 2004 report comes in two forms: a Brief Summary of Findings that was made widely available, and Confidential Final Report. These reports are relied on by witnesses for the Province and Canada, respectively.⁶³

84. Though the Innu Day Schools serving the Sheshatshiu and Mushuau Innu First Nations were geographically distant, they shared essential common features throughout the Class Period.

85. First, the Innu Day Schools were administered under the same statutory regime which conferred direct duties on the Province and its officers in respect of the Innu Day Schools. From 1960 onward, the Roman Catholic School Board of Labrador, and, after 1997, the Labrador School Board (together, the “School Boards”) exercised supervisory and operational duties over the Innu Day Schools. The School Boards’ liabilities in respect of the Innu Day Schools were ultimately vested in the Province.

86. Second, the creation, funding, and administration of the Innu Day Schools were coordinated by Canada and Newfoundland through a series of agreements through the Class Period and a succession of committee structures. These agreements and committees amounted to an abdication by Canada of its constitutional and statutory responsibility for the Innu of Labrador.

⁶¹ David Philpott et. al. “An Educational Profile of the Learning Needs of Innu Youth: Brief Summary of Findings” (2004), (“Philpott 2004 Summary Report”), Exhibit A to the affidavit of Cynthia Fleet, at p 22, **Responding Record of the Defendant, Newfoundland and Labrador (“RRDNL”), TAB 1, p 42**; See also Morin Affidavit, Exhibit 31, p 65: “Without question, the existing model of education is failing Innu youth and teachers are quick to voice frustration concerning how to affect change.” **RRDC, Tab B, p 1596.**

⁶² Philpott 2004 Summary Report, Exhibit A to the affidavit of Cynthia Fleet, p 22, **RRDNL, Tab 1, p 42.**

⁶³ Philpott 2004 Summary Report, Exhibit A to the affidavit of Cynthia Fleet, **RRDNL, TAB 1, p 17**; Philpott 2004 Final Report, Exhibit 31 to the affidavit of Jean-Pierre Morin, **RRDC, TAB B, p 1528.**

87. Third, the Innu Day Schools shared the common purpose of assimilating the Innu of Labrador. This purpose persisted through the Class Period, despite the Defendants being repeatedly put on notice that the assimilative purpose of the Innu Day Schools and their dysfunctionality was harming Innu students.

88. Fourth, the Innu Day Schools inflicted the same kind of harms on their students. Students at the Innu Day Schools were neglected and abused, and suffered the loss of their traditional language and culture.

(i) The Province's Statutory Obligations in Respect of the Innu Day Schools

89. Throughout the Class Period, the statutory framework governing the Province's obligations in respect of the Innu Day Schools changed several times. Nevertheless, at all times during the Class Period, the Province:

- a. Either directly or through its appointed officers, had duties to supervise the day-to-day operations of the Innu Day Schools; and
- b. Had the ultimate authority to articulate the curriculum, school year, and attendance policies governing the Innu Day Schools. As detailed in Part I, D.(iii) below, these policies were specifically contemplated by the Province to be a tool to assimilate Innu children being educated in the Innu Day Schools.

90. From the inception of the Innu Day Schools until 1960, the Innu Day Schools were operated by Oblate priests living in Sheshatshiu and Old Davis Inlet who served as the Province's agents in

the community, at least one of whom was paid a direct salary by the Province.⁶⁴ These priests were joined in the 1950s by professional teachers who were paid direct salaries by the Province.⁶⁵

91. Until 1960, the Innu Day Schools were not formally administered under the auspices of a school board, as there was no Roman Catholic school board established for Labrador until that year. Thus, from the outset of the Class Period until 1960, the Roman Catholic denominational Superintendent of Education (the “Superintendent”) exercised the powers of a school board over the Innu Day Schools pursuant to section 13 of *The Education Act*, SN 1952, c. 101 (“**1952 Education Act**”) which states that if there is no Board of Education, the Superintendent is impowered to act as a Board.⁶⁶

92. School boards’ powers and duties during this period to 1960 were enumerated in section 6 of the 1952 *Education Act*. Broadly speaking, the school boards’ duties were comprehensive day-to-day operational and supervisory duties over schools in their remit.⁶⁷

93. The Superintendent was a provincial officer appointed pursuant to section 4(1) of *The Education (Departmental) (Amendment) Act, 1950*, SN 1950, No. 13, (the “1950 Act”):

4.(1) The Lieutenant-Governor in Council shall appoint four Superintendents of Education who shall respectively be members of the Church of England, of the Roman Catholic Church, of the United Church of Canada and of the Salvation Army and who shall be the recognized representatives on educational matters affecting the Boards of Education, schools, Boards of Directors, colleges and teachers of their respective religious denominations within the Department.⁶⁸

⁶⁴ Vardy at 12, Exhibit “D” to the Tanner Affidavit, **SAR, Tab 9**; Procter at 393-394, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**.

⁶⁵ Vardy at 13, Exhibit “D” to the Tanner Affidavit, **SAR, Tab 9**.

⁶⁶ *The Education Act*, SN 1952, c. 101, s 13, Tab 124 of BoA.

⁶⁷ *The Education Act*, SN 1952, c. 101, s 6, Tab 124 of BoA.

⁶⁸ *The Education (Departmental) (Amendment) Act, 1950*, SN 1950, No. 13, s. 4(1), Tab 125 of BoA.

94. The Superintendent's duties were enumerated in section 4(2) of the 1950 Act. Broadly, these duties included administering the Department of Education's "business" with the "schools" and "teachers" of their respective denominations, to chair the "Board of Examiners" of their respective denomination, and to administer "services" as assigned by the Minister, including "curriculum, supervision, teacher-training, public examinations... attendance and statistics."⁶⁹

95. The 1950 Act provided, at section 5, that "all educational policy" in the Province was set by the "Council of Education", consisting of the Minister of Education, the Deputy Minister of Education, and the Province's four denominational Superintendents of Education:

5(1) There shall be a Council of Education which Council shall consist of the Minister, who shall be the chairman, the Deputy Minister of Education, who shall be vice-chairman, and the four Superintendents of Education.

(2) The Council shall, subject to the Minister, be the authority for all educational policy dealing with the Boards of Education, schools, Boards of Directors, colleges and teachers under The Education Act 1927, as amended.⁷⁰

96. Denominational school boards were introduced pursuant to section 6(1) of *The Education Act, 1960*, S.N. 1960, No. 50 (the "1960 Act"). As of 1960, the newly-created Roman Catholic School Board for Labrador (the "RCSBL") was responsible for Labrador, including the Innu Day Schools.⁷¹ The operational and supervisory duties of the RCSBL in respect of the Innu Day Schools were set out at section 12 of the 1960 Act. These duties included mandatory reporting by the school board to the Denominational Superintendent and Council of Education regarding financial matters and details of the management of all schools under its control.⁷²

⁶⁹ *The Education (Departmental) (Amendment) Act, 1950*, SN 1950, No. 13, s. 4(2), Tab 125 of BoA.

⁷⁰ *The Education (Departmental) (Amendment) Act, 1950*, SN 1950, No. 13, s. 5, Tab 125 of BoA.

⁷¹ Affidavit of Cynthia Fleet, sworn September 8, 2025 ("Fleet Affidavit") at para 15, **RRDNL, TAB 1, p 7**.

⁷² *The Education Act, 1960*, S.N. 1960, No. 50, s 12, Tab 126 of BoA.

97. Though the Province's statutory regime governing school boards changed from time to time during the Class Period, RCSBL's statutory duties remained substantially similar to those set out in the 1960 Act.

98. Under the 1960 Act, the RCSBL's supervisory duties over the Innu Day Schools were shared with the Province. Section 53 of the 1960 Act allowed the Minister to appoint supervising inspectors, whose numerous mandatory duties were enumerated at section 54. Broadly, these duties encompassed visiting schools and evaluating their physical state of repair, ensuring the "prescribed course of study" was being taught, assisting teachers and advising them, examining and reporting on the performance of teachers, evaluating "methods used in maintaining discipline", meeting with teachers and principals to discuss their findings, and reporting when the "duties of teachers as prescribed by this Act are not being carried out".⁷³

99. In 1968, *The Department of Education Act, 1968* RSN 1968, No. 58 (the "**1968 Act**") replaced the Council of Education with Denominational Educational Committees (later titled "Denominational Educational Councils") whose members were appointed by the five religious denominations represented by the Denominational Superintendents of Education, and whose duties included making recommendations to the Lieutenant-Governor in Council concerning the selection and appointment of members of School Boards, the development and administration of religious education, and making recommendations to the Minister concerning the selection, training, indenturing and initial certification of teachers.⁷⁴

⁷³ *The Education Act, 1960*, S.N. 1960, No. 50, ss 53-54, Tab 126 of BoA.

⁷⁴ *The Department of Education Act, 1968* RSN 1968, No. 58, ss 16-17, Tab 127 of BoA.

100. The Executive Secretaries of the Denominational Educational Committees served on other advisory bodies defined under the 1968 Act, including a General Advisory Committee charged with advising the Province on matters of “existing educational policy and... the initiation of new policy”.⁷⁵

101. The 1968 Act also restated, at section 9, the Province’s statutory “powers, functions and duties” in respect of education:⁷⁶

9. Subject to the other provisions of this Act, the powers, functions and duties of the Minister extend to and include all matters relating to education generally, including, without limitation of the foregoing, [...]

(b) such co-operation with the Government of Canada or any department, agency or body under the jurisdiction of the Parliament of Canada as may be necessary or desirable for carrying out any of the purposes of this Act;

(c) the undertaking, promotion or recommendation of measures for the development, control and direction of education;

(d) the collection, compilation, analyzing and recording of such statistical and other information relating to education as may be useful;

(e) the preparation and publication of statistics, reports, records, bulletins, pamphlets, circulars and other means of disseminating information and advice in relation to education as may be useful;

(f) the study of, reporting on and advising upon the system and administration of education;

(g) the fostering, through scientific investigation and technology, of knowledge of educational matters and of the means of dealing with any conditions relating to the development, control and direction thereof;

(h) the training, examination, classification, grading and pensioning of teachers and the receiving of recommendations made pursuant to paragraph (b) of Section 17;

(i) public examinations; [...]

⁷⁵ *The Department of Education Act, 1968* RSN 1968, No. 58, s 22, Tab 127 of BoA.

⁷⁶ *The Department of Education Act, 1968*, RSN 1968, No. 58, s 9, Tab 127 of BoA.

(k) colleges and schools receiving financial aid directly or indirectly from the province;

(l) the furnishing to colleges and schools, at or below cost, of

(i) textbooks, including, without limitation of the generality of the foregoing, religious text books, and

(ii) audio-visual aids approved by the Minister;

(m) assistance to and the preparation and planning of the future of youth, except where any aspect thereof is specifically assigned to another Minister or department of Government by any other Act;

(n) the ensuring of the progress of educational institutions in the province;

(o) the supervision and inspection of colleges and schools; [...]

(q) the doing of such other things or the exercise of such other powers as are necessary or desirable for carrying out any of the purposes of this Act; and

(r) the exercise and discharge of such other powers, functions and duties as the Lieutenant-Governor in Council assigns to the Minister.

102. The *Schools Act*, RSN 1970, c. 346 provided for the appointment of “Regional Superintendents” who continued to have supervisory duties in respect of provincial schools:⁷⁷

111. The duties of a Regional Superintendent shall be to

(a) act as liaison between the Department and Boards of Directors and School Boards;

(b) advise the Superintendents in his area of jurisdiction with respect to the organization of education in their districts and in developing an educational program for the schools in their districts;

(c) ascertain whether the colleges, schools, Boards of Directors and School Boards in his area of jurisdiction are complying with all Acts and regulations of the province applicable thereto and report thereon to the Minister;

(d) evaluate the progress of education in his area of jurisdiction;

⁷⁷ *The Schools Act*, RSN 1970, c 346, s 110-111, Tab 128 of BoA.

- (e) encourage Superintendents, principals and teachers in his area of jurisdiction to raise the standard of instruction in their colleges and schools;
- (f) assist the Department in developing curriculum; and
- (g) perform such other duties as may be assigned to him by the Minister.

103. The 1970 *Schools Act* also reiterated the Province's control over the curriculum taught in provincial schools, including the Innu Day Schools:⁷⁸

59. (1) Subject to Section 26 of *The Department of Education and Youth Act* and to subsections (2), (3) and (4) of this Section 59, all public schools shall use as a basic program the courses of study authorized by the Minister and the text books authorized by the Minister and distributed through the Curriculum Division of the Department.

104. Legislation relating to the training and classification of teachers was also consolidated in 1968 in *The Education (Teacher Training) Act, 1968*, S.N. 1968, No. 94 (the "Teacher Training Act"), which provided for the Lieutenant-Governor to appoint a Board of Examiners for each denomination. Under s. 5 of the Teacher Training Act, the Board of Examiners had the authority for, *inter alia*: recruiting and selecting pupil teachers, and recommending to a Teachers' Certification Committee the cancellation of the certificate or licence of any teacher who is guilty of drunkenness, gross misconduct, or incompetence. The Teachers' Certification Committee, established under s. 8 of the Teacher Training Act, included the Registrar of Teachers, who was appointed by the Minister.⁷⁹

105. This apportionment of duties in respect of the Innu Day Schools as between the Province and RSCBL remained substantially the same until 1997, when denominational education in the Province was abolished through the amendment of Term 17 of the Terms of Union of

⁷⁸ *The Schools Act*, RSN 1970, c 346, s 59, Tab 128 of BoA.

⁷⁹ *The Education (Teacher Training) Act, 1968*, S.N. 1968, No. 94, ss 5 and 8, Tab 129 of BoA.

Newfoundland and Canada, and the *Schools Act, 1997*, SN 1997, C S-12.2 (the “*Schools Act, 1997*”) was passed. As discussed below, the RCSBL was abolished and replaced by the Labrador School Board, which assumed responsibility for the Innu Day Schools.

106. While the *Schools Act, 1997* did not substantively change the Labrador School Board’s duties as compared to the RSCBL’s, it did eliminate the office of Regional Superintendent. The *Schools Act, 1997* conferred a general supervisory duty over schools on the Province, set out at section 40:⁸⁰

40. (1) The minister shall establish a method of monitoring, evaluating, inspecting and reporting to ensure that each school maintains adequate program and school performance standards and may appoint persons to evaluate and report on the performance of schools in the province.

(2) The minister shall provide public notice of a report received under subsection (1) and make the report available to the public.⁸¹

107. The Province has assumed all of the liabilities of the Denominational Educational Councils and the School Boards.

108. The *Education Act*, SNL 1996, c. E-2.2, at s. 8, abolished Denominational Educational Councils and vested their liability in the Crown:

8. (1) When the commission is established but, in any event, not later than 21 days after the commencement of this Act, a denominational education council established under section 4 of the former Act is abolished. [...]

(3) The Crown is charged with and assumes all of the obligations and liabilities incurred under a duty or power of a denominational education council existing under the former Act.⁸²

⁸⁰ *Schools Act, 1997*, SN 1997, C S-12.2, s 40, Tab 130 of BoA.

⁸¹ *Schools Act, 1997*, SN 1997, C S-12.2, s 40, Tab 130 of BoA.

⁸² *Education Act*, SNL 1996, c. E-2.2, s 8, Tab 131 of BoA.

109. In 1996, pursuant to the *School Boards Dissolution Order*, NLR 116/96 and the *Boundaries of School Districts Order*, NLR 79/96, the RCSBL was dissolved and succeeded by the non-denominational Labrador School Board. Liabilities of the RCSBL vested in the successor board pursuant to s. 5(1) and s. 6(2) of *An Act to Amend the Schools Act and the Education Act*, RSN 1996, c. 13, which provided as follows:

5(1). A school board constituted or continued under this Act immediately before this section comes into force shall be dissolved upon the order of the minister. [...]

6(2). Upon the dissolution of a school board under subsection 5(1), the successor board is the successor in law to the dissolved school board, and

(a) all agreements, contracts, debts, liabilities and other obligations of that dissolved school board shall be assumed by the successor board and the successor board shall fulfil and satisfy all those agreements, contracts, debts, liabilities and other obligations.⁸³

110. In 2013, pursuant to the *School Boards Dissolution Order*, NLR 95/13, and the *Boundaries of School Districts Order*, NLR 93/13, the Labrador School Board was dissolved and succeeded by the Newfoundland and Labrador English School District. Liabilities of the Labrador School Board vested in the successor board pursuant to the then-operative s. 57 of the *Schools Act, 1997*:

57. (1) The Lieutenant-Governor in Council may by order dissolve a board on a specified date and that board shall be considered to be dissolved on that date. ...

(5) Where a board is dissolved under subsection (1) and there is a successor board, the successor board is the successor in law of the dissolved board and...

(a) all agreements, contracts, debts, liabilities and other obligations of that dissolved school board are assumed by the successor board and the successor board shall fulfil and satisfy all those agreements, contracts, debts, liabilities and other obligations...⁸⁴

⁸³ *An Act to Amend the Schools Act and the Education Act*, RSN 1996, c. 13, ss 5(1) and 6(2) , Tab 134 of BoA.

⁸⁴ *Schools Act, 1997*, SN 1997, c S-12.2, s 57, Tab 128 of BoA.

111. Finally, in the 2023 amendment to the *Schools Act, 1997*, SNL 1997, c. S-12.2, section 51.2 dissolved the school board of the Newfoundland and Labrador English School District and made the Province the successor in law.⁸⁵

(ii) Agreements between Canada and the Province in respect of the Innu Day Schools

112. For the first few years after Newfoundland's entry into Confederation, Canada provided sporadic payments to the Province for administration of Indigenous people in Labrador, though these payments were not under any formal agreement.⁸⁶

113. Beginning in 1954, Canada and the Province entered into a series of agreements governing the funding and administration of services for First Nations and Inuit in Newfoundland and Labrador, including education. The Province retained Dr. Leonard Locke, a retired Full Professor of Economics, to prepare an expert report to “describe the various funding arrangements that were in place between the Government of Canada and Province of Newfoundland and Labrador between 1949 and 2009 in relation to the provision of education to Innu students in Labrador.”⁸⁷ Dr. Locke's report usefully summarizes the chronology and content of those agreements.⁸⁸ On cross-examination, Dr. Locke agreed that “the federal government played an important role in funding education for the Innu of Labrador at Innu day schools throughout the class period.” Dr. Locke confirmed that “throughout the class period, Innu Day Schools were funded jointly by the federal government and the provincial government”, with the “majority of the funding for Innu Day

⁸⁵ *Schools Act, 1997*, SN 1997, c S-12.2, s 51.2, Tab 128 of BoA.

⁸⁶ Tanner, at 247, Exhibit “O” to the Tanner Affidavit, **SAR, Tab 20**; James Roche, *Canada–Newfoundland Agreements: An Innu Perspective* (Sheshatshit: Innu Nation, July 1992) (“Roche”), at 1-2, Exhibit “J” to the Tanner Affidavit, **SAR, Tab 15**; McRae, at 7, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

⁸⁷ Locke Instruction Letter, Exhibit “A” to the Locke Affidavit, sworn September 10th, 2025 (“Locke Affidavit”), **RRDNL, Tab 3, p 63**.

⁸⁸ Locke Expert Report, Exhibit “B” to the Locke Affidavit, **RRDNL, Tab 3, p 78-105**.

Schools” coming from the federal government.⁸⁹ Dr. Locke also agreed that Canada could have used “conditions in funding agreements to exercise control over the administration of Innu schools during the class period”, and further that these conditions could have included, amongst other things, program delivery requirements, minimum standards regarding the treatment of students, minimum standards for teachers and staff, curriculum requirements, protection of language and culture, and inspections, monitoring and compliance.⁹⁰ Canada chose not to examine Dr. Locke.

114. These agreements reflected an abdication of Canada’s responsibility for the Innu of Labrador. Under these agreements, Canada provided only partial, inadequate funding for services for the “Indian and Eskimo population of Northern Labrador”, including the Innu Day Schools. Administration of the services funded under the agreements was left to the Province, despite Canada’s understanding that the Province treated the Innu “as no different than the other residents of that province,” with no regard for their special constitutionally-protected status or unique needs.⁹¹ In particular, the agreements made no provision to ensure that the Province’s delivery of education to the Innu of Labrador would be carried out with diligence.

115. The agreements were administered under a series of joint provincial-federal committees. In particular, the 1965 Agreement provided for the establishment of a joint federal-provincial committee, chaired by the Province, to propose the “operational plan” and budget for services provided to the Province’s Indigenous peoples.⁹² The 1981 contribution agreement established a coordinating committee composed of federal and provincial officials and Innu representatives of

⁸⁹ Transcript of the cross-examination of Dr. Leonard Wade Locke (“Locke Cross-Examination”), held October 22, 2025 at 9-11.

⁹⁰ Locke Cross-Examination at 15-18.

⁹¹ McRae, at 28, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**.

⁹² Letter from Lester B Pearson, Prime Minister, to Joseph R Smallwood, Premier of the Province of Newfoundland (25 May 1965) (“Pearson”), **SAR, Tab 6**.

the communities of Sheshatshiu and Davis Inlet.⁹³ Minutes of these committees' meetings reveal Canada's failure to meaningfully supervise the Province's discharge of its administrative obligations under the agreements.⁹⁴

116. Chronic underfunding was a constant theme throughout the class period. The Province regularly requested additional funds for education⁹⁵ and raised concerns regarding the sufficiency of funding overall. In March 1964, Premier Joseph Smallwood wrote to Prime Minister Lester B. Pearson, urging Canada to either assume full responsibility for the Innu and Inuit, or provide the Province a level of financial support equal to that provided to Indigenous individuals in other provinces.⁹⁶ In 1974, the Royal Commission on Labrador's Report concluded that the funding available for the Province's Indigenous population was grossly inadequate and disproportionately low to the funding provided by Canada for the Indigenous peoples of other provinces.⁹⁷ Professor McRae's investigation for the CHRC concluded that these agreements resulted in consistent underfunding and disadvantage for the Innu of Labrador, as opposed to an alternate scenario where the Innu of Labrador were funded as if they were registered under the federal *Indian Act* and dealt with on that basis.⁹⁸

(iii) Assimilative Methods and Criticism of the Innu Day Schools during the Class Period

117. The Innu Day Schools accomplished their assimilative purpose through common methods during the Class Period, including the mandatory, English-language curriculum, the structure of

⁹³ 1981 Canada-Newfoundland-Native Peoples of Labrador Agreement s. 6, Exhibit 9 of the Morin Affidavit, **RRDC, Tab B, pp 1121-1123.**

⁹⁴ E.g. Coordinating Meeting Minutes, Exhibit 10 of the Morin Affidavit, **RRDC, Tab B, pp 1142-1164.**

⁹⁵ Roche, at 10, Exhibit "J" to the Tanner Affidavit, **SAR, Tab 15.**

⁹⁶ Roche, at 11-12, Exhibit "J" to the Tanner Affidavit, **SAR, Tab 15.**

⁹⁷ Roche, at 22-25, Exhibit "J" to the Tanner Affidavit, **SAR, Tab 15.**

⁹⁸ McRae, at 28, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17.**

the school year, and coerced mandatory student attendance. These assimilative methods, as well as the schools' dysfunctional operations and inadequate supervision, were criticized repeatedly during the Class Period. This criticism went largely unheeded by the Defendants.

(a) School year and mandatory attendance

118. From their inception, the Innu Day Schools applied a mandatory attendance regime and school year structure through coercive means. Mandatory attendance and the school year structure had an assimilative effect on the Innu by preventing the Innu from engaging in their traditional land-based lifestyle.

119. Early in the Class Period, the Province's Department of Education was advised that its school-year designation was responsible for student absenteeism. The Department of Education refused requests from the Province's agent in Sheshatshiu to change the school year to adapt it to the Innu's needs.⁹⁹ Instead, the Province focused on convincing Innu families to live in the community permanently.¹⁰⁰

120. In Sheshatshiu, the Province's agents pressured Innu families to abandon their traditional pattern of life and instead settle in Sheshatshiu year-round and send their children to school.¹⁰¹ Innu families were visited where they were camped near the village, and were told to move to the village.¹⁰² Housing and jobs were promised if Innu families stayed in the village and sent their children to school, and families were threatened with withdrawal of social assistance payments if

⁹⁹ Vardy, at 14-15, Exhibit "D" to the Tanner Affidavit, **SAR, Tab 9**.

¹⁰⁰ Procter, at 391-392, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

¹⁰¹ Procter, at 387-389, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

¹⁰² Procter, at 387, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

they did not comply.¹⁰³ Parents were beaten for taking their children on the land instead of sending them to school, and students were beaten for failing to attend school.¹⁰⁴

121. Likewise, in Old Davis Inlet and Davis Inlet, priests and school officials also used threats and coercion to pressure Innu families to settle in the village and send their children to school.¹⁰⁵ From the outset of the Class Period, the Province's agent, Father Cyr, told Innu parents that if they did not send their children to school, their children would be taken away and placed somewhere they could attend school, or the family's social assistance would be cut off. If children did not attend school, Father Cyr went to go look for them in families' tents.¹⁰⁶

122. The 1995 Gathering Voices report recorded testimony of members of the Mushuau Innu First Nation that families were told their "children would be taken from us if they didn't go to school and our social assistance would be cut."¹⁰⁷ Numerous Innu witnesses from both Sheshatshiu and Davis Inlet have testified before the ongoing Inquiry Respecting the Treatment, Experiences and Outcomes of the Innu in the Child Protection System that families were threatened with withdrawal of their federal Family Allowance payment if their children failed to attend the Innu Day School in their community.¹⁰⁸

¹⁰³ Procter, at 388 and 391, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

¹⁰⁴ Samson, at 95, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**.

¹⁰⁵ Procter, at 394-395, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**; McRae, at 6, Exhibit "L" to the Tanner Affidavit, **SAR, Tab 17**; Innu Nation and Mushuau Innu Band Council, at 57, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**; This is also reflected in the Community Session Transcripts, vol 21 (23 October 2023), at 2, Exhibit "A" to the Affidavit of Caitlin Urquhart, sworn February 18, 2025 ("Urquhart Affidavit"), **SAR, Tab 27**; Formal Hearing Transcripts, vol 29 (22 January 2024), at 8; vol 3 (15 February 2023), at 5, Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

¹⁰⁶ Procter, at 394-395, Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**; Innu Nation and Mushuau Innu Band Council, at 57, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

¹⁰⁷ Innu Nation and Mushuau Innu Band Council, at 33 and 57, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

¹⁰⁸ Community Session Transcripts, vol 21 (23 October 2023), at 2, Exhibit "A" to the Urquhart Affidavit, **SAR, Tab 27**; Formal Hearing Transcripts, vol 2 (14 February 2023), at 13; vol 3 (15 February 2023) at 5; vol 29 (22 January 2024) at 8, Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

123. Magdaline Benuen, Marie Martha Andrew, and Gregory Rich all testified in their affidavits about compulsory attendance at the Innu Day Schools and the coercion used to enforce attendance. This coercion included threats to withhold social assistance payments to families,¹⁰⁹ threats and actual violence against children and families,¹¹⁰ and authorities physically apprehending children from home and taking them to school.¹¹¹

124. In 1993, the Gathering Voices Community Research Project recommended that the school year change to accommodate children being on the land for an extended period of time.¹¹² This recommendation was not implemented by the RCSBL, Labrador School Board, or the Province. Cynthia Fleet, witness for the Province, testified that she was unable to alter the Innu's school year during her time working with the schools and relevant school boards due to the Ministry of Education's mandated start and end dates for the year, the required days of instruction during that period, and the collective agreement in place with the teachers union.¹¹³

125. Professor Colin Samson's 2000 study noted that "many Innu" still chose to "forsak[e] the school" to spend months at a time in hunting camps in *nutshimit* instead.¹¹⁴

¹⁰⁹ This is reflected in the Community Session Transcripts, vol 21 (23 October 2023), at 2, Exhibit "A" to the Urquhart Affidavit, **SAR, Tab 27**; Formal Hearing Transcripts, vol 3 (15 February 2023), at 5; vol 29 (22 January 2024), at 8, Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

¹¹⁰ Gregory Rich Affidavit, at paras 3, 9-10, **AR**.

¹¹¹ Benuen Affidavit at paras 13-14, **AR**.

¹¹² Innu Nation, at 141, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

¹¹³ Fleet Transcript at 118-120, 196-199.

¹¹⁴ Samson, at 99, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**.

(b) **English-language Curriculum and Denigration of Innu Culture and Language**

126. Throughout the Class Period, the Innu Day Schools applied a provincially-mandated, English language curriculum which made little to no provision for the traditional knowledge, culture or practices of the Innu of Labrador.

127. The representative Plaintiffs and class members gave evidence that in school they were taught mostly or exclusively in English,¹¹⁵ and that students were taught that Euro-Canadian culture, history and ways of life were superior to Innu culture, history and ways of life.¹¹⁶ As one example, Prote Poker testified that he specifically recalled “a poster on the wall in a classroom in the school that depicted hell and showed brown-skinned people going to hell, who appeared to be Innu or other First Nations people. The poster showed white people rising to heaven.”¹¹⁷ George Rich and Gregory Rich recalled that they were not allowed to speak Innu-aimun in school,¹¹⁸ and Gregory Rich gave evidence that students were punished for doing so.¹¹⁹ Many of the representative Plaintiffs gave evidence of the shame school caused them to feel about who they are as Innu.¹²⁰

128. The assimilative English language curriculum and its failings were recognized in 1974 by the Report of the Royal Commission on Labrador. The Commission found that:

¹¹⁵ Poker Affidavit, at paras 9, 12; Andrew Affidavit at para 10; Benuen Affidavit at para 15; Gregory Rich Affidavit at para 13; George Rich Affidavit, at para 10, **AR**.

¹¹⁶ Poker Affidavit, at paras 9-10; Andrew Affidavit, at para 10; Benuen Affidavit, at para 15; Gregory Rich Affidavit, at paras 13, 24, **AR**; See also Vardy, at 13, 20-21, Exhibit “D” to the Tanner Affidavit, **SAR, Tab 9**; Procter, at 388-389, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**; see also Samson, at 94, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**; Predominance of Euro-Canadian culture is also noted in the Community Session Transcripts, vol 21 (23 October 2023), at 2, Exhibit “A” to the Urquhart Affidavit, **SAR, Tab 27**.

¹¹⁷ Poker Affidavit, at para 10, **AR**.

¹¹⁸ George Rich Affidavit, para 10, **AR**.

¹¹⁹ Gregory Rich Affidavit, para 10, **AR**.

¹²⁰ Poker Affidavit, paras 9-10; Andrew Affidavit at para 10; Benuen Affidavit at para 15; Gregory Rich Affidavit at para 13, **AR**.

- a. The curriculum did not give educational value to any of the skills possessed by northern people.¹²¹
- b. Innu language skills “are neither taught nor recognized as desirable, except at the individual initiative of socially aware teachers.”¹²²
- c. Innu language training was not part of the supplied curriculum.¹²³
- d. Skills associated with use and understanding of the environment, such as komatik building, snow shoe construction, survival in the country, and hunting, trapping and fishing techniques, were entirely ignored as being worthy of inclusion in the curriculum.¹²⁴
- e. The curriculum did not recognize as valuable or encompass the teachings of any of the traditional skills of northern people.¹²⁵
- f. “The failure to recognize the importance of such skills and the emphasis on an irrelevant and academic curriculum in essence culminates in a degradation of the normal life style of the residents of the coast. The curriculum continually presents, as models worth of emulation, things external to the present environment. In doing so, it fails to provide the link between the present situation of students and their potential.”¹²⁶

¹²¹ *Report of the Royal Commission on Labrador*, vol 1 (February 1974) (Donald Snowden) “Education” (131–234) (“Royal Commission on Labrador”), at 167, Exhibit “C” to the Tanner affidavit, **SAR, Tab 7.**

¹²² Royal Commission on Labrador, at 167, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7.**

¹²³ Royal Commission on Labrador, at 167, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7.**

¹²⁴ Royal Commission on Labrador, at 167, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7.**

¹²⁵ Royal Commission on Labrador, at 170, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7.**

¹²⁶ Royal Commission on Labrador, at 167, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7.**

- g. Most Innu students did not speak English when they started school, instruction in schools for Innu students were entirely carried out in English. As a result, for many months and sometimes years, Innu students could not understand the words being used by their teachers, let alone the concepts behind the words.¹²⁷

129. The Commission recommended that the Province immediately provide for employment of local, bilingual teacher aides or interpreters in Innu schools, who could assist Innu students in understanding concepts in their own language.¹²⁸ The Commission also recommended that Innu-aimun courses be offered in appropriate schools as a language elective for credit.¹²⁹ The Commission also recommended offering cross-cultural courses to teachers considering teaching in Innu and Inuit schools.¹³⁰ By contrast to Innu and Inuit students, the Commission noted that French-speaking children could attend all their classes in their own language.¹³¹

130. Further criticism of the Province's assimilative English-language curriculum was made by the Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education, which delivered its Report in 1992. The Report noted how "[n]ative people and others have for many years expressed concern that the education system does not adequately recognize native culture, does not emphasize native language and has a predominance of non-native teachers in native schools." The Report further noted the "objective" of "greater native control over education" as follows: "to preserve or revive the native languages, to develop in children a sense of native history and the values associated with that history, and

¹²⁷ Royal Commission on Labrador, at 174, Exhibit "C" to the Tanner Affidavit, **SAR, Tab 7.**

¹²⁸ Royal Commission on Labrador, at 175-176, Exhibit "C" to the Tanner Affidavit, **SAR, Tab 7.**

¹²⁹ Royal Commission on Labrador, at 177, Exhibit "C" to the Tanner Affidavit, **SAR, Tab 7.**

¹³⁰ Royal Commission on Labrador, at 176, Exhibit "C" to the Tanner Affidavit, **SAR, Tab 7.**

¹³¹ Royal Commission on Labrador, at 178, Exhibit "C" to the Tanner Affidavit, **SAR, Tab 7.**

generally to develop an education system for native children that reflects the native culture.”¹³²

The Commission concluded “immediate change” was required to “improve education for native children.”¹³³ The Report specifically highlighted the problems of native education in coastal Labrador, including the very low student retention rate in Sheshathsiu and Davis Inlet and the retention of Innu language and culture, as requiring “immediate attention.”¹³⁴

131. Professor McRae, the CHRC’s Special Investigator, noted in his 1992 report the Innu of Labrador’s frustration with the status quo of the Innu Day Schools, which failed to “preserve and enhance their unique culture”:

The wish of the Innu people is to determine their own future in accordance with their own values, to provide for the education of their children in a way that will permit them to preserve and enhance their unique culture in the light of present-day economic and social realities. They wish to make their own decisions and to take responsibility for them...”¹³⁵

132. In 2002, the CHRC issued its follow-up review of the 1993 Report, authored by Professor McRae and Professor Constance Backhouse.¹³⁶ The report also evaluated how the government was implementing recommendations out of the 1996 Report of the Royal Commission on Aboriginal Peoples (“RCAP”). The report noted the recommendation of the RCAP to develop Aboriginal-controlled education systems that assigned priority to Aboriginal languages in Aboriginal education systems, which had become critical in respect of the Innu, and yet there was little evidence of any progress to implementing the RCAP recommendation.¹³⁷ The 2002 follow-up review concluded that the preservation of Innu-aimun was at a “critical juncture”, and that the Innu

¹³² NF DOE, at 251, Exhibit “I” to the Tanner Affidavit, **SAR, Tab 14.**

¹³³ NF DOE, at 253, Exhibit “I” to the Tanner Affidavit, **SAR, Tab 14.**

¹³⁴ NF DOE, at pp 252-253, Exhibit “I” to the Tanner Affidavit, **SAR, Tab 14.**

¹³⁵ McRae, at 61, Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17.**

¹³⁶ Backhouse & McRae, at 1, Exhibit “Q” to the Tanner Affidavit, **SAR, Tab 23.**

¹³⁷ Backhouse & McRae, at 39, Exhibit “Q” to the Tanner Affidavit, **SAR, Tab 23.**

of Labrador's lack of control over the Innu Day Schools and their policies had led to ongoing marginalization of Innu language and culture.¹³⁸

133. In his 2004 report on the findings of his two-year study of school-aged Innu children, Dr. Philpott found that "despite recent efforts to include some Innu-aimun language and traditional culture in the curriculum, the schools in Innu communities continue to operate and align with an assimilative model."¹³⁹ Dr. Philpott noted that, although in recent years some Innu content had been introduced into the school setting, there continued to be criticisms that it "lacks meaningfulness out of context of the natural environment and that it is presented more as something of historical interest rather than something relevant to current life," and that some of the content used by teachers came from central and western Canada and "is therefore a misrepresentation of Innu history and culture."¹⁴⁰ He further noted that most teachers were non-Innu and unfamiliar with Innu language and culture, and that schools were lacking strategies to train teachers in Innu-aimun and in an appreciation of Innu culture.¹⁴¹

134. The Province's affiant Cynthia Fleet confirmed in cross-examination that, in 2004, mainstream or non-Innu culture dominated the curriculum and language of instruction, classroom structure, and, with some exceptions, the routine, and methods of teaching in Innu schools.¹⁴² Fleet agreed that even by 2004 significant changes were needed for the schools to adequately teach Innu-

¹³⁸ Backhouse & McRae, at 52, Exhibit "Q" to the Tanner Affidavit, **SAR, Tab 23**.

¹³⁹ Philpott 2004 Summary Report, p 20 Exhibit "A" to the Fleet Affidavit, **RRDNL, Tab 1, p 40**; See also Philpott 2004 Final Report, Exhibit 31 to the Morin Affidavit, at 33, **RRDC, Tab B, p 1564**. "Focus group discussions with non-Innu teachers and Innu teacher aides invited the conclusion that school continues to function on an assimilative model. Mainstream culture not only dominates the curriculum and language of instruction, but is also embedded in the school environment, routine, classroom structure and methods of teaching."

¹⁴⁰ Philpott 2004 Summary Report, at 5, Exhibit "A" to the Fleet Affidavit, **RRDNL, Tab 1, p 25**; Philpott 2004 Final Report at 6, Exhibit 31 to the Morin Affidavit, **RRDC, Tab B, p 1537**.

¹⁴¹ Philpott 2004 Summary Report, at 5, Exhibit "A" to the Fleet Affidavit, **RRDNL, Tab 1, p 25**; Philpott 2004 Final Report at 6, Exhibit 31 to the Morin Affidavit, **RRDC, Tab B, p 1537**.

¹⁴² Fleet Cross-Examination at pp 125-127, exceptions explained at pp 174-185.

aimun, and testified that between 1990 and 2006 Innu-aimun was not being taught extensively enough in the schools.¹⁴³ On re-examination, Fleet gave evidence that, from her viewpoint, she didn't see a great change in the educational experience in the Innu schools such that it was different in 2006 than it had been in 1990, and that if there was any change it was not enough.¹⁴⁴

(c) Persistent and systemic failures of management and supervision in the Innu Day Schools

135. Throughout the Class Period, the Innu Day Schools were persistently and systemically mismanaged and suffered from inadequate supervision and oversight.

136. In its 1974 Report, the Royal Commission on Labrador raised significant concerns about the very poor quality of education in “remote parts of Labrador” and the failures of the Province’s school boards and superintendents to effectively carry out their supervisory and oversight duties. Despite the “vital importance” of “regular and direct contact with principals and teaching staff” and superintendents, such contact “has not been a feature of education, and results in bitter and frequent complaints, not only from educators, but from the public they serve.” As a result, the Report raises serious concerns about the effectiveness of supervision.¹⁴⁵

137. Regarding the supervisory duties of Regional Superintendents pursuant to the 1970 *Schools Act*,¹⁴⁶ the Province’s former Director of School Services, Mr. Gary Hatcher, gave evidence on cross-examination that there were in fact no Regional Superintendents because none were appointed. In other words, despite clear statutory authority and responsibility the Minister never

¹⁴³ Fleet Cross-Examination at pp 83-85 and 206-208. See also p 58, where Fleet agreed that the language of instruction in the Innu schools in 2002 was still predominantly English.

¹⁴⁴ Fleet Cross-Examination at pp 206-208.

¹⁴⁵ Royal Commission on Labrador, at 153-154, Exhibit “C” to the Tanner Affidavit, **SAR, Tab 7**.

¹⁴⁶ *The Schools Act*, RSN 1970, c 346, s 110-111, Tab 128 of BoA.

appointed Regional Superintendants to evaluate and report on the performance of the Innu Day Schools or other schools in the Province.¹⁴⁷

138. The 1995 Gathering Voices Report summarized participants' sentiment that both the Innu Day Schools' principals and provincial superintendents were unresponsive:

Now we have no say in how the school is run. Over the years, we have gone to principals for help and they don't do anything. It is like we don't have the right to complain about the school. We write letters to the superintendent. He is the same. They don't seem to listen when people tell them things. They don't care.¹⁴⁸

139. The 1995 Gathering Voices Report specifically recommended that the Innu Day School in Davis Inlet needed "guidelines on disciplining children to put an end to the abuse."¹⁴⁹

140. The issues highlighted by the Royal Commission on Labrador and the Gathering Voices Report persisted. In 2002, Professors McRae and Backhouse reported for the CHRC that:

Attendance at the high school level can be as low as 10% — and not always the same 10%. Students who do stay in school suspect that their educational level is not the same as those at the same grade in other schools in Newfoundland and Labrador. Remuneration of teachers in the provincial system is structured in such a way that the Innu schools are unlikely to attract experienced teachers, and once they gain experience, they are likely to leave. Some years, it is difficult even to obtain a full complement of teachers. Recently, the school in Davis Inlet was unable to open at the beginning of the school year because of a lack of teachers.

The schools in both Sheshatshiu and Davis Inlet are in extremely poor physical condition. The school in Davis Inlet has had to be closed on at least one occasion because leaking oil had caused an environmental hazard. There is agreement that it is necessary to construct a new school in Sheshatshiu, but there is no consensus as to who will fund the construction, nor whether the new school will be built to federal or provincial standards. No one claims that the schools provide any kind of effective mechanism for conserving and revitalizing Innu language and culture. Some Innu parents have lost faith in the capacity of the schools to offer education either in the Innu language and culture or in the basic skills offered under

¹⁴⁷ Cross-examination of Gary Hatcher held October 20, 2025, at p. 72, 80.

¹⁴⁸ Innu Nation and Mushuau Innu Band Council, at 79, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

¹⁴⁹ Innu Nation and Mushuau Innu Band Council, at 123, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

the provincial curriculum. A number of Sheshatshiu parents have responded by sending their children across the bridge to the school in North West River.

Education remains in the hands of the Province, and discussions between the federal and provincial governments appear to contemplate that even after registration the Province will continue to provide education services to the Innu under an agreement with the Government. In short, the financial arrangement will change but there will be no fundamental change in what is being delivered.¹⁵⁰

141. Similarly, in his 2004 report, Dr. Philpott also noted the high rate of teacher turnover and lack of qualified and experienced teachers in the schools, and ongoing attendance issues.¹⁵¹ He observed that teachers at that time still lacked training not only in Innu-aimun, but in teaching English as a second language, leaving them without the essential tools to teach students in English and collaborate with Innu teaching aides in planning, delivering and evaluating lessons.¹⁵²

142. Regarding responses to allegations of teacher abuse from 1981 forward, the Province's former Director of School Services, Mr. Gary Hatcher, stated in his affidavit evidence: "My understanding, based on my time working in the Department of Education and interfacing with the school boards, was that in the case of suspected teacher abuse, the principal of the school would be notified by the investigating authorities (police or social workers), and that the principal in turn would notify the school board."¹⁵³ On cross-examination, Mr. Hatcher admitted that this understanding in fact came from reading the legislation, and not from any specific experience or knowledge of policies while in the Department.¹⁵⁴

¹⁵⁰ Backhouse & McRae, at 50-51, Exhibit "Q" to the Tanner Affidavit, **SAR, Tab 23**.

¹⁵¹ Philpott 2004 Final Report at 38, 43 and 46-47, Exhibit 31 to the Morin Affidavit, **RRDC, Tab B, pp 1569, 1574, 1577-1578**; Philpott 2004 Summary Report, at 8, 11, 12, Exhibit "A" to the Fleet Affidavit, **RRDNL, Tab 1, p 28, 31-32**.

¹⁵² Philpott 2004 Summary Report, at 18, Exhibit "A" to the Fleet Affidavit, **RRDNL, Tab 1, p 38**; Philpott 2004 Final Report at 7, 35-6, 38 Exhibit 31 to Morin Affidavit, **RRDC, Tab B**, pp 1538, 1566-1567, 1569.

¹⁵³ Affidavit of Gary Hatcher sworn September 10, 2025, at para 15.

¹⁵⁴ Cross-examination of Gary Hatcher held October 20, 2025, at p. 91, 98-101.

(iv) **Abuses Inflicted at the Innu Day Schools**

(a) **Routine physical, verbal and sexual abuse at the Innu Day Schools**

143. Throughout the Class Period, children at the Innu Day Schools were subjected to routine physical, verbal, emotional and sexual abuse.¹⁵⁵

144. Children were exposed to a program of denigration, psychological abuse and physical violence. Physical discipline was frequent and excessive. Professor Samson, summarizing his interviews with numerous survivors of Innu Day Schools through his years of research, noted that survivors reported memories of abuse occurring into the 1980s.¹⁵⁶ The 1993 and 1995 Gathering Voices reports set out survivors' recollections of abuse throughout the Class Period. As these survivors recounted and the Reports summarized:

- a. Teachers "hurt us a lot."¹⁵⁷
- b. "The teacher was not very good. He used to beat me up a lot."¹⁵⁸
- c. "When I was in school, the teacher used to abuse us. He would take a ruler or stick and start beating us. We were in a lot of pain. He used to laugh and make fun at the way we dressed. When we didn't know our work, the teachers used to beat us up. A teacher used to pull down our pants and spank us on our bottoms."¹⁵⁹

¹⁵⁵ Samson, at 93, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**; This is also reflected in Community Session Transcripts, vol 6 (17 April 2023), at 19; vol 7 (18 April 2023), at 19; vol 8 (19 April 2023), at 5; vol 9 (20 April 2023), at 14-15; vol 13 (7 June 2023), at 7; vol 39 (25 June 2024), at 18, Exhibit "A" to the Urquhart Affidavit, **SAR, Tab 27**; Formal Hearing Transcripts, vol 4 (16 February 2023), at 21-23, Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

¹⁵⁶ Samson, at 95, Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21**.

¹⁵⁷ Innu Nation and Mushuau Innu Band Council, at 67, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

¹⁵⁸ Innu Nation and Mushuau Innu Band Council, at 67, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

¹⁵⁹ Innu Nation and Mushuau Innu Band Council, at 67, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

- d. “Teachers used to beat us when we didn't know what they were trying to teach.”¹⁶⁰
- e. “Many people are angry because some teachers, including the vice-principal, beat up on students. We don't want to see this happening any more. Children won't learn if teachers beat them. Students quit because of beatings from teachers. This has got to be stopped.”¹⁶¹
- f. “I remember three years ago a teacher beat up on my brother. He pushed him against a brick wall and bumped his head. My brother had a bruise. This same teacher beat up on other students. Many students quit school because of him”.¹⁶²
145. Abuse was dealt out for minor infractions of school protocol.¹⁶³ Students were beaten with sticks, rulers, metal curtain rods or leather belts for not paying attention, arriving late, or not knowing an answer.¹⁶⁴ The abuse was compounded by the fact that it was done in front of other children and this caused the victim to experience shame.¹⁶⁵
146. Between the 1950s and 1990s, several priests and teachers sexually abused Innu children at Innu Day Schools.¹⁶⁶ The 1995 Gathering Voices report records multiple accounts of sexual

¹⁶⁰ Innu Nation and Mushuau Innu Band Council, at 67, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁶¹ Innu Nation and Mushuau Innu Band Council, at 75, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁶² Innu Nation and Mushuau Innu Band Council, at 75, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁶³ Samson, at 93, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**.

¹⁶⁴ Procter, at 390, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**; Samson, at 93-94, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**; This abuse is also reflected in the Community Session Transcripts, vol 7 (18 April 2023), at 19; vol 8 (19 April 2023), at 5; vol 9 (20 April 2023), at 15; vol 39 (25 June 2024), at 18, Exhibit “A” to the Urquhart Affidavit, **SAR, Tab 27**; Formal Hearing Transcripts, vol 4 (16 February 2023), at 21, 22, Exhibit “B” to the Urquhart Affidavit, **SAR, Tab 26**.

¹⁶⁵ Samson, at 94, Exhibit “P” to the Tanner Affidavit, **SAR, Tab 21**; Benuen Affidavit, at paras. 7-8, 10-12, **AR**; Andrew Affidavit, at paras. 5-8, **AR**; George Rich Affidavit, at paras. 7-8, **AR**; Gregory Rich Affidavit, at paras. 15-19, **AR**; This is also reflected in the Community Session Transcripts, vol 7 (18 April 2023), 3 at 19; vol 9 (20 April 2023), at 15, Exhibit “A” to the Urquhart Affidavit, **SAR, Tab 27**; Formal Hearing Transcripts, vol 4 (16 February 2023), Exhibit “B” to the Urquhart Affidavit, **SAR, Tab 26**.

¹⁶⁶ Procter, at 390, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**.

abuse occurring at the Innu Day Schools by priests and teachers.¹⁶⁷ By 2001, members of Innu Nation had filed almost 50 charges of sexual abuse and complaints against individual priests, the local diocese, and the Roman Catholic Church, and there may be more victims.¹⁶⁸

147. The survivor affiants have all provided extensive evidence about the abuse they witnessed and suffered at the Innu Day Schools:

- a. George Rich, who attended the Innu Day School in Davis Inlet, experienced serious abuse and assaults from teachers, priests and nuns working at the school. He remembered them being very angry, and would often scream at him and the other students. He remembered sexual, physical and emotional abuse happening to both male and female students at the school.¹⁶⁹
- b. Gregory Rich, who attended the Innu Day School in Davis Inlet, witnessed other students, including friends and relatives, getting beaten up at school by teachers, priests, nuns, and other adults running the school.¹⁷⁰ He was once punched by a teacher in the face for not putting a basketball away, causing him to fall and hit his head on the cement floor. This assault traumatized him. He left school soon after, and began drinking, using drugs and sniffing gas.¹⁷¹
- c. Marie Martha Andrew attended the Innu Day School in Sheshatshiu. She testified in her affidavit about teachers hitting her and other students with straps. In grade 4, a

¹⁶⁷ Innu Nation and Mushuau Innu Band Council, at 59 and 75, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁶⁸ Procter, at 390, Exhibit “R” to the Tanner Affidavit, **SAR, Tab 24**.

¹⁶⁹ George Rich Affidavit, at paras 4-5, 7-8, 10, **AR**.

¹⁷⁰ Gregory Rich Affidavit, at paras 3, 10, 15, **AR**.

¹⁷¹ Gregory Rich Affidavit, at paras 17-19 and 21, **AR**.

teacher would not let her use the bathroom, and hit her with a yardstick for wetting her pants.¹⁷² Father Pirson was also very abusive towards her and other children: “I remember seeing his face turn very red when he was angry, and I knew something bad was coming.”¹⁷³

- d. Magdaline Benuen testified in her affidavit about numerous and cruel punishments she and other survivors endured. She described an incident in grade 7 involving her homeroom teacher Mr. Thorne. As punishment for drawing a picture of Nutshimit, with mountains and a tent on her worksheet, Mr. Thorne crumpled it up and tried to make her eat the paper. Magdaline testified, “He kept trying to shove it in my mouth. I kept my mouth closed tightly. I was trying not to make noise because I didn’t want the other students to see because I was embarrassed.”¹⁷⁴
- e. Prote Poker remembered a story he heard from his cousin about his father attending the school in Old Davis Inlet. On one occasion, a priest hit his father in the head with a gun barrel so brutally that he never returned to school.¹⁷⁵ Prote, who attended the school in Davis Inlet from the late 1960s through the 1970s, endured abuse himself, and witnessed the violent abuse of other children.¹¹⁷

¹⁷² Andrew Affidavit at para 8, **AR**.

¹⁷³ Andrew Affidavit at paras 3-6, **AR**.

¹⁷⁴ Benuen Affidavit, at para 11, **AR**.

¹⁷⁵ Poker Affidavit, at para 8, **AR**.

(b) Impacts of abuse and cultural harms at the Innu Day Schools

148. The Gathering Voices Reports, the transcripts of testimony before Innu Inquiry, survivors' experiences recorded in the work of Professors Samson and Proctor, and the survivors' affidavits set out the harm caused by the assimilative nature of education in the Innu Day Schools.

149. The routine abuse and cultural harms in the schools had deep and lasting impacts on Innu students, and on the Innu communities. The trauma of the schools impaired students' self-worth and their relationship with their language and culture, and led to mental health issues and substance abuse. As one witness at the Innu Inquiry testified, the mistreatment, humiliation, and abuse she suffered and witnessed while attending an Innu Day School led her to start sniffing gas.¹⁷⁶ Another witness, reciting physical abuse and humiliation she suffered in the Innu Day School in Davis Inlet, commented that "when somebody is doing that to you, you don't feel good about yourself and that's what happened with me. You know, I was afraid in school and also, you know, you work – you work hard. So all that stuff that we went through."¹⁷⁷

150. Numerous participants in the 1993 and 1995 Gathering Voices reports explained the harmful impact of the Innu Day Schools. A participant from Davis Inlet stated "The way I see it is, we were taught in school that Innu people are no good. We need to bring back the pride and the spirit of the Innu people, to be proud of who we are."¹⁷⁸ A current high school student stated:

Why haven't we been taught our culture? We don't blame the teachers, we blame the school system. The children are starting to think like non-Innu. The students are being taught that way. We place ourselves between the tent and the non-Innu house, between the two cultures. We have respect for our own animals and the non-Innu have their own animals.

¹⁷⁶ This is reflected in the Community Session Transcripts, vol 7 (18 April 2023) and vol 8 (19 April 2023), at 5, Exhibit "A" to the Urquhart Affidavit, **SAR, Tab 27**.

¹⁷⁷ Community Session Transcripts, vol 8 (19 April 2023), at 5, Exhibit "A" to the Urquhart Affidavit, **SAR, Tab 27**.

¹⁷⁸ Innu Nation, at 43, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

We use trees to make canoes, and the non-Innu make houses out of the trees. We don't learn any Innu culture in Peenamin Mackenzie School. We want to learn these things in school. Some of us wished we knew how to make a canoe and paddles like our great grandparents did. We want to know all the things that Innu people knew before.¹⁷⁹

151. A participant in the 1995 Gathering Voices inquiry summarized the harmful effect of the Eurocentric emphasis of the Innu Day Schools:

I talk to young people, but they don't seem to understand. The language I use is hard for them. I often hear the children name things in English. I want the children to learn our way of life. This is very important. If our culture and our language is lost, there is nowhere in the world where it can be found. My younger children sometimes bring a kind of paper to me from school. They are really proud. I guess they don't really know the school can make them lose their own culture. Whatever they learn in school is white man's ways. I guess one day the children will find out what they have gained and what they have lost from the school. They will learn that they have lost more than gained.¹⁸⁰

152. The survivor affiants testified in their affidavits about the lasting harms of attending the Innu Day Schools:

- a. Prote Poker testified that he dropped out of high school without completing grade 9, as a result of trauma from the abuse he experienced at the school in Davis Inlet, and the difficulties of going to high school in a foreign culture, language and location because high school was not offered in Davis Inlet.¹⁸¹ Prote also used drugs and alcohol as a response to the abuse in the schools.¹⁸² Prote explained, “I, like many others in my community, tried to numb the pain and trauma with drugs and alcohol. I have now been sober for over 30 years.”¹⁸³ Prote testified that this experience is common, explaining in his affidavit: “I see this cycle of abuse often in my community. This cycle of trauma,

¹⁷⁹ Innu Nation, at 44, Exhibit “K” to the Tanner Affidavit, **SAR, Tab 16**.

¹⁸⁰ Innu Nation and Mushuau Innu Band Council, at 69, Exhibit “M” to the Tanner Affidavit, **SAR, Tab 18**.

¹⁸¹ Poker Affidavit, at para 11, **AR**.

¹⁸² Poker Affidavit, at para 8, **AR**.

¹⁸³ Poker Affidavit, at para 7, **AR**.

addictions and further abuse stems in large part from the abuse we suffered in the community schools.”¹⁸⁴

- b. Marie Martha Andrew testified that her attendance at the Sheshatshiu Innu Day School “was a very traumatizing experience for me and has caused me a lot of pain over the years.”¹⁸⁵

- c. Magdaline Benuen testified that sending her children to the same school she experienced abuse at was re-traumatizing: “I was terrified for them, that they would experience some of the same things that I, my classmates, and my siblings experienced.”¹⁸⁶ Her affidavit also described the impact of her attendance at the Innu Day School on her identity:

The abuse we experienced in school was not just physical and mental. It was also related to who we are as Innu. We were kept away from our land and way of life by being forced to spend time in school year-round. We were not taught about Innu culture at school. [...] We were taught that Innu ways were bad and wrong. This created a lot of shame for me about my culture and identity.¹⁸⁷

- d. George Rich testified on the impact of the forced assimilation of the Innu in schools and in the communities, explaining it “destroyed our culture, language, and traditions, which resulted in the loss of our cultural and social identity for many Innu people. The separation of Innu from our culture weakened our sense of community, which contributes to intergenerational trauma and the prevalence of mental health issues, substance abuse, violence, and suicides throughout the Innu communities. The Innu

¹⁸⁴ Poker Affidavit, at para 8, **AR**.

¹⁸⁵ Andrew Affidavit at para 11, **AR**.

¹⁸⁶ Benuen Affidavit, at para 18, **AR**.

¹⁸⁷ Benuen Affidavit, at para 15, **AR**.

Day School inflicted deep and lasting harm on Innu Nation and the Innu communities by undermining our culture, autonomy, sovereignty, and well-being.”¹⁸⁸ He also testified about the impact on his ability to speak Innu-aimun, saying that “[t]o this day I do not have a fluent grasp of my native language, which is related to what I experienced at school.”¹⁸⁹

- e. Gregory Rich testified that “[t]he schools were strict and there was no involvement of Innu culture and ways of life. We were taught in the English language, and we were punished for speaking our language. We were taught that Innu ways and culture were wrong. This created a lot of shame for me, over who I am as an Innu person.”¹⁹⁰ Gregory Rich also experienced substance abuse challenges, and turned to alcohol and drugs like gas sniffing, in the wake of the abuse he experienced at the schools. Despite the abuses he suffered in school and experiencing enormous tragedy he has found a path to healing and pride in his identity as an Innu person. He has been sober for many years now.¹⁹¹

E. Innu Exclusion from Prior Residential and Day School Settlements

153. This class action is not novel. Courts across Canada have certified significantly more complex class actions and approved settlement agreements related to near-identical harms experienced by Indigenous children in the residential and day school systems. The Innu of Labrador have been excluded from all of these prior class actions.¹⁹²

¹⁸⁸ George Rich Affidavit, at para 12, **AR**.

¹⁸⁹ George Rich Affidavit, at para 10, **AR**.

¹⁹⁰ Gregory Rich Affidavit, at para 13, **AR**.

¹⁹¹ Gregory Rich Affidavit, at paras 21, 25-27, **AR**.

¹⁹² Ford Transcript, p 52, ll 3-15.

(v) Indian Residential School Class Actions

154. The Innu of Labrador were not included in the class actions commenced in respect of Canada's nationwide Indian Residential School ("IRS") system.

155. For example, one of these class actions (*Cloud*) was brought by former students who attended the Mohawk Institute Residential School in Ontario and their families¹⁹³ In 2004, the Court of Appeal for Ontario certified the class action.¹⁹⁴

156. In 2006, the Ontario Superior Court certified a class action on consent and approved a settlement reached between Canada and a nationwide class of IRS Survivors (the Indian Residential Schools Settlement Agreement, or "IRSSA").¹⁹⁵ The settlement was reached for the benefit of former students who attended and resided at specific residential schools across Canada (the "IRSSA Survivor Class").¹⁹⁶ The settlement encompassed and released over 15,000 pending residential school-related claims by survivors. The Innu Day Schools and their survivors were not included in the IRSSA.

157. In approving the IRSSA, Chief Justice Winkler of the Ontario Superior Court commented on the harms of the residential school system and their assimilative purpose:¹⁹⁷

The flaws and failures of the policy and its implementation are at the root of the allegations of harm suffered by the class members. Upon review by the Royal Commission on Aboriginal Peoples, it was found that the children were removed from their families and communities to serve the purpose of carrying out a "concerted campaign to obliterate" the "habits and associations" of "Aboriginal languages, traditions and beliefs", in order to

¹⁹³ *Cloud v Canada (Attorney General)* (2004), 73 OR 401, Tab 4 of BoA, 73 OR (3d) 401 (ONCA).

¹⁹⁴ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at paras 6, 72, 96, Tab 4 of BoA.

¹⁹⁵ *Baxter v Canada (Attorney General)* (2006), 83 OR 481 at para 85, Tab 5 of BoA.

¹⁹⁶ *Baxter v Canada (Attorney General)* (2006), 83 OR 481 at paras 4-5, 13, 85, Tab 5 of BoA.

¹⁹⁷ *Baxter v Canada (Attorney General)* (2006), 83 OR 481 at para 3, Tab 5 of BoA.

accomplish “a radical re-socialization” aimed at instilling the children instead with the values of Euro-centric civilization.

158. As part of the settlement, Prime Minister Harper delivered an historic apology in the House of Commons. The apology addressed the national assimilative program underpinning the residential school system:

Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.

[...] First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools.

The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

159. Canada’s affiant, Kimberlee Ford, Manager with the Litigation and Resolution Directorate within Crown-Indigenous Relations and Northern Affairs, conceded in cross-examination that the IRS settlement involved a far larger and more diverse class spanning a larger area and a longer class period than the claim here.¹⁹⁸

¹⁹⁸ Ford Cross-Examination at p 21, ll 5-22.

(vi) **Indian Residential School Day Scholars Class Action – *Gottfriedson***

160. The IRSSA did not capture all students who attended an IRS. Students who, much like those who attended the Innu Day Schools, attended an IRS by day but went home at night (“Day Scholars”), were left out of the IRSSA.¹⁹⁹

161. In 2015, the Federal Court certified a class action (“*Gottfriedson*”) respecting the harms that these students suffered (“Day Scholars Survivor Class”), as well as harms suffered by First Nations who either had a Residential School in their community or had members who attended a Residential School (“Band Class”).²⁰⁰

162. The *Gottfriedson* class action settled in two parts: in 2021, the Federal Court approved a settlement reached between Canada and the Day Scholars Survivor Class for the loss of culture and language suffered by the survivors.²⁰¹ Then, in 2023, the Federal Court approved a settlement reached between Canada and the Day Scholars Band Class for the loss of culture and language caused to Indian Bands by the Indian Residential School system.²⁰² The Innu Day Schools and their survivors were not included in those settlements.

163. Canada conceded that, like the IRSSA, the *Gottfriedson* settlement involved a far larger and more diverse class spanning a larger area and a longer class period than in this case.²⁰³

¹⁹⁹ *Gottfriedson v Canada*, 2015 FC 706 at para 1, Tab 6 of BoA; Ford Cross-Examination at pp 22-23, ll 28-6, p 25, ll 8-18.

²⁰⁰ *Gottfriedson v Canada*, 2015 FC 706 at paras 1-3, Tab 6 of BoA.

²⁰¹ *Tk'emlúps te Secwépemc First Nation v Canada*, 2021 FC 988 at paras 74-78, Tab 7 of BoA.

²⁰² *Tk'emlúps te Secwépemc First Nation v Canada*, 2023 FC 327 at paras 103-104, Tab 1 of BoA.

²⁰³ Ford Cross-Examination at p 25, ll 8-19, p 31, ll 13-23.

(vii) Indian Day Schools Class Action – *McLean*

164. The IRSSA also excluded federally-administered day schools for Indigenous children, where students attended during the day and went home at night (“Indian Day Schools”).²⁰⁴ In 2009, survivors brought the *McLean* Indian Day Schools class action against Canada for harms related to the Indian Day Schools. *McLean* was certified as a class proceeding on consent in 2019 and settled that year. The Innu Day School survivors were excluded from the *McLean* settlement. Again, Canada conceded that, like the IRSSA and *Gottfriedson*, the *McLean* claim (and settlement) involved a far larger and more diverse class spanning a larger area and a longer class period than this claim.²⁰⁵

165. Gregory Rich was Grand Chief when the *McLean* Indian Day Schools class action settlement was finalized, and when he realized the Innu had been left out, he wrote to Canada urging Canada to include the Innu in the settlement. Canada never responded.²⁰⁶

166. In approving the Indian Day Schools settlement agreement, Justice Phelan commented on the Indian Day Schools’ assimilative purpose and harms:

[1] This settlement agreement is the culmination of litigation concerning tragic, scarring events in the lives of those who attended Indian Day Schools. These events include mockery, belittlement, and physical, sexual, cultural and emotional abuse, which are soul damaging. Healing will be a long-term process at best.

[2] This case involves allegations of assault, abuse and mistreatment of children who are our most precious gift.

²⁰⁴ *McLean v Canada*, 2019 FC 1075 at para 6, Tab 8 of BoA.

²⁰⁵ Ford Cross-Examination at p 38, ll 2-15.

²⁰⁶ Gregory Rich Affidavit, at paras. 33-35, **AR**.

[3] It is not possible to take the pain and suffering away and heal the bodies and spirits, certainly not in this proceeding. The best that can be done is to have a fair and reasonable settlement of the litigation. [...]

[6] For over 50 years, many Indigenous children were compelled to attend day schools [Indian Day Schools] operated by the Defendant. The principal difference between Indian Day School students and Residential School students is that Day School students went home at night. [...]

[19] These schools had profoundly negative effects on many of their students. The representative plaintiffs were exposed to a program of denigration, psychological abuse and physical violence often for such simple things as speaking their own language to others of their community at the schools. This experience had a deep and lasting impact on the representative plaintiffs, impairing their sense of self-worth and impeding their relationships with others and leading to personal issues with substance abuse among the many ills that resulted from that abuse.²⁰⁷

(viii) Newfoundland and Labrador Indian Residential Schools Class Action

167. Indigenous and non-Indigenous children in Newfoundland and Labrador who attended five residential schools in the Province (the “NL Residential School Survivors”) were also left out of the IRSSA. The NL Residential School Survivors brought a class action against Canada (the “*Anderson*” proceeding) for the harms they suffered at these residential schools, which was certified in 2011.²⁰⁸ In 2016, the Court approved settlement in *Anderson*.²⁰⁹ Again, Canada conceded that the *Anderson* claim involved a larger and more diverse class than the case here.²¹⁰

PART II - ISSUES TO BE DETERMINED

168. The sole issue on this motion is whether this action should be certified as a class action pursuant to the five conjunctive criteria set out at section 5(1) of the *Class Actions Act*.²¹¹

²⁰⁷ *McLean v Canada*, 2019 FC 1075 at paras 1-3, 6, 19, Tab 8 of BoA.

²⁰⁸ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at paras 3, 9, 123, Tab 9 of BoA.

²⁰⁹ *Anderson v Canada (Attorney General)* (2016), 2016 CanLII 76817, Tab 10 of BoA.

²¹⁰ Ford Cross-Examination at pp 43-44, ll 20-21.

²¹¹ *Class Actions Act*, SNL 2001, c C-18.1, s 5(1), Tab 137 of BoA.

PART III - LAW AND ARGUMENT

A. General principles of certification

169. The core of a class proceeding is the resolution of issues on a common basis to avoid duplication of fact finding or legal analysis.²¹²

170. A certification motion is a procedural motion. It focuses on the form of the action and its suitability for prosecution as a class proceeding. That is, the Court considers the appropriateness of the procedure.

171. As the Supreme Court of Canada has explained, “the certification stage is decidedly not meant to be a test of the merits of the action....”²¹³ Section 6(2) of the *CAA* states this explicitly.²¹⁴

172. It is well-settled law in Newfoundland and Labrador (and across Canada) that the test for certification is set at a low threshold. The section 5(1)(a) criterion is assessed without reference to evidence. There must be “some basis in fact” for the section 5(1)(b)-5(1)(e) criteria.

173. The “some basis in fact” test recognizes that “a defendant [...] has ‘an enormous information advantage’ over a plaintiff. Discovery at the certification stage is not a matter of right, and it would be unfair to require a plaintiff to provide evidence that relates to matters exclusively within the [defendants’] specialized knowledge.”²¹⁵ The criteria are not onerous and the basis in fact for the common issues in particular is a low bar.²¹⁶

²¹² *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 18, Tab 11 of BoA; *McKenna v Gammon Gold Inc.*, 2010 ONSC 1591 at para 124, Tab 12 of BoA.

²¹³ *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 16, Tab 11 of BoA [emphasis added]. See also: *Anderson v Canada (Attorney General)*, 2010 NLTD 106 at paras 44-46, Tab 13 of BoA, aff’d *Canada (Attorney General) v Anderson*, 2011 NLCA 82, Tab 9 of BoA.

²¹⁴ *Class Actions Act*, SNL 2001, c C-18.1, s 6(2) [“An order certifying an action as a class action is not a determination of the merits of the action.”], Tab 137 of BoA.

²¹⁵ *Spring v Goodyear Canada Inc.*, 2020 ABQB 252 at para 39, Tab 14 of BoA.

²¹⁶ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at paras 45, 52, Tab 4 of BoA.

174. The “some basis in fact” standard is satisfied where “some minimal evidence support[s] the existence of a claim.”²¹⁷ It does not require the Court to make factual findings on a balance of probabilities. The Court should not resolve “conflicting facts and evidence”²¹⁸ or otherwise assess the strength of the action.²¹⁹ As the Supreme Court set out in *Pro-Sys Consultants* and reiterated in *Atlantic Lottery*, “[t]he certification process ‘does not allow for an extensive assessment of the complexities or challenges a plaintiff may face in establishing its case at trial’ and the approach is not to engage ‘in a robust analysis of the merits at the certification stage.’”²²⁰ Instead, the certification process should ensure that the claims and issues are suited to class-wide treatment.

175. The class action procedure is intended to achieve three advantages: access to justice, judicial economy, and behavior modification. Class action legislation is, accordingly, given a generous, broad, liberal, and purposive interpretation: “it is essential ... that courts not take an overly restrictive approach to the legislation, but rather interpret the Act in a way that gives full effect to the benefits foreseen by the drafters.”²²¹

B. The pleadings disclose causes of action: s. 5(1)(a) of the CAA

176. The test under s. 5(1)(a) of the CAA, which requires that the pleadings disclose a cause of action,²²² is the same test applied under rule 14.24(1)(a) of the *Rules of the Supreme Court, 1986*. A pleading discloses a cause of action if it is not “plain and obvious” that the claim will fail. A “germ or scintilla” of a cause of action will suffice to maintain a claim.²²³ In assessing this:

²¹⁷ *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 at para 78, Tab 15 of BoA.

²¹⁸ *Palmer v Teva Canada Limited*, 2024 ONCA 220 at para 104, Tab 16 of BoA.

²¹⁹ *Lilleyman v Bumble Bee Foods LLC*, 2024 ONCA 606 at para 71, Tab 17 of BoA.

²²⁰ *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 138, Tab 18 of BoA, citing *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57, [2013] 3 SCR 477 at para 105, Tab 19 of BoA.

²²¹ *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 15, Tab 11 of BoA.

²²² CAA, s. 5(1)(a).

²²³ *Toronto District School Board v Toronto (City of)*, 2025 ONSC 4167 at para 32, Tab 20 of BoA.

- a. evidence is not to be considered;
- b. the facts pleaded are accepted to be true unless patently ridiculous or incapable of proof; the claim is to be read generously to allow for drafting frailties and the plaintiff's lack of access to key documents and discovery information; and
- c. the Court must not bar certification on the basis that a claim is novel; and the Court should permit claims to proceed where the law is unsettled.²²⁴

177. The Second Amended Statement of Claim asserts tenable causes of action in negligence, breach of fiduciary duties, and breach of Constitutional duties including infringement of Aboriginal Rights and breaches of the Honour of the Crown.

(i) The Plaintiffs' Allegations

178. The factual allegations set out in the Proposed Second Amended Claim underpinning the causes of action are as follows:

- a. Canada had exclusive legislative authority for "Indians", including the Innu of Labrador, under section 91(24) of the *Constitution Act*, and was otherwise responsible for the welfare and education of all Indigenous peoples, including the Class Members. Canada and the Innu of Labrador had a special relationship of trust, reliance and

²²⁴ *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at pages 971-972, Tab 21 of BoA; *Dewey v Corner Brook Pulp and Paper Limited*, 2025 NLCA 8 at paras 43-46, Tab 22 of BoA; *PMC York Properties Inc v Siudak*, 2022 ONCA 635 at paras 31, 34, Tab 23 of BoA; *Chiasson v Nalcor Energy*, 2021 NLCA 34 at para 8, Tab 24 of BoA, quoting *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 14, Tab 18 of BoA; *Krishnan v Jamieson Laboratories Inc*, 2021 BCSC 1396 at para 45, Tab 25 of BoA; *Gilani v BMO Investments Inc*, 2021 ONSC 3589 at para 70, Tab 26 of BoA; *Dow Chemical Company v Ring*, 2010 NLCA 20 at paras 10-11, Tab 27 of BoA.

- dependence. Canada funded, allowed or was otherwise involved in the Innu Day Schools.²²⁵
- b. The Province was responsible for the education and social development of the children of the Innu of Labrador, and allowed, established, operated, designated, funded, oversaw, regulated, administered, or was otherwise involved in the Innu Day Schools.²²⁶
- c. Canada and the Province undertook the provision of education through the Innu Day Schools pursuant to formal and informal agreements from the date of Confederation until the close of the Class Period.²²⁷
- d. The Province directly administered the Innu Day Schools with Canada until 1960. This administration was conducted through the Roman Catholic Denominational Superintendent of Education and the Province's local agents.²²⁸
- e. After 1960, the Province administered the Day Schools with the Roman Catholic School Board for Labrador, and, after 1998, the Labrador School Board, both of which were the Province's and Canada's agents. The School Boards had administrative, operational and supervisory duties in respect of the Innu Day Schools.²²⁹
- f. The Province and its officers, including the Denominational Superintendents of Education, held statutory duties to supervise the Innu Day Schools, to train and qualify

²²⁵ Proposed Second Amended Statement of at paras 10 and 27.

²²⁶ Proposed Second Amended Statement of at para 11.

²²⁷ Proposed Second Amended Statement of at para 12.

²²⁸ Proposed Second Amended Statement of at paras 17 and 19.

²²⁹ Proposed Second Amended Statement of at paras 12-14.

teachers, and to formulate and implement educational policy applied in the Innu Day Schools.²³⁰

- g. Canada and the Province together funded the construction of school facilities in Sheshatshiu, Old Davis Inlet, Davis Inlet and Nautashish jointly with the RCSBL.²³¹
- h. The Province and Canada mandated compulsory attendance at the Innu Day Schools, both through “statute and/or intimidation and coercion by their agents and the organizations and individuals to which Canada and the Province delegated the implementation and operation of the Innu Day Schools.”²³²
- i. Survivors of the Innu Day Schools were subjected to systematic physical, sexual, emotional, psychological, cultural, and spiritual abuses by teachers, adults in positions of authority, and/or other students. Canada and the Province allowed, or failed to curtail, this systemic abuse.²³³
- j. Canada and the Province implemented the Innu Day Schools as “a cornerstone of colonial efforts to force the Innu to settle permanently in villages and end their way of life on the land”, an assimilative purpose accomplished through denigrating the “cultural beliefs, values and teachings” of the Innu of Labrador and instead fostering an “institutionalized culture that was hostile and harmful to Innu culture and spiritual practice”.²³⁴

²³⁰ Proposed Second Amended Statement of at paras 14-15.

²³¹ Proposed Second Amended Statement of at paras 18-19 and 22.

²³² Proposed Second Amended Statement of at para 29.

²³³ Proposed Second Amended Statement of at paras 28 and 33

²³⁴ Proposed Second Amended Statement of at para 30.

- k. The Innu Day Schools caused irreversible harm to the Survivor Class, their families and their communities, as represented by the Innu Government Class. Canada and the Province intended this harm, or were negligent, reckless and/or wilfully blind as to that harm and its likelihood.²³⁵

(ii) Causes of Action: Systemic Negligence

(a) Legal principles of systemic negligence

179. Liability in negligence requires the breach of a duty of care owed by the tortfeasor to the plaintiff, causing foreseeable and compensable harm.²³⁶ Systemic negligence concerns the failure to “have in place management and operations procedures that would reasonably have prevented... abuse”²³⁷ to a “class of victims as a group”.²³⁸ The Plaintiffs’ claims sound in systemic negligence – they concern systemic breaches of duties of care by the Defendants, and not individual tortious malfeasance.²³⁹

180. Duties of care asserted against the Crown are analyzed using the test articulated in *Cooper v. Hobart*.²⁴⁰ To ground a private law duty of care by public authorities under the *Cooper* framework, three factors must be satisfied:

- a. The losses alleged must have been reasonably foreseeable to the defendant.

²³⁵ Proposed Second Amended Statement of at paras 32-33

²³⁶ *Robertson v Ontario*, 2022 ONSC 5127 at para 40, Tab 28 of BoA.

²³⁷ *Rumley v British Columbia, 2001 SCC 69 (CanLII)*, 2001 SCC 69 at para 30, Tab 29 of BoA.

²³⁸ *Rumley v British Columbia, 2001 SCC 69 (CanLII)*, 2001 SCC 69 at para 34, Tab 29 of BoA.

²³⁹ *Rumley v British Columbia, 2001 SCC 69 (CanLII)*, 2001 SCC 69 at para 30, Tab 29 of BoA; *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at para 68, Tab 30 of BoA.

²⁴⁰ *Cooper v Hobart, 2001 SCC 79 (CanLII)*, 2001 SCC 79, Tab 31 of BoA; *Aylmer Meat Packers Inc v Ontario*, 2022 ONCA 579 at para 24, Tab 32 of BoA.

- b. There must be a relationship of proximity or “sufficient closeness” between the government actor and the impacted individual or group of individuals such that it would be “just and reasonable” to impose a duty of care on the government actor.²⁴¹
- c. There must be no policy considerations fatally militating against the imposition of a duty of care. This may be the case where the proposed duty conflicts with an “overarching statutory or public duty”,²⁴² or where the decision amounts to a “core policy decision”²⁴³ for which the Crown is immune from liability in negligence. Core policy decisions are “decisions as to a course or principle of action that are based on public policy considerations, such as economic, social and political factors, provided they are neither irrational nor taken in bad faith.”²⁴⁴

181. Sufficiently proximate relationships are identified through the use of established categories.²⁴⁵ The Crown’s proximity may arise from two sources – (1) either expressly or by implication from duties imposed by statute or regulation, or (2) where the government, through its conduct or undertaking, enters a sufficiently proximate relationship with the claimant.²⁴⁶

182. Whether the Crown’s relationship to the tortfeasor is sufficiently “proximate” is evaluated by looking at the “expectations” and “interests involved.”²⁴⁷

²⁴¹ *Robertson v Ontario*, 2022 ONSC 5127 at para 42, Tab 28 of BoA.

²⁴² *Syl Apps Secure Treatment Centre v BD*, 2007 SCC 38, [2007] 3 SCR 83 at para 28, Tab 33 of BoA.

²⁴³ *Nelson (City) v Marchi*, 2021 SCC 41 (CanLII), 2021 SCC 41 at paras 42-49, Tab 34 of BoA.

²⁴⁴ *Nelson (City) v Marchi*, 2021 SCC 41 (CanLII), 2021 SCC 41 at para 67, Tab 34 of BoA, citing *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 (CanLII), 2011 SCC 42 at para 90, Tab 35 of BoA.

²⁴⁵ *Cooper v Hobart*, 2001 SCC 79 (CanLII), 2001 SCC 79 at para 31, Tab 31 of BoA.

²⁴⁶ *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 (CanLII), 2011 SCC 42 at paras 43, 45, Tab 35 of BoA.

²⁴⁷ *Cooper v Hobart*, 2001 SCC 79 (CanLII), 2001 SCC 79 at para 34, Tab 31 of BoA.

183. In *Nelson (City) v. Marchi*, the Supreme Court of Canada concluded that core policy immunity “must be proven by the public authority.”²⁴⁸ The British Columbia Supreme Court and Ontario Court of Appeal have applied *Marchi* to conclude that “core policy immunity” is a substantive defence for trial, not to be resolved on the pleadings alone at the certification stage.²⁴⁹ The characterization of core policy immunity as a substantive defence is trenchant here, given that the Defendants have not delivered their defences, and has not yet been pleaded, let alone proved.²⁵⁰

184. Courts are also reluctant to resolve core policy immunity at the certification stage because “indefensible applications of policy may be actionable” and this indefensibility must be proven on an evidentiary record.²⁵¹ Here, the pleadings allege that the Defendants’ conduct was, *inter alia*, wilful or reckless as to the harms suffered by the Class Members, further supporting that a merits hearing is the appropriate venue to resolve the Plaintiffs’ claims in negligence.²⁵²

(b) Canada’s negligence

185. Canada is pled to have owed the Class Members numerous duties in respect of the Innu Day Schools, including, *inter alia*:

- a. the promotion of the health, safety, and well-being of Innu as Indigenous persons;²⁵³

²⁴⁸ *Nelson (City) v Marchi*, 2021 SCC 41 (CanLII), 2021 SCC 41 at para 79, Tab 34 of BoA.

²⁴⁹ *Gibot v British Columbia (Public Guardian and Trustee)*, 2023 BCSC 1597 at para 102, Tab 36 of BoA; *Elizabeth Fry Society of Greater Vancouver v British Columbia (Public Guardian and Trustee)*, 2025 BCSC 610 at paras 71-72, Tab 37 of BoA; *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 102-103, Tab 30 of BoA; *Leroux v Ontario*, 2023 ONCA 314 at paras 102-103, Tab 38 of BoA.

²⁵⁰ These four factors are set out in *Nelson (City) v Marchi*, 2021 SCC 41 (CanLII), 2021 SCC 41 at paras 61-67, Tab 34 of BoA as (1) the level and responsibilities of the decision-maker; (2) the process by which the decision was made; (3) the nature and extent of budgetary considerations and (4) the extent to which the decision was based on objective criteria.

²⁵¹ *Gottfriedson v Canada*, 2015 FC 706 at para 39, Tab 6 of BoA.

²⁵² Proposed Second Amended Statement of Claim at para 32.

²⁵³ Proposed Second Amended Statement of Claim at 44a.

- b. the provision of resources including funding and services to support the Innu, including educational services;²⁵⁴
- c. the selection, control, training, supervision, and regulation of the designated operators, organizations and individuals to which Canada delegated the implementation and operation of the Innu Day Schools and their agents, including administrators, teachers, and staff;²⁵⁵
- d. the care and education, control, and well-being of Aboriginal peoples sent to an Innu Day School during the Class Period;²⁵⁶
- e. the provision of educational services to the Class Members, pursuant to the provisions of the *Indian Act*;²⁵⁷ and
- f. the inspection and supervision of the Innu Day Schools and all activities that took place and for full and frank reporting to Departmental officials and to the families with respect to conditions in all Innu Day Schools and all activities that took place therein.²⁵⁸

186. Canada is pled to have breached these duties, causing foreseeable harm to the Class Members. The gravamen of Canada's breach was its allowance of a "program of forced integration of Innu children through the institution of Innu Day Schools" despite the foreseeability of

²⁵⁴ Proposed Second Amended Statement of Claim at para 44b.

²⁵⁵ Proposed Second Amended Statement of Claim at para 44e.

²⁵⁶ Proposed Second Amended Statement of Claim at para 44g.

²⁵⁷ Proposed Second Amended Statement of Claim at para 44f.

²⁵⁸ Proposed Second Amended Statement of Claim at para 44i.

“profound” injury to the Class Members as a result of this program, and its failure to monitor, oversee, supervise and control the Innu Day Schools to prevent the abuses which did occur.²⁵⁹

187. The Claim discloses two bases for Canada’s proximity to the Class Members in respect of the Innu Day Schools giving rise to the duties enumerated above.

188. The first basis for Canada’s proximity to the Class Members is its exclusive legislative authority for “Indians” under s. 91(24) of the *Constitution Act, 1867*, and its responsibility for the welfare of all Indigenous peoples, including the Innu of Labrador.²⁶⁰ Canada’s unilateral authority over the Innu of Labrador and their children is pled to have been exercised in the context of a program to intentionally assimilate and deculturate the Innu of Labrador.²⁶¹

189. The second basis for Canada’s proximity is the formal and informal agreements it entered with the Province to establish, fund and administer the Innu Day Schools as the sole and compulsory form of education for the Innu of Labrador, in service of its “colonial effort” to assimilate the Innu.²⁶²

190. The vital interests implicated by the Innu Day Schools reinforce Canada’s proximity to the Class Members. The physical and psychological health of students, language, culture, traditions, values and family integrity of the Innu of Labrador broadly were at stake in how the Innu Day Schools were supervised and operated.

²⁵⁹ Proposed Second Amended Statement of Claim at para 43.

²⁶⁰ Proposed Second Amended Statement of Claim at para 10.

²⁶¹ Proposed Second Amended Statement of Claim at paras 30 and 32-33.

²⁶² Proposed Second Amended Statement of Claim at paras 29-30.

191. It is not plain and obvious that the duties of care alleged against Canada are foreclosed by policy reasons. There is no spectre of “indeterminate and unreasonable liability to a limitless population”,²⁶³ nor any contradictory overarching statutory or public duty. The beneficiaries of Canada’s duty of care are the ascertainable, fixed group of survivors of the Innu Day Schools and the Sheshatshiu and Mushuau Innu First Nations.

192. Sufficiently proximate relationships are identified through the use of established categories.²⁶⁴ Numerous authorities support the viability of a claim in negligence against Canada given the bases for proximity alleged in the Claim.

193. In *Anderson v. Canada (Attorney General)*, the Court of Appeal of Newfoundland and Labrador, upholding certification of a class proceeding in respect of Newfoundland’s residential school system, concluded that the class members’ claims in negligence against Canada disclosed a viable cause of action. The two sources for Canada’s proximity to the survivors of Newfoundland’s residential school identified by the Court of Appeal in *Anderson* are the same two sources of proximity pled in the Claim here.

194. The first source of proximity identified by the Court of Appeal in *Anderson* was the “special constitutional relationship” between “the Crown and aboriginals”, particularly in the context of Canada’s assimilative scheme of “forced integration of aboriginal persons” through compulsory attendance at residential schools:

69 The unique constitutional relationship existing here between Canada and the respondents, however, may give rise to different considerations. While the claim that Canada has a constitutional responsibility for the welfare of all aboriginal peoples including members of the Survivor Class, from the date of Confederation in 1949, might

²⁶³ *Price v Smith & Wesson Corporation*, 2025 ONCA 452 at para 68, Tab 39 of BoA.

²⁶⁴ *Cooper v Hobart*, 2001 SCC 79 (CanLII), 2001 SCC 79 at para 31, Tab 31 of BoA.

be a novel claim, it has some justification. This is particularly so in light of the respondents' allegations against Canada set out in paragraph 48 of these reasons including the continuation of "a systematic program of forced integration of aboriginal persons through the institutions of the schools when it knew or ought to have known that doing so would cause profound and permanent cultural, emotional and physical injury to the members of the Survivor Class". Looking at this unilateral exercise of control over aboriginal children, it is at least arguable that an analogy may be drawn between the situation herein existing and one or more of the relationships in which duties of care have been recognized, such as that existing between guardians and wards cited by the Supreme Court in *Broome* and later in *Elder Advocates*.²⁶⁵

195. The second source of proximity identified in *Anderson* was Canada's alleged "operational and administrative obligations, either separately or jointly with Newfoundland, to inspect and supervise the Schools attended by the Survivor Class to ensure that the residents were healthy and safe from various forms of abuse, after being involuntarily removed from the care of their families."²⁶⁶

196. The question of whether the claim in *Anderson* engaged Canada's immunity for matters of "core policy" was left to trial.²⁶⁷

197. *Anderson* is a binding authority on point which militates for certification of the Class Members' claims in negligence against Canada here.

198. The case at bar is analogous to *Anderson*. Like *Anderson*, Canada's special constitutional relationship with the Innu of Labrador, its assimilative program of forced integration through the funding and administration of purpose-built schools for an exclusively Indigenous student body, and Canada's conduct in entering agreements for the funding and administration of the Innu Day Schools are alleged to give rise to duties of care, whose breach caused foreseeable harms to the

²⁶⁵ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at para 69, Tab 9 of BoA [emphasis added].

²⁶⁶ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at para 76., Tab 9 of BoA

²⁶⁷ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at para 77, Tab 9 of BoA.

Class Members. As the Court of Appeal concluded in *Anderson*, “one cannot say that the facts pleaded are ‘manifestly incapable of being proven.’”²⁶⁸

199. Four recent class actions merits decisions on motions for summary judgment also support the viability of the Class Members’ cause of action in negligence.

200. In *St. Theresa Point First Nation et al. v. His Majesty the King*,²⁶⁹ the Federal Court granted summary judgment holding Canada liable in negligence for its failure to “take reasonable measures” to provide, or refrain from impeding, the access to adequate on-reserve housing for remote First Nations and their members.

201. The Court concluded that Canada had a proximate relationship with the Class, and owed a duty of care in respect of the provision of adequate on-reserve housing, on the basis of:

- a. its long-standing historical relationship and fiducial obligations to First Nations and their members revealed that Canada exercised a “significant degree of control over First Nations, and, by implication, First Nations members residing on reserves”;²⁷⁰ and
- b. Canada’s “constellation of laws, policies and funding agreements” governing on-reserve housing meant that it had “directly entered the field” in that domain, and that the First Nations had “no practical alternative” besides Canada to address their ongoing on-reserve housing crisis.²⁷¹

²⁶⁸ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at paras 78-79, Tab 9 of BoA.

²⁶⁹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926, Tab 40 of BoA.

²⁷⁰ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 248, Tab 40 of BoA.

²⁷¹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 251, Tab 40 of BoA.

202. In *Shamattawa First Nation v. Canada (Attorney General)*,²⁷² Justice Favel applied the reasoning in *St Theresa Point First Nation* to conclude that Canada also owed, and breached, a duty of care to members of First Nations whose reserves were subject to drinking water advisories that lasted for at least a year, and were commenced after June 2021. As in *St Therea Point First Nation*, the Court concluded that Canada exercised sufficient discretionary control over First Nations members living on-reserve such that it stood in a relationship of proximity, giving rise to a duty of care in respect of their on-reserve drinking water systems.²⁷³

203. In *Varley v. Canada*, the Plaintiffs alleged that Canada funded provincial initiatives that had the effect of removing Indigenous children from their homes, limiting their connection with their culture and identity.²⁷⁴ The Federal Court concluded that Canada owed a duty of care towards a class of Indigenous children placed for adoption pursuant to a provincial adoption program which was “directly funded” by Canada. The Federal Court reasoned that the direct funding of the adoption program, in the context of Canada’s “historical relationship” with Indigenous people, sufficed to create a proximate relationship between Canada and affected children subject to adoption under the program.²⁷⁵ As the Federal Court reasoned:

[174] When it funded the AIM program, the federal government knew that it would result in the permanent separation of Indigenous children from their families and communities. This was obvious from the grant application, and even from the name of the program itself, as adoption severs the relationship between a child and their biological parents [...]

[175] It is true that AIM was operated by employees of the Saskatchewan government. Some of the program’s documents describe it as a joint federal-provincial initiative; others

²⁷² *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927, Tab 41 of BoA.

²⁷³ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at paras 177-180, Tab 41 of BoA.

²⁷⁴ *Varley v Canada (Attorney General)*, 2025 FC 753 at paras 1-4, 27-32, Tab 42 of BoA.

²⁷⁵ *Varley v Canada (Attorney General)*, 2025 FC 753 at para 168, Tab 42 of BoA.

as a provincial program. These characterizations are immaterial. What matters is that funding the program enabled the harm it allegedly caused to class members.

[176] Of course, not every grant provided by the federal government creates proximity with persons affected by the program that receives the grant. In this case, however, the grant pertained to Indigenous peoples, with whom the federal Crown has a fiduciary relationship. Moreover, the servants of the federal Crown who approved the grant knew or must have known that the program would have serious impacts on the transmission of Indigenous identity and culture, which are interests of the utmost importance in this fiduciary relationship.

[177] Hence, to paraphrase Lord Atkin in *Donoghue* at 580, the Métis and non-status Indian children placed pursuant to the AIM program were so closely and directly affected by what the federal grant enabled the Saskatchewan government to do that the federal government ought reasonably to have them in contemplation when deciding whether to fund the program or not.²⁷⁶

204. The proposition in *Varley* that Canada’s funding of a provincial program targeted at Indigenous children may create a proximate relationship giving rise to duties of care if the provincial program will foreseeably result in “serious impacts” to interests of “utmost importance” applies to Canada’s funding of the Innu Day Schools under the series of joint federal-provincial agreements with the Province, and Canada’s pled intent to sever Innu children’s connection with the Indigenous identity and culture.²⁷⁷

205. Another supportive authority for the tenability of the Class Members’ claim in negligence against Canada is *Brown v. Canada (Attorney General)*, where the Ontario Superior Court granted summary judgment holding Canada liable for breaching a duty of care to Indigenous children subject to the “Sixties Scoop”. The Sixties Scoop was a practice from the 1960s to the 1980s in which provincial governments removed thousands of Indigenous children from their families and communities and put them in the care of non-Indigenous families.²⁷⁸ In 1965, Canada entered into

²⁷⁶ *Varley v Canada (Attorney General)*, 2025 FC 753 at paras 174-177, Tab 42 of BoA [emphasis added].

²⁷⁷ Proposed Second Amended Statement of Claim at paras 32-33.

²⁷⁸ *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 5, Tab 43 of BoA.

an agreement with the province to “make available to the Indians in the province the full range of provincial welfare programs”. Under this agreement, Ontario extended “provincial adoption services” to Indigenous children living on reserves in Ontario, resulting in thousands of children being apprehended by provincial child welfare authorities.

206. The Court held that, under the 1965 agreement, Canada undertook to consult with Indian bands subject to this new remit of provincial child welfare “services”, but failed to do so. This breach caused foreseeable harm to the communities from which children were apprehended and subsequently adopted. Notably, the Court found that both the removed children and their Bands had an important interest in receiving information about the child's heritage and entitlement to various federal benefits.²⁷⁹

207. In addition, Justice Belobaba concluded that Canada held a novel duty of care to Indigenous children subject to the Sixties Scoop, even in the absence of its undertaking in the 1965 agreement. The proximate relationship giving rise to this duty of care was found on the following bases:

- a. the “special and long-standing historical and constitutional relationship between Canada and aboriginal peoples;”²⁸⁰
- b. the settled law during the Class Period that Canada's care and welfare of the aboriginal peoples was a “political trust of the highest obligation;”²⁸¹

²⁷⁹ *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 54, Tab 43 of BoA.

²⁸⁰ *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 78, Tab 43 of BoA.

²⁸¹ *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 80, Tab 43 of BoA.

- c. “aboriginal peoples' concern to protect and preserve their aboriginal identity was and remains an interest of the highest importance;”²⁸² and
- d. the focus of the extended child welfare regime was a highly vulnerable group, namely, children in need of protection.²⁸³

208. *Brown* has been relied on in decisions certifying negligence claims against Canada in respect of classes of Indigenous children.²⁸⁴ The negligence claim pled against Canada tracks the basis for proximity identified in *Brown*.

(c) The Province’s negligence

209. The Province’s duties of care to the Class Members, its breach of these duties, and the foreseeability of the resulting harm suffered by Class Members are pled on substantially similar terms to Canada’s.²⁸⁵

210. The Claim discloses two bases for the Province’s proximity to the Class Members in respect of the Innu Day Schools giving rise to its duties of care.

211. The first basis for the Province’s proximity with the Class Members is the statutory framework governing the administration of education in the Province, which at all times during the Class Period placed mandatory duties upon the Province and its officers in respect of the Innu Day Schools, including supervisory duties.²⁸⁶ As pled in the Claim, these duties were imposed on

²⁸² *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 80, Tab 43 of BoA.

²⁸³ *Brown v Canada (Attorney General)*, 2017 ONSC 251 at para 81, Tab 43 of BoA.

²⁸⁴ See, e.g., *Boucher et al v The Government of Manitoba et al*, 2023 MBKB 182 at para 30, Tab 44 of BoA; *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at para 79, Tab 30 of BoA; *Riddle v Canada*, 2018 FC 641, Tab 45 of BoA

²⁸⁵ Proposed Second Amended Statement of Claim at paras 44 and 46.

²⁸⁶ Proposed Second Amended Statement of Claim at para 11.

the Province by, *inter alia*, the *Education (Departmental) (Amendment) Act*, 1950, SN 1950, No 13, the *Education Act, 1960*, SNL 1960, c 50, and the *Department of Education Act*, RSN 1968, No. 58, as amended from time to time, and their successor statutes.

212. The second basis for the Province's proximity is its actual undertaking in "establishing, operating, designating, funding, overseeing, supervising, administering, or otherwise being involved in the Innu Day Schools."²⁸⁷ With Canada, the Province was party to the various joint federal-provincial agreements under which the Innu Day Schools were funded, established and administered.²⁸⁸ The Province is pled to have directly administered the Innu Day Schools prior to 1960, after which point administration and supervision of the Innu Day Schools was shared with the RCSBL, and, after 1998, with the Labrador School Board.

213. The Plaintiffs have pleaded that, with Canada, the Province's undertaking in respect of the Innu Day Schools was the furtherance of its assimilative and deculturating agenda for the Innu of Labrador.

214. The claim in negligence against the Province engages the same vital interests of the Class Members as the claim in negligence against Canada. As with the claim in negligence against Canada, it is not plain and obvious that policy considerations would operate to bar a duty of care.

215. Numerous authorities have certified claims in negligence against the federal and/or provincial Crown on similar pleadings alleging proximity through statutory duties of supervision and/or an actual undertaking by government authorities.

²⁸⁷ Proposed Second Amended Statement of Claim at para 11.

²⁸⁸ Proposed Second Amended Statement of Claim at para 12.

216. In *Francis v. Ontario*,²⁸⁹ the Ontario Court of Appeal upheld summary judgment holding the Ontario government liable in negligence to a class of prisoners subject to administrative segregation in Ontario's prisons. The basis for the claim in negligence included allegations of Ontario's failures to (1) exercise its statutory discretion to stop the practice of administrative segregation when it posed a risk of permanent injury, (2) supervise its agents to "ensure that class members would not suffer unreasonable harm" and (3) "investigate ongoing harm" caused by its policies on administrative segregation.²⁹⁰

217. In *Gottfriedson* (the Day Scholars class action) claims in negligence were certified against the federal Crown on the basis of its pled "organization and management of Indian Residential Schools", at which it mandated compulsory attendance,²⁹¹ and its policy to "assimilate the Aboriginal Peoples of Canada into Euro-Canadian society" through the Indian Residential Schools.²⁹²

218. In *McLean* (the Indian Day Schools class action) claims in negligence were certified on consent against the federal Crown on the basis of its "establishment, funding, control, and maintenance of Indian Day Schools."²⁹³

219. In *Papassay v. The Queen (Ontario)*,²⁹⁴ a claim in negligence was certified against the Ontario government on the basis of pleadings that:

²⁸⁹ *Francis v Ontario*, 2021 ONCA 197, Tab 46 of BoA.

²⁹⁰ *Francis v Ontario*, 2021 ONCA 197 at para 100, Tab 46 of BoA.

²⁹¹ *Gottfriedson v Canada*, 2015 FC 706 at para 6, Tab 6 of BoA.

²⁹² *Gottfriedson v Canada*, 2015 FC 706 at para 18, Tab 6 of BoA.

²⁹³ *McLean v Canada (Attorney General)*, 2018 FC 642, Tab 47 of BoA.

²⁹⁴ *Papassay v The Queen (Ontario)*, 2015 ONSC 3438, Tab 48 of BoA.

- a. Ontario owed a duty of care to its Crown wards to, broadly speaking, pursue compensation for criminal and tortious acts suffered by the Crown wards, and advise Crown wards of their rights to do so upon attaining the age of majority.
- b. Ontario's proximity to its Crown wards arose, in part, from a statutory duty to "inspect or direct and supervise the inspection of the operation and records of [Children's Aid] societies". These children's aid societies were pled to have day-to-day responsibilities for the care and upbringing of the Crown Wards. The Court concluded that the statutory framework pled by the Plaintiffs left the Crown with the "power to rationalize and oversee the practices of the children's aid societies and regulate conditions for the children in the societies' care", sufficient to disclose a cause of action.²⁹⁵

220. A similar conclusion was reached in *G.G. v. Ontario*,²⁹⁶ where a claim in negligence was certified against the Ontario government in respect of its failure to prevent the province's Children's Aid Societies from issuing "birth alerts" – notifications to hospitals and other healthcare providers regarding pregnancies, issued to identify to medical staff that the patient raised a child protection concern in respect of the unborn child and to ensure that the relevant children's aid society would be notified when the birth took place. These birth alerts were alleged to have exceeded the bounds of the authorities of Ontario's Children's Aid Societies.

221. The Court in *G.G.* concluded that the statutory framework, which imposed an "overarching duty to supervise" the province's Children Aid Societies and conferred authority to make

²⁹⁵ *Papassay v The Queen (Ontario)*, 2015 ONSC 3438 at para 43, Tab 48 of BoA.

²⁹⁶ *GG v Ontario*, 2025 ONSC 3011, Tab 49 of BoA.

corrective changes to Ontario's child welfare policy, was sufficient to create a relationship of proximity with the class members (pregnant persons who had been subject to birth alerts).²⁹⁷

222. In *Robertson v. Ontario*,²⁹⁸ the Ontario Court of Appeal upheld certification of a claim in negligence against Ontario's Ministry of Long-Term Care in respect of its alleged failure to prevent the spread of COVID-19 in provincial long-term care homes. The Ministry of Long-Term Care's proximity with the *Robertson* class members (residents of affected long-term care homes) was found on the basis of language in Ontario's *Long-Term Care Homes Act*, SO 2007, c 8, which provided that Ontario had the "responsibility to take action where standards or requirements under this Act are not being met or where the care, safety, security and rights of residents might be compromised."²⁹⁹

223. It is trite that a school board or other entity which directly administers a school owes duties of care to the students attending the school. In *Rumley v. British Columbia*, former students of the provincial residential school for the deaf based their claim on the allegation of systemic negligence, claiming the Province was negligent in the operation and management of the school and in the failure to have in place management and operations procedures that would reasonably have prevented sexual abuse.³⁰⁰ In the decision certifying the class action, and reversing the dismissal by the applications judge, Mackenzie J.A held that the duty of care to take reasonable measures to protect students from abuse should not be controversial:

18 ... It is true that the claims of class members may span a period of 42 years and that standards of operation and management of the school may have changed several times over

²⁹⁷ *GG v Ontario*, 2025 ONSC 3011 at paras 75-77, 85-101, Tab 49 of BoA.

²⁹⁸ *Robertson Estate v Ontario*, 2024 ONCA 86, Tab 50 of BoA.

²⁹⁹ *Robertson Estate v Ontario*, 2024 ONCA 86 at para 15, Tab 50 of BoA.

³⁰⁰ *Rumley v British Columbia, 2001 SCC 69 (CanLII)*, 2001 SCC 69 at para 30, Tab 29 of BoA, aff'g 1999 BCCA 689.

that lengthy period... [T]he duty of the school to reasonably protect its students from sexual abuse is clear and immutable throughout the period that the school was in operation... The duty of care to take reasonable measures to protect students from abuse should not be controversial.³⁰¹

(d) Negligence – School Boards

224. The Plaintiffs allege that liabilities held by the School Boards in respect of the Innu Day Schools became vested in the Province by operation of statute, as set out above at Part I D.(i) above. In turn, the School Boards are alleged to have owed, and breached, duties of care to the Class Members, causing foreseeable harm.³⁰²

225. The basis for the School Board's proximity to the Class Members was their statutory duties under the *Education Act, 1960*, the *1970 Schools Act*, and successor statutes, and their actual day-to-day operation and oversight of the Innu Day Schools.³⁰³ As noted above, the duty of care of a school board to prevent harm to students attending its schools is well-settled.³⁰⁴

226. As noted above, any potential liability of school boards in negligence now belongs to the Province as a result of the Province's own statutes.

(iii) Breach of Fiduciary Duty

227. Fiduciary obligations can be *per se*, *ad hoc* or *sui generis*. The Plaintiffs have pleaded sufficiently to support claims that Canada and the Province owed and breached all three types of fiduciary duties toward the Class Members.

³⁰¹ [*LR v British Columbia*](#), 1999 BCCA 689 at para 18, Tab 51 of BoA.

³⁰² Proposed Second Amended Statement of Claim at paras 45 and 47.

³⁰³ Proposed Second Amended Statement of Claim at para 14.

³⁰⁴ See, e.g., [*CO v Williamson*](#), 2020 ONSC 3874 at paras 98-100, Tab 52 of BoA; [*Myers v Peel County Board of Education, 1981 CanLII 27 \(SCC\)*](#) (1981), 123 DLR 1 (SCC), Tab 53 of BoA.

(a) *Per se and ad hoc fiduciary duties*

228. *Per se* fiduciary relationships exist as a matter of course within the traditional categories of trustee-*cestui qui trust*, executor-beneficiary, solicitor-client, agent-principal, director-corporation and guardian-ward or parent-child, although the categories of fiduciary relationship are not closed.³⁰⁵ In the traditional categories of *per se* fiduciary relationships, the nature of the relationship itself defines the interest at stake.³⁰⁶

229. *Ad hoc* fiduciary duties are established on a case-by-case basis, where such duties do not fit into existing *per se* categories of fiduciary duties.³⁰⁷ *Ad hoc* fiduciary duties require 1) an undertaking by the alleged fiduciary, whether express or implied, to act in the best interests of the alleged beneficiaries; 2) a defined class of beneficiaries vulnerable to the fiduciary's control; and 3) that the beneficiaries have a legal or substantial practical interest that stands to be adversely affected by the alleged fiduciary's exercise of discretion or control.³⁰⁸

230. Courts have found that school boards, provinces and Canada owed a fiduciary duty to students on the basis that the fiduciary relationship between them is similar to the relationship between parent and child or guardian and ward.

231. In *G. (E.D.) v. Hammer*, the British Columbia Supreme Court found that a school board owed a fiduciary duty to a student on the basis that the fiduciary relationship between a school board and its students is similar to the relationship between parent and child.³⁰⁹ The Court held that, by virtue of its statutory position, the school board enjoys a position of overriding power and

³⁰⁵ [Alberta v Elder Advocates of Alberta Society, 2011 SCC 24 \(CanLII\)](#), 2011 SCC 24 at paras 33, 54.

³⁰⁶ [Ibid](#) at para 35.

³⁰⁷ [Ibid](#) at paras 29, 33.

³⁰⁸ [Ibid](#) at paras 30-36.

³⁰⁹ [EDG v Hammer](#) (1998), 1998 CanLII 15064 at para 40 (BCSC), affirmed, [EDG v Hammer, 2003 SCC 52 \(CanLII\)](#), 2003 SCC 52 at para 22.

influence over its students characterized by unilateral discretion. The school board therefore has a duty to provide a safe, non-threatening learning environment.³¹⁰ The decision was upheld by the Supreme Court of Canada.³¹¹

232. In *Seed v Ontario*, the Ontario Superior Court of Justice found, for the purposes of certification, that the Province owed students a fiduciary duty. The Court certified a class proceeding commenced by former students of a provincially-operated school for the visually impaired. The Court held that the Province of Ontario exercised control over the operation and management of the school which was under the authority of the Provincial Schools Branch within the Learning and Curriculum Division of the Ministry of Education. The Court held that the Province owed the plaintiff students a fiduciary duty similar to that of a parent, including a duty to ensure that reasonable care was taken of the students both physically and emotionally and that they were protected from intentional torts.³¹²

233. In *Anderson*, the Newfoundland Court of Appeal upheld the trial judge's certification of a class action brought against Canada by students who attended residential schools. While much of the analysis in this case related to a *sui generis* fiduciary duty, in upholding the trial judge's certification decision, the Court of Appeal relied in part on the Supreme Court's reasoning in *Elder Advocates*, which compared fiduciary duties owed by the Crown to Aboriginal peoples to traditional categories of fiduciary relationships such as "guardian-ward or parent-child."³¹³ As

³¹⁰ *EDG v Hammer*, *supra* note 5 at para 40, affirmed, *EDG v Hammer*, 2003 SCC 52 (CanLII), *supra* note 5.

³¹¹ *EDG v Hammer*, 2003 SCC 52 (CanLII), *supra* note 5 at para 22.

³¹² *Seed* at paras 5, 103-104.

³¹³ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at para 54, Tab 9 of BoA.

with claims in negligence, *Anderson* is binding precedent supporting the certification of the Class Members' claims in breach of fiduciary duty against Canada here.

(b) Canada, the Province and the School Boards owed a *per se* fiduciary duty to the Class Members

234. The proposed representative plaintiffs have pleaded sufficient facts to support a *per se* fiduciary duty by Canada, the Province and the School Boards based on their roles in establishing and administering the Innu Day Schools.

235. As pleaded at paragraph 12 of the Claim, the Innu Day Schools were administered indirectly with the support of Canada and the Province until in or around the 1960s, after which point administration of the Innu Day Schools was carried out by various school boards, together with the Province and Canada, pursuant to provincial statutes and a series of formal and informal agreements between the Province and Canada which started at the beginning of the class period and continued until September 2009.

236. Regarding provincial statutes generally, as noted above in Part I (D)(i), for the duration of the Class Period, at the provincial level, governance and operation of the school system was divided between the Department of Education, boards of education, school boards, and denominational representation. The functions and duties of these bodies varied with changes in legislation. Organizational overlap – as well as many decisions requiring ministerial approval – created a system of shared governance for the duration of the Class Period.

237. At the inter-governmental level, pursuant to s. 9 of the *Department of Education Act, S.N. 1968, No. 58* (the “1968 Act”), the powers, functions and duties of the Minister extended to and included all matters relating to education, including such co-operation with the Government of

Canada as may be necessary or desirable for carrying out any of the purposes of the 1968 Act. Similarly, s. 11 of the 1968 Act provided for the Minister to enter into agreements with, *inter alia*, the Government of Canada for the joint undertaking of projects relating to any aspect of any of the powers, functions or duties of the Minister.³¹⁴

238. Based on the foregoing, *G. (E.D.) v. Hammer* constitutes a binding precedent applicable in this case that the School Boards have a *per se* fiduciary obligation akin to a parent child fiduciary relationship.³¹⁵ *Per se* fiduciary duties owed to Class Members by Canada and the Province are arguably a natural extension of the traditional categories of *per se* fiduciary relationships existing between children and their parents, guardians, school boards, or other persons entrusted with their care. The proposed representative plaintiffs have pleaded sufficient facts to support same.

(c) Canada, the Province and the School Boards owed an *ad hoc* fiduciary duty to the Class Members

239. Additionally, the plaintiffs have pleaded sufficient facts to support an *ad hoc* fiduciary duty by Canada, the Province and the Schools Boards based on their roles in establishing and administering the Innu Day Schools.

240. Under the first requirement for an *ad hoc* fiduciary duty, there must be a “forsaking by the alleged fiduciary of the interests of all others in favour of those of the beneficiary, in relation to the alleged specific legal interest at stake”.³¹⁶ An alleged fiduciary owes the “utmost loyalty” to the beneficiaries.³¹⁷

³¹⁴ *The Department of Education Act, 1968* RSN 1968, No. 58, ss 9,11, Tab 127 of BoA.

³¹⁵ *EDG v Hammer* (1998), 53 BCLR 89 at para 40, Tab 54 of BoA, affirmed *EDG v Hammer, 2003 SCC 52 (CanLII)*, 2003 SCC 52, Tab 55 of BoA.

³¹⁶ *Alberta v Elder Advocates of Alberta Society, 2011 SCC 24 (CanLII)*, *supra* note 1 at para 31.

³¹⁷ *Ibid* at para 43.

241. The undertaking may be found in the relationship between the parties, in an imposition of a responsibility by statute, or under the express or implied terms of an agreement to act as trustee of the beneficiary's interest.³¹⁸ If the undertaking arises by implication from the relationship between the parties, the content of the obligation will vary depending on the nature of the relationship and should be determined by focusing on analogous cases.³¹⁹ With respect to finding an implied fiduciary duty on the government, the Supreme Court commented that "the necessary undertaking is met with respect to Aboriginal peoples by clear government commitments from the *Royal Proclamation of 1763* to the *Constitution Act, 1982* and considerations akin to those found in the private sphere," as well as where the relationship is "akin to one where a fiduciary duty has been recognized by private actors."³²⁰

242. Here, the undertaking arises from the relationship between the students attending the Innu Day Schools and Canada, the Province, and the School Boards, as the school's administrators and managers. Furthermore, acting in the best interests of the Innu is arguably an implied term of agreements between Canada and the Province in the establishment, funding, and operation of the Innu Day Schools.

243. The proposed representative plaintiffs have pleaded facts sufficient to establish that Canada, the Province and the School Boards undertook to act in the best interests of the class members in numerous ways. For Canada, these facts are listed above at para. 185. For the Province and School Boards, these are set out at paras. 44 and 45 of the Claim and include:

³¹⁸ *Ibid* at para 32.; *Galambos v Perez, 2009 SCC 48 (CanLII)*, 2009 SCC 48 at para 77, Tab 56 of BoA *Perez v. Galambos*, 2009 SCC 48, at para 77.

³¹⁹ *Alberta v Elder Advocates of Alberta Society, 2011 SCC 24 (CanLII)*, 2011 SCC 24 at para 46, Tab 57 of BoA.

³²⁰ *Alberta v Elder Advocates of Alberta Society, 2011 SCC 24 (CanLII)*, 2011 SCC 24 at para 48, Tab 57 of BoA.

- a. the promotion of the health, safety, and well-being of Innu in the Province;
- b. the provision and allocation of resources including funding and services to support the Innu, including educational services;
- c. the management, operation, and administration of the Department of Education and Early Childhood Education and the Department of Children, Seniors and Social Development and their predecessor Departments, and decisions taken by these Departments, their Ministers and their respective agents;
- c. the selection, control, training, supervision, and regulation of organizations and individuals to which the Province delegated the implementation and operation of the Innu Day Schools and their agents, including administrators, teachers, and staff;
- d. the provision of all educational services and opportunities to the Class Members;
- e. the care and education, control, and well-being of all members of the Survivor Class while they were in attendance at an Innu Day School;
- f. the provision of educational services to the Class Members;
- g. the inspection and supervision of the Innu Day Schools and all activities that took place and for full and frank reporting to Departmental officials and to the families with respect to conditions in all Innu Day Schools and all activities that took place therein; and
- h. preferring the interests of the Innu to their own interests.

244. Under the second requirement, the duty must be owed to a defined person or class of persons who must be vulnerable to the fiduciary's control, in the sense that the fiduciary has a discretionary power over them.³²¹ The proposed representative plaintiffs have pleaded facts sufficient to establish defined classes of persons vulnerable to Canada and the Province's control,

³²¹ *Ibid* at para 33.

namely the Survivor Class, referring to all Innu persons who attended an Innu Day School during the Class Period, and the Innu Governments Class, referring to the Innu government organizations that formally represent the Innu of Labrador.³²²

245. Under the third requirement, the alleged beneficiaries must show that they have “an identifiable legal or vital practical interest” that stands to be adversely impacted by the fiduciary’s exercise of discretion or control.³²³ The degree of control must be “equivalent or analogous to direct administration of that interest.”³²⁴ The interest must be a specific *private law* interest to which the person has a pre-existing distinct and complete legal entitlement.³²⁵

246. The proposed representative plaintiffs have pleaded facts sufficient to establish an identifiable legal or vital practical interest that stood to be adversely impacted by the Province’s and Canada’s exercise of discretion or control.

247. As pleaded at paragraphs 48-50 of the Claim, the Class Members exercised laws, customs, and traditions integral to their distinctive societies prior to contact with Europeans. They hold an Aboriginal right to learn, exercise, develop, use, teach, transmit, and revitalize, their culture and language (collectively, “Innu Language and Culture Rights”), and a right to control and govern the education and welfare of their children (“Education Right”).³²⁶ These are private law interests that are held by all Aboriginal peoples. They are crucial to the continuity and survival of the Innu, and

³²² Proposed Second Amended Statement of Claim at para 1.

³²³ [*Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 \(CanLII\)](#), *supra* note 1 at para 35.

³²⁴ *Ibid* at para 53.

³²⁵ *Ibid* at para 51.

³²⁶ Proposed Second Amended Statement of Claim, at paras 48-50.

infringement has resulted in losses being suffered by the Survivor Class, their descendants, and their communities as a whole, as represented by the Innu Governments Class.³²⁷

248. Courts have recognized that Indigenous children's interest in maintaining their culture, language and identity can constitute identifiable interests sufficient to ground an *ad hoc* fiduciary duty.³²⁸

249. Further, the strong correspondence with one of the traditional categories of fiduciary relationship, that of the parent-child or guardian ward relationship, supports a finding of an *ad hoc* fiduciary duty on the government.³²⁹

250. Two recent class actions merits decisions on motions for summary judgment support the viability of the Class Members' cause of action of *ad hoc* fiduciary duty: *St. Theresa Point First Nation et al. v His Majesty the King* and *Shamattawa First Nation et al. v Attorney General of Canada*.³³⁰ In both cases, the Federal Court granted the class members' motion for summary judgment, finding that Canada owed an *ad hoc* fiduciary duty to the class members.³³¹ The issue of whether Canada has breached its fiduciary duty will be addressed at Stage 2 of both actions.³³²

251. In *St. Theresa Point*, the Federal Court granted the class members' motion for summary judgment, finding that Canada owed an *ad hoc* fiduciary duty to the class members as individuals

³²⁷ Proposed Second Amended Statement of Claim, at paras 59-60.

³²⁸ *Paddy-Cannon v Canada (Attorney General)*, 2025 ONCA 394 at para 79; *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 193-194.

³²⁹ *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 (CanLII), *supra* note 1 at para 47; *Ross v Canada (Attorney General)*, 2018 SKCA 12 at paras 62-70, Tab 58 of BoA.

³³⁰ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926, Tab 40 of BoA; *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927, Tab 41 of BoA.

³³¹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 305, Tab 40 of BoA; *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 190, Tab 41 of BoA.

³³² *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 2, Tab 40 of BoA; *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 4, Tab 41 of BoA.

and to First Nations communities in a representative capacity, to take reasonable means to provide them with, ensure they were provided with, or refrain from impeding, access to adequate housing on First Nations reserves.³³³ The Court reached this conclusion based on the colonial legacy and Canada's control over funding and policies relating to housing on-reserve.³³⁴

252. First, the Court held that the *Indian Act* and the constellation of federal funding, programs and policies established that Canada has expressly and impliedly undertaken to act in the best interests of First Nations.³³⁵ The Court held that to find otherwise would ignore the legacy of colonization, which would not fit within the reconciliatory approach that is required to address disputes involving Canada and First Nations.³³⁶

253. The Court held that the Crown's fiduciary duty to First Nations flows from the Honour of the Crown, and the principles of the Honour of the Crown must guide consideration of the scope, extent and potential breach of the fiduciary duties.³³⁷ The Court held that the "Honour of the Crown adds a 'reconciliatory justice' approach in which 'courts can and must be creative in finding a remedy that advances reconciliation.'"³³⁸ The Court recognized that a reconciliatory justice approach is particularly required where a novel argument for breach of fiduciary duty is advanced, as was the case on this class action.³³⁹

254. The fact that Canada was at the time of the decision not administering housing on-reserve directly was of no moment. The fact that Canada was funding and developing policies in relation

³³³ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 195, 305, Tab 40 of BoA.

³³⁴ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 195, Tab 40 of BoA.

³³⁵ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 196, Tab 40 of BoA.

³³⁶ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 196, Tab 40 of BoA.

³³⁷ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 125, Tab 40 of BoA.

³³⁸ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 127, Tab 40 of BoA.

³³⁹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 127, 196, Tab 40 of BoA.

to housing on-reserve and that First Nations were vulnerable to that control was sufficient to establish an undertaking to ground an *ad hoc* fiduciary duty.³⁴⁰

255. The Court recognized that Canada historically exercised power, authority and control over all facets of First Nations' life – including housing – which created a dependency that persisted. At the time of the decision, Canada retained control of access to adequate housing on reserve based on its administration of the funding regime for on-reserve housing, and First Nations were vulnerable to that exercise of control, sufficient to establish an *ad hoc* fiduciary duty.³⁴¹

256. The Court held that the strings attached to Canada's funding regime, such as reporting requirements, funding conditions, and the long waits between the application process and the confirmation of funding, gave rise to discretionary control by Canada. The Court recognized, "Since Canada's inadequate funding may constitute all, or substantially all, of a First Nation's housing funding each year, the way that Canada administers this funding, and the control that it asserts, dictates what housing can be built, where housing can be built, and when housing can be built."³⁴² Canada's administration over funding dictated the nature of housing on reserve, constituting discretionary control, and a correlated undertaking to act in the First Nations' best interests. The Court held:³⁴³

[171] Canada is correct in stating that it is not presently directly involved in administering housing nor is Canada actually swinging any hammers. However, [...] the complex web of policies, funding arrangements and non-ISC programs such as with CMHC's *National Housing Act* section 95 housing loans, does point to much more control than Canada acknowledges. The complex web, the requirements to submit funding proposals and adhere to any conditions of funding along with waiting for the bureaucracy to determine what amount and when the funding will flow all point to a significant degree of control despite

³⁴⁰ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 171, 173, 195, Tab 40 of BoA.

³⁴¹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 166-175, 195, Tab 40 of BoA.

³⁴² *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 167, Tab 40 of BoA.

³⁴³ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 171, Tab 40 of BoA.

no hammers being presently swung. This is sufficient to establish the discretionary level of control.

257. The Court held “that direct administration or control is not required, particularly where the Crown is involved. What will suffice as evidence of the exercise of discretionary control is the scope of the exercise of discretion and vulnerability, which exists here.”³⁴⁴

258. The Court held that Canada’s funding arrangements and control over funding, and that First Nations were vulnerable to that control, were sufficient to establish that Canada exerted control over First Nations’ on-reserve housing, and that this constituted an undertaking to act in the First Nations’ best interests.³⁴⁵

259. Second, the Court held that First Nations and status Indians resident on reserve “were vulnerable to Canada’s control over housing policy and control over how funding is accessed.”³⁴⁶ This vulnerability was created by the reserve system, the legacy of the *Indian Act*, “and the control that Canada has exerted and continues to exert over how funding is accessed by and distributed to First Nations.”³⁴⁷ The creation of reserves in remote areas where there are limited opportunities for economic development created further dependence on Canada, exacerbating the vulnerability of First Nations.³⁴⁸

260. Third, the Court held that the class members’ practical interest in housing on reserve has been affected by Canada’s “significant exercise of discretion and control.”³⁴⁹ The Court recognized

³⁴⁴ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 174, Tab 40 of BoA.

³⁴⁵ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 171, 173, 195-196, Tab 40 of BoA.

³⁴⁶ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 197, Tab 40 of BoA.

³⁴⁷ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 197, Tab 40 of BoA.

³⁴⁸ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 197, Tab 40 of BoA.

³⁴⁹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 197, Tab 40 of BoA.

that if First Nations were unable to navigate the complex web of housing-related funding processes or to have an economic base upon which to create their own source revenues to alleviate the massive housing shortage, they would not have access to a safe supply of housing on reserve, nor to manage the existing stock of homes that required major injections of capital to be rendered livable and safe.³⁵⁰

261. The Court held that the fact that on its face there would appear to be a conflict between Canada's potential loyalty to act in the Class Members' best interest in relation to on-reserve housing, and other government priorities, was no bar to a finding of *ad hoc* fiduciary duty, because "the relationship between Canada and First Nations is a special one unlike the relationship Canada has with the rest of Canadian society."³⁵¹

262. In *Shamattawa*, the Federal Court likewise granted the class members' motion for summary judgment, finding that Canada owed an *ad hoc* fiduciary duty to the class members as individuals and to First Nations communities in a representative capacity to provide access to safe drinking water on First Nations reserves.³⁵² The Court reached this conclusion on the same legal basis as in *St. Theresa Point*, as there was evidence of discretionary control being exercised by Canada over the access to safe drinking water by vulnerable on-reserve First Nations, and an undertaking by Canada to act in the best interests of First Nations.³⁵³

263. As in both *St. Theresa Point* and *Shamattawa*, the representative plaintiffs have pleaded sufficient facts to establish that Canada's historical exercise of power, authority and control over

³⁵⁰ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 198, Tab 40 of BoA.

³⁵¹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 194, Tab 40 of BoA.

³⁵² *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at paras 179, 190, Tab 41 of BoA.

³⁵³ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at paras 177, 179, Tab 41 of BoA.

the Innu's lives has created a dependency that persists to this day.³⁵⁴ The Plaintiffs have sufficiently pled to support the argument that Canada's "complex web of policies, funding arrangements"³⁵⁵ and control over funding constituted a significant, discretionary level of control over the Innu Day Schools, and an undertaking to act in the Class Members' best interests, and that the Class Members' interests were vulnerable to Canada's significant exercise of discretion and control. To find otherwise would ignore the legacy of colonization, and would not fit with the Honour of the Crown and the reconciliatory justice approach that is required in this case.³⁵⁶

264. The fact that there might on its face appear to be a conflict between Canada's potential loyalty to act in the Class Members' best interests in relation to the Innu Day Schools and other government priorities is no bar to the finding of an *ad hoc* fiduciary duty, given the "special" relationship between Canada and First Nations, that is "unlike the relationship Canada has with the rest of Canadian society."³⁵⁷

265. The representative plaintiffs have also pled sufficient facts to establish that the Province's and School Board's administration of the Day Schools constituted a significant, discretionary level of control over the Innu Day Schools and an undertaking to act in the Class Members' best interests, and that the Class Members' interests were vulnerable to the Province's and the School Board's significant exercise of discretion and control. Unlike Canada in *St. Theresa Point* and *Shamattawa*, the Province and the School Board were the parties "directly involved in

³⁵⁴ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 166, Tab 40 of BoA.

³⁵⁵ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 171, Tab 40 of BoA.

³⁵⁶ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 127, 196, Tab 40 of BoA.

³⁵⁷ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 194, Tab 40 of BoA.

administering” the Innu Day Schools, and “actually swinging” the proverbial hammers.³⁵⁸ This is sufficient to establish an *ad hoc* fiduciary duty for the purposes of certification.

(d) Canada and the Province owed a *sui generis* fiduciary duty

266. The Crown’s *sui generis* fiduciary duties are unique to the Crown-Indigenous relationship. The origins of the *sui generis* fiduciary duty lie in protecting the interests of Indigenous peoples in recognition of the “degree of economic, social and proprietary control and discretion asserted by the Crown” over them, which left Indigenous peoples “vulnerable to the risks of government misconduct or ineptitude.”³⁵⁹

267. A *sui generis* fiduciary duty arises where there is (1) a specific or cognizable Aboriginal interest; and (2) a Crown undertaking of discretionary control over that interest.³⁶⁰ The specific or cognizable Aboriginal interest must be sufficiently independent of the Crown’s executive and legislative functions to give rise to a responsibility in the nature of a private law duty.³⁶¹ The Crown undertaking need not confer on the Crown complete or exclusive control, provided that the Crown had a degree of control that left the cognizable Aboriginal interest vulnerable to the adverse exercise of its discretion.³⁶²

268. A *sui generis* fiduciary duty permits the Crown to balance competing interests, but the Crown cannot shirk its fiduciary obligations merely by invoking competing interests, and must reconcile competing interests fairly.³⁶³ The Crown has a duty to act in the best interests of the

³⁵⁸ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 171, Tab 40 of BoA.

³⁵⁹ *Wewaykum Indian Band v Canada*, 2002 SCC 79 (CanLII), 2002 SCC 79 at para 80, Tab 59 of BoA.

³⁶⁰ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 234, Tab 60 of BoA.

³⁶¹ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 238, Tab 60 of BoA.

³⁶² *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 (CanLII), 2018 SCC 4 at para 76, Tab 61 of BoA.

³⁶³ *Wewaykum Indian Band v Canada*, 2002 SCC 79 (CanLII), 2002 SCC 79 at paras 96, 104, Tab 59 of BoA.

beneficiary,³⁶⁴ and act in relation to the specific Aboriginal interest with loyalty and in good faith, and with ordinary diligence.³⁶⁵

269. On the first step of the test, the proposed representative plaintiffs plead that they have specific and cognizable Aboriginal interests, including an Aboriginal right to learn, exercise, develop, use, teach, transmit, and revitalize their culture and language (collectively, “Innu Language and Culture Rights”) and a right to control and govern the education and welfare of their children (“Education Right”).³⁶⁶ The Innu Language and Culture Rights and Education Right are pre-existing Aboriginal rights that exist independently of the Crown’s executive and legislative functions, such that they give rise to a responsibility in the nature of a private law duty.

270. On the second step of the test, the plaintiffs plead that Canada and the Province have undertaken discretionary control over the Innu’s Language and Culture Rights and Education Right in numerous ways, as set out at paragraph 243 above.

271. The fact that there was a division of responsibility between the Crowns and that the Crowns relied on one another in funding and administering the schools is no bar to a finding of an undertaking of discretionary control by Canada or the Province.³⁶⁷

272. Numerous authorities support the viability of a claim of breach of *sui generis* fiduciary duty against Canada and the Province.

³⁶⁴ [*Manitoba Metis Federation Inc v Canada \(Attorney General\)*, 2013 SCC 14 \(CanLII\)](#), 2013 SCC 14 at para 47, Tab 62 of BoA.

³⁶⁵ [*Ontario \(Attorney General\) v Restoule*](#), 2024 SCC 27 at para 234, Tab 60 of BoA.

³⁶⁶ Proposed Second Amended Statement of Claim at para. 44(j), 46(o), 53.

³⁶⁷ [*Williams Lake Indian Band v Canada \(Aboriginal Affairs and Northern Development\)*, 2018 SCC 4 \(CanLII\)](#), 2018 SCC 4 at para 76, Tab 61 of BoA; *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 171, Tab 41 of BoA

273. In *Anderson*, cited above, the Newfoundland Court of Appeal upheld the trial judge's certification of a class action brought against Canada by students who attended residential schools. The Court of Appeal upheld the trial judge's conclusion that there was a certifiable cause of action in fiduciary duty, based on the representative plaintiffs' right to the protection of their cultural identity and well-being, and "Canada's over-arching responsibility for the health and welfare of aboriginal persons attending residential schools", which constituted an undertaking of discretionary control.³⁶⁸

274. In *St. Theresa Point*, cited above, the Federal Court granted the class members' motion for summary judgment, finding that Canada owed a *sui generis* fiduciary duty to the class members as individuals and to First Nations communities in a representative capacity, to take reasonable means to provide them with, ensure they were provided with, or refrain from impeding, access to adequate housing on First Nations reserves.³⁶⁹

275. The Court held that Canada exercised discretionary control over the First Nations' interest in on-reserve housing because Canada historically exercised power, authority and control over all facets of First Nations' life – including housing – which created an ongoing dependence. Moreover, at the time of the decision, Canada retained control of access to adequate housing on reserve based on its administration of the funding regime for on-reserve housing, and First Nations were vulnerable to that exercise of control.³⁷⁰ The Court held that "direct administration or control is not required, particularly where the Crown is involved. What will suffice as evidence of the

³⁶⁸ *Anderson v Canada (Attorney General)*, 2010 NLTD 106 at paras 52-56, 62-63, Tab 13 of BoA; upheld on appeal, *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at paras 54, 63, Tab 9 of BoA.

³⁶⁹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 154, 306, Tab 40 of BoA.

³⁷⁰ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at paras 159, 166-175, Tab 40 of BoA.

exercise of discretionary control is the scope of the exercise of discretion and vulnerability, which exists here.”³⁷¹

276. In *Shamattawa*, also cited above, the Federal Court also granted the class members’ motion for summary judgment, finding that Canada owed a *sui generis* fiduciary duty to the class members as individuals and to First Nations communities in a representative capacity, to provide access to safe drinking water on First Nations reserves.³⁷² The Court held that the Crown exercised discretionary control in relation to the First Nations’ interest in water on reserve, given “the ‘thicket’” of Canada’s “required guidelines, protocols and policies that are a condition of funding.”³⁷³ The Court held that “the scope of discretionary control, and the ability to exert that control” by Canada demonstrated the existence of a fiduciary duty.³⁷⁴

277. The Court recognized that in the context of making out a fiduciary duty, “[d]iscretionary control is not about the form or extent of the power to affect the interest, but it is precisely the vulnerability of the interest to the risk of fiduciary misconduct or ineptitude that demonstrates a fiduciary duty is owed.”³⁷⁵ The Court held that on-reserve First Nations are uniquely vulnerable to Canada’s failure to discharge its obligations.³⁷⁶ The fact that there was some shared control over the interest does not negate the existence of a fiduciary duty.³⁷⁷

278. In *Fisher River*, the Federal Court also certified a class action on the basis that an Aboriginal right to culture and language constituted a specific and cognizable Aboriginal interest,

³⁷¹ *St. Theresa Point First Nation et al. v His Majesty the King*, 2025 FC 1926 at para 174, Tab 40 of BoA.

³⁷² *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 190, Tab 41 of BoA.

³⁷³ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at paras 167-170, Tab 41 of BoA.

³⁷⁴ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 170, Tab 41 of BoA.

³⁷⁵ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 171, Tab 41 of BoA.

³⁷⁶ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 171, Tab 41 of BoA.

³⁷⁷ *Shamattawa First Nation et al. v Attorney General of Canada*, 2025 FC 1927 at para 171, Tab 41 of BoA.

and that Canada's administration of a child welfare program constituted a Crown undertaking, that could give rise to a *sui generis* fiduciary duty.³⁷⁸ The Federal Court held that, for the purposes of certification, the representative plaintiffs had "identified a 'cognizable interest' by referencing their Aboriginal rights being infringed", which were "the right to culture and language, amongst others" and that the Crown undertook discretionary control in relation to these rights by administering the child welfare program, giving rise to a *sui generis* fiduciary duty for the purposes of certification.³⁷⁹

279. In *Neal v Canada (Attorney General)*, the British Columbia Supreme Court also certified a class action on the basis that an Aboriginal right to culture and identity constituted a specific and cognizable Aboriginal interest, and that Canada's discretionary power to fund child welfare programs carried out by the Province constituted a Crown undertaking, that could constitute a *sui generis* fiduciary duty.³⁸⁰ The Court found that "the list of categories of cognizable Indigenous interests is not closed, and such interests may apply to other kinds of relationships between the Crown and Indigenous people beyond real estate", as this area of Aboriginal law is "rapidly evolving."³⁸¹ The court held that the plaintiffs had established a legal interest in the class members' Indigenous culture and identity, family unity, and connections, that may be protected by s. 35, sufficient to trigger a *sui generis* fiduciary duty for the purposes of certification.³⁸² Further, despite the fact that Canada had retracted its support for the child welfare programs for off-reserve Indigenous children at the beginning of the claim period and relied on the Province to service off-reserve Indigenous children, the Court found that Canada's wielding of discretionary power over

³⁷⁸ *Fisher River Cree Nation v Canada (Attorney General)*, 2025 FC 561 at paras 58-60, 114.

³⁷⁹ *Fisher River Cree Nation v Canada (Attorney General)* at paras 58-60.

³⁸⁰ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at para 204, Tab 30 of BoA.

³⁸¹ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at para 184, Tab 30 of BoA.

³⁸² *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 184, 204, Tab 30 of BoA.

funding programs for off-reserve children through funding decisions and agreements could constitute a Crown undertaking sufficient to ground a duty.³⁸³ The Court found that Canada's denial and willful ignorance caused the class to suffer damages, if established, would constitute a breach of Canada's *sui generis* fiduciary duty.³⁸⁴

280. Similarly, the Court of Appeal for Ontario held, on a motion to strike decision of a class action, that it was not plain and obvious that the children of former students of Indian residential schools could not be owed a fiduciary duty by the Crown "to act as a protector of their aboriginal rights, including the protection and preservation of their language, culture, and way of life."³⁸⁵

281. In *Gottfriedson* (the Day Scholars class action) a claim of breach of fiduciary duty was certified against Canada on the basis of pleadings that "through the purpose, operation or management of the residential schools", Canada breached its fiduciary duty to protect the class members from actionable mental harm, and its fiduciary duty not to destroy the class members' language and culture.³⁸⁶

282. As in these cases, the proposed representative plaintiffs have pleaded sufficient facts for certification to establish a breach of *sui generis* fiduciary duty by Canada and the Province.

(e) Canada, the Province and the School Boards breached a *per se* and *ad hoc* fiduciary duty, and Canada and the Province breached a *sui generis* fiduciary duty

283. Canada, the Province and the School Boards are pled to have breached their fiduciary duties in numerous ways at paras. 43, 46 and 47 of the Claim. This includes Canada, the Province, and

³⁸³ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 202, 204, Tab 30 of BoA.

³⁸⁴ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at para 204, Tab 30 of BoA.

³⁸⁵ *Bonaparte v Canada* (2003), 2003 CanLII 40016 at para 7 (ONCA).

³⁸⁶ *Gottfriedson v Canada*, 2015 FC 706 at paras 20, 95-96.

the School Boards' roles in failing to properly screen the individuals to whom they delegated implementation of the Innu Day Schools system; in failing to adequately supervise and control the day schools and teachers; in permitting Survivor Class Members to be assaulted and battered; and in failing to protect the Survivor Class Members from abuse while attending the Innu Day Schools. This also includes their roles in allowing a system of forced integration of the Innu when they knew or ought to have known that doing so would cause profound cultural, psychological, emotional and physical injury; and conducting Innu education in a way that interfered the Innu's Language and Culture Rights and Education Rights.³⁸⁷

(iv) Breach of Constitutional Duties – Canada and the Province

(a) Infringements of Aboriginal Rights

284. The Plaintiffs have pleaded that Canada and the Province have breached their Aboriginal rights, including the Innu Language and Culture Rights, and Education Right as defined above by conducting education in a way that interfered with these rights.³⁸⁸

285. Aboriginal rights are protected under s 35(1) of the *Constitution Act, 1982*: “The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.”³⁸⁹ “Aboriginal rights ‘arise from the fact that aboriginal people are aboriginal,’” and flow from the commitment by Canadians in s. 35 to “protect and preserve constitutional space for Aboriginal peoples to be Aboriginal.”³⁹⁰ The Plaintiffs have pleaded, at para 50, that the Class

³⁸⁷ Proposed Second Amended Statement of Claim at paras. 42-47, 50-51, 55-57.

³⁸⁸ Proposed Second Amended Statement of Claim at paras 42(j), 43(p), 44(j), 47(o).

³⁸⁹ *Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, Tab 120 of BoA.

³⁹⁰ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at para 475, Tab 63 of BoA, citing *R v Van der Peet*, 1996 CanLII 216 (SCC) (1996), 137 DLR 289 at para 19 (CA), Tab 64 of BoA; *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at para 33, Tab 65 of BoA.

Members are among the Aboriginal peoples of Canada within the meaning of s. 35 of the *Constitution Act, 1982*.

286. Courts have recognized that Aboriginal culture, values and identity underpin the distinctiveness of Aboriginal peoples, and the survival of Aboriginal peoples as distinct peoples requires Aboriginal peoples to be able to protect their children, ensure their children's well-being and pass on cultural values to their children.³⁹¹

287. Aboriginal rights can be established as specific rights, unique to the Aboriginal group holding them, or generic rights, the basic contours of which are the same between Aboriginal peoples.³⁹² Specific rights are established by showing that, prior to the arrival of Europeans, an activity is “an element of a practice, custom or tradition integral to the distinctive culture of the aboriginal group claiming the right.”³⁹³ The Plaintiffs plead, at para. 51, that the “Innu communities have sustained their distinctive cultures through their own way of life, speaking their language Innu-aimun, practicing their customs and traditions, and freely transmitting all of this from one generation to the next”, since time immemorial, prior to contact with Europeans. The Plaintiffs further plead that the Innu Language and Culture Rights and the Education Right are central to the Innu as a people.³⁹⁴

288. Courts have also recognized generic Aboriginal rights protected by s. 35. For example, in *Renvoi QCCA*, the Quebec Court of Appeal held that the right to self-government in relation to

³⁹¹ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 46-55, Tab 63 of BoA.

³⁹² *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 46-55, Tab 63 of BoA.

³⁹³ *R v Van der Peet, 1996 CanLII 216 (SCC)* (1996), 137 DLR 289 at para 46 (CA), Tab 64 of BoA.

³⁹⁴ Proposed Second Amended Statement of Claim at para 49.

child and family services was a generic right protected by s. 35.³⁹⁵ In *R c Montour*, the Quebec Superior Court applied the QCCA's approach in *Renvoi QCCA* and held that some Aboriginal rights are generic rights, and found that the right to freely pursue economic development is one such generic right.³⁹⁶ Courts have also found that Aboriginal title is also a form of generic Aboriginal right, since it is identical in scope for all title holders.³⁹⁷

289. In recognizing the right to self-government in relation to child and family services, the Quebec Court of Appeal modified the test for Aboriginal rights set out by the Supreme Court in *Van der Peet* to reflect that the right in question pertained to Aboriginal peoples as peoples, in that it was a right “intimately tied to the cultural survival of Aboriginal peoples, but is not necessarily based on the practice of distinctive cultural activities in the strict sense.”³⁹⁸ The court found this right was generic because the jurisdiction to regulate child and family services “is essential to the cultural security and survival of each.”³⁹⁹

290. Similarly here, language and culture rights, and the right to control and govern the education and welfare of children, are common to all Aboriginal peoples and necessary to all Aboriginal peoples continuing to be distinct peoples. Accordingly, the Proposed Representative Plaintiffs have sufficiently plead recognizable Aboriginal rights, and as outlined below, an infringement of these rights.⁴⁰⁰

³⁹⁵ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 486-489, Tab 63 of BoA.

³⁹⁶ *R c Montour*, 2023 QCCS 4154 at paras 1371-1372, Tab 66 of BoA.

³⁹⁷ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at paras 422-425, Tab 63 of BoA.

³⁹⁸ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at para 486, Tab 63 of BoA.

³⁹⁹ *Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*, 2022 QCCA 185 at para 487, Tab 63 of BoA.

⁴⁰⁰ Proposed Second Amended Statement of Claim at paras 49 and 51.

291. The infringement of similar Aboriginal rights has been certified in other similar class actions. For example, in *Fisher River*, a class action where ten First Nations sought to advance claims about losses suffered related to culture, tradition and spiritual practices when the First Nations' children were removed from their communities because of Canada's operation of child welfare programs. The Court certified the plaintiffs' Aboriginal Rights claim. The plaintiffs' pleadings asserted that "Aboriginal rights have been recognized to include cultural and social rights, and rights associated with and dependent on land rights and the right not to be separated from First Nations lands." They further pled that "Canada has a constitutional duty not to interfere with these Aboriginal rights, such as by taking First Nations children away from their families, communities, nations, and other purveyors of their nation's history, religions, spiritual practices, customs, and languages." They also pled that "[t]his is also how the mass scooping of First Nations children and disconnecting them from their communities has systemically prevented the teaching and passing on of First Nations practices, religions, customs, languages, and traditions."⁴⁰¹

292. The Court in *Fisher River* found that the First Nations:

pleaded material facts that these rights are integral to the distinctive cultures of their respective pre-contact societies. Indeed, it is hard to imagine anything as 'integral' or of 'central significance' to a First Nation than the unique cultures, spiritualities, and languages that constitute day-to-day life in their respective societies. I am satisfied that this Aboriginal right to culture, spirituality and language is demonstrably connected to, and reasonably regarded as a continuation of pre-contact practices.⁴⁰²

293. As in *Fisher River*, the Plaintiffs have also plead that Canada and the Province conducted Innu education in a way that interfered with these Aboriginal rights, and in doing so infringed on

⁴⁰¹ *Fisher River Cree Nation v Canada (Attorney General)*, 2025 FC 561 at para 67 [*Fisher*].

⁴⁰² *Fisher* at para 75 [emphasis added].

the Class Members' Aboriginal rights, causing class members harm.⁴⁰³ They plead that these infringements substantially interfered with Class Members' ability to exercise their rights, caused them undue hardship, constituted an unreasonable limitation on their rights, and denied them their preferred means of exercising their rights.⁴⁰⁴ This is consistent with caselaw on infringements of Aboriginal rights, which requires consideration of whether the imposed limitation of the right is unreasonable, imposes undue hardship, or denies the rightsholder their preferred means of exercising that right.⁴⁰⁵

294. Considering the above, the Plaintiffs' pleadings sufficiently disclose a cause of action of infringement of Aboriginal rights by Canada and the Province.

(b) Breaches of Duties Flowing from the Honour of the Crown

295. The honour of the Crown was engaged when Canada and the Province undertook their respective roles regarding Innu education and Indigenous peoples in 1949 at Confederation, and through Canada and the Province allowing, establishing, operating, designating, funding, overseeing, regulating and administering the Innu Day Schools.⁴⁰⁶

296. The honour of the Crown is "the principle that servants of the Crown must conduct themselves with honour when acting on behalf of the sovereign."⁴⁰⁷ The underlying purpose of this principle is to "facilitate the reconciliation of the Crown's interests and those of Indigenous

⁴⁰³ Proposed Second Amended Statement of Claim at paras 43(p) and 46(o).

⁴⁰⁴ Proposed Second Amended Statement of Claim at para 50.

⁴⁰⁵ *R v Gladstone*, [1996] 2 SCR 723 at para 54, Tab 67 of BoA

⁴⁰⁶ Proposed Second Amended Statement of Claim at paras 27, 43, 46.

⁴⁰⁷ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 71, Tab 60 of BoA, citing *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 (*CanLII*), 2013 SCC 14 at para 65, Tab 62 of BoA.

peoples.”⁴⁰⁸ As a result of this “special relationship,”⁴⁰⁹ the honour of the Crown is at stake “in all its dealings with Aboriginal peoples.”⁴¹⁰ It is well established that it is the honour of the Crown that gives rise to a *sui generis* fiduciary duty, where the Crown exercises control over specific Indigenous interests.⁴¹¹

297. Recently, in *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan* [Takuhikan], the Supreme Court noted that the “common element among the circumstances that the Court has so far recognized as engaging the honour of the Crown is that they relate to the reconciliation of specific Indigenous claims, rights or interests with the Crown’s assertion of sovereignty.”⁴¹² The Court then extended the principle into the private law realm to apply to contracts between the Crown and Indigenous groups, where the contract is entered into on the basis of a group’s “Indigenous difference, which reflects its distinctive philosophies, traditions and cultural practices,”⁴¹³ and where the contract relates to Indigenous self-government.⁴¹⁴

⁴⁰⁸ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 148, Tab 68 of BoA; *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para 22, Tab 69 of BoA.

⁴⁰⁹ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 147, Tab 68 of BoA, relying on *Mikisew Cree First Nation v Canada (Governor General in Council)*, 2018 SCC 40 at para 21, Tab 69 of BoA, per Karakatsanis J, quoting *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 at para 32, Tab 70 of BoA, and citing *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 (CanLII), 2013 SCC 14 at para 66, Tab 62 of BoA; see also *Manitoba Metis Federation* at para 67, quoting *Beckman v Little Salmon/Carmacks First Nation*, 2010 SCC 53, [2010] 3 SCR 103 at para 62, Tab 65 of BoA.

⁴¹⁰ *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 at para 17, Tab 70 of BoA.

⁴¹¹ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 156, Tab 68 of BoA, citing *Wewaykum Indian Band v Canada*, 2002 SCC 79 (CanLII), 2002 SCC 79 at paras 79, 81, Tab 59 of BoA, and *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 (CanLII), 2013 SCC 14 at para 73, Tab 62 of BoA; see also *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 SCR 511 at para 18, Tab 70 of BoA.

⁴¹² *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 156, Tab 68 of BoA.

⁴¹³ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 161, Tab 68 of BoA, quoting *Dickson v Vuntut Gwitchin First Nation*, 2024 SCC 10 at para 51, Tab 71 of BoA, quoting *Report of the Royal Commission on Aboriginal Peoples*, vol. 2, *Restructuring the Relationship* (1996) 234.

⁴¹⁴ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at paras 163, 168, 177, Tab 68 of BoA.

298. Here, the honour of the Crown arises in the same circumstances as the respective Crowns' *sui generis* fiduciary duties and common law duty of care. The Plaintiffs have pleaded that in undertaking Innu education, Canada and the Province necessarily impacted Aboriginal rights/interests central to the Innu as people: Innu language, Innu culture, and the right of the Innu to control and govern the education and welfare of their children.⁴¹⁵ Canada and the Province thus exercised their sovereignty in a manner that affected rights and interests of the Innu relating to the Innu's 'Indigenous difference' and self-governance respecting Innu education.⁴¹⁶ These pleaded facts are sufficient to engage the honour of the Crown.

299. The honour of the Crown is not a cause of action itself, but rather gives rise to specific obligations, which vary depending on the circumstances, where it is engaged.⁴¹⁷ Generally, the honour of the Crown imposes a high standard of conduct on the Crown and is one such public law rule that may, in some contexts, broaden the scope of Crown liability.⁴¹⁸ It is "a flexible and capacious doctrine that can 'measure and regulate conduct of the government in relation to aboriginal peoples.'"⁴¹⁹

⁴¹⁵ Proposed Second Amended Statement of Claim at para 53.

⁴¹⁶ Courts have acknowledged that language and culture go to the core of who Indigenous peoples are, see [*Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*](#), 2024 SCC 5 at para 112, Tab 72 of BoA; see also [*Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis*](#), 2022 QCCA 185 at para 494, Tab 63 of BoA; see also [*First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada \(for the Minister of Indian and Northern Affairs Canada\)*](#), 2016 CHRT 2, Tab 73 of BoA; [*Quebec \(Attorney General\) v Pekuakamiulnuatsh Takuhikan*](#), 2024 SCC 39 at paras 156, 161, Tab 68 of BoA, [*Dickson v Vuntut Gwitchin First Nation*](#), 2024 SCC 10 at para 51, Tab 71 of BoA, quoting *Report of the Royal Commission on Aboriginal Peoples*, vol. 2, *Restructuring the Relationship* (1996) 234.

⁴¹⁷ [*Quebec \(Attorney General\) v Pekuakamiulnuatsh Takuhikan*](#), 2024 SCC 39 at para 185, Tab 68 of BoA; [*Haida Nation v British Columbia \(Minister of Forests\)*](#), 2004 SCC 73, [2004] 3 SCR 511 at para 18, Tab 70 of BoA.

⁴¹⁸ [*Quebec \(Attorney General\) v Pekuakamiulnuatsh Takuhikan*](#), 2024 SCC 39 at para 12, Tab 68 of BoA.

⁴¹⁹ [*Ontario \(Attorney General\) v Restoule*](#), 2024 SCC 27 at para 219, Tab 60 of BoA, citing JTS McCabe, *The Honour of the Crown and its Fiduciary Duties to Aboriginal Peoples* (2008), at 53.

300. The honour of the Crown, once engaged, required Canada and the Province to undertake and exercise control over Innu education in a manner that would advance reconciliation of Innu rights and interests with asserted Crown sovereignty, as plead at paragraph 53.⁴²⁰ The Plaintiffs have further plead that the honour of the Crown required that Canada and the Province exercise diligence in ensuring education was delivered in a way that protected, or alternatively did not harm, Innu Language and Culture rights and protected, or alternatively did not harm, the welfare of Innu children.⁴²¹

301. While courts have not previously provided a standard for this specific circumstance, this type of standard is consistent with the existing caselaw. For example, in the treaty implementation context, courts have held that the honour of the Crown “requires the Crown to endeavor to ensure its obligations are fulfilled” with “due diligence”.⁴²² In instances where the honour of the Crown leads to a fiduciary duty, the standard imposed is that of a person of ordinary prudence managing their own affairs.⁴²³ In the context of Aboriginal rights infringement, the honour of the Crown requires that a legislative objective be attained in a manner consistent with the honour of the Crown, and that the Crown justify any legislation that is unreasonable, imposes undue hardship, or prevents rightsholders from their preferred means of rights exercise, leading to a meaningful diminution of that right.⁴²⁴

⁴²⁰ Proposed Second Amended Statement of Claim at para 53.

⁴²¹ Proposed Second Amended Statement of Claim at para 55.

⁴²² *Manitoba Metis Federation Inc v Canada (Attorney General)*, 2013 SCC 14 (CanLII), 2013 SCC 14 at para 79, Tab 62 of BoA. See also *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at paras 254-259, Tab 60 of BoA.

⁴²³ *Southwind v Canada*, 2021 SCC 28 (CanLII), 2021 SCC 28 at paras 60-64, Tab 74 of BoA; *Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development)*, 2018 SCC 4 (CanLII), 2018 SCC 4 at para 46, Tab 61 of BoA.

⁴²⁴ *R v Sparrow*, [1990] 1 SCR 1075, Tab 75 of BoA at 1109, 1114; *R v Gladstone*, [1996] 2 SCR 723 at para 43, Tab 67 of BoA.

302. In each circumstance, the honour of the Crown imposes a standard of conduct akin to due diligence: the Crown must fulfill its duties to protect Aboriginal rights and interests, or alternatively, to ensure it does not harm those rights and interests, in a diligent, prudent, and/or reasonable manner. The Plaintiffs have similarly plead at paragraph 55 of the Proposed Second Amended Statement of Claim that Canada and the Province were required to exercise due diligence in ensuring education was delivered in a way that protected, or alternatively did not harm, Innu Language and Culture rights and protected, or alternatively did not harm, the welfare of Innu children.⁴²⁵

303. In *Takuhikan*, the court found that the honour of the Crown raises the standard of conduct owed by the Crown and acts as an “additional public law obligation... superimposed” on the Crown’s contractual obligations in the private law context.⁴²⁶ The court described the honour of the Crown as not changing the terms of contractual agreements but rather modifying “how the obligations found therein are performed by requiring the Crown to act in a manner that fosters reconciliation.”⁴²⁷ Similarly here, the standard pleaded by the Plaintiffs at paragraph 55 of the Proposed Second Amended Statement of Claim reflects an additional obligation, superimposed on the Crowns’ respective common law duties, requiring that the Crowns’ exercise their control over Innu education in a manner that would advance the reconciliation of asserted Crown sovereignty

⁴²⁵ Proposed Second Amended Statement of Claim at para 55.

⁴²⁶ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 188, Tab 68 of BoA.

⁴²⁷ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 188, Tab 68 of BoA. See also para 187: “it is a matter of recognizing that the honour of the Crown requires the Crown, in negotiating and performing an agreement that has reconciliation as its backdrop, to meet a standard of conduct that is higher than in the context of an ordinary contractual relationship. (*Manitoba Metis Federation Inc v Brian Pallister et al*, 2021 MBCA 47 at para 56, Tab 76 of BoA; *Saskatchewan (Attorney General) v Witchehan Lake First Nation*, 2023 FCA 105 at para 130, Tab 77 of BoA.)

with Innu rights and interests relating to language, culture, and the right to control the education and welfare of their children.

304. While the honour of the Crown arising with a common law duty of care is a novel application of the doctrine, the fact that it is novel is no reason to strike it as a cause of action.⁴²⁸ This is particularly so in the Aboriginal law context. The honour of the Crown is an evolving doctrine, and case law has emphasized the need for Aboriginal law claims to be interpreted generously and with an open mind.⁴²⁹ The court in *Tsilhqot'in Nation v. British Columbia* highlighted that reconciliation requires the just resolution of claims in a manner that reflects the substance of the matter.⁴³⁰ This requires a functional rather than technical approach to pleadings in Aboriginal law cases.⁴³¹ The Plaintiffs' pleading of a novel application of the honour of the Crown should be interpreted generously and determined substantively at trial.⁴³²

305. Finally, the Plaintiffs have pleaded at paragraph 55 that Canada and the Province acted in breach of these obligations flowing from the honour of the Crown.⁴³³ At paragraphs 43(p) and 46(o) the Proposed Representative Plaintiffs have pleaded that Canada and the Province provided for a system of education which interfered with the Innu's culture and language rights and their

⁴²⁸ *R v Imperial Tobacco Canada Ltd, 2011 SCC 42 (CanLII)*, 2011 SCC 42 at para 21, Tab 35 of BoA; *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19, Tab 18 of BoA; see also *Mohawk Council of Akwesasne v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 611 at para 17, Tab 78 of BoA, citing *Shubenacadie Indian Band v Canada (Attorney General)* (2001), 104 ACWS 62 at paras 5-6, Tab 79 of BoA.

⁴²⁹ *Mohawk Council of Akwesasne v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 611 at para 17, Tab 78 of BoA, citing *Shubenacadie Indian Band v Canada (Attorney General)* (2001), 104 ACWS 62 at paras 5-6, Tab 79 of BoA, which emphasizes the application of this principle in Aboriginal law and the need for such claims to be interpreted generously and with an open mind.

⁴³⁰ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 256 at paras 21, 23, Tab 80 of BoA.

⁴³¹ *Tsilhqot'in Nation v British Columbia*, 2014 SCC 44, [2014] 2 SCR 256 at paras 20, 23, Tab 80 of BoA.

⁴³² *R v Imperial Tobacco Canada Ltd, 2011 SCC 42 (CanLII)*, 2011 SCC 42 at para 21, Tab 35 of BoA; *Atlantic Lottery Corp Inc v Babstock*, 2020 SCC 19 at para 19, Tab 18 of BoA; see also *Mohawk Council of Akwesasne v Canada (Public Safety and Emergency Preparedness)*, 2015 FC 611 at para 17, Tab 78 of BoA, citing *Shubenacadie Indian Band v Canada (Attorney General)* (2001), 104 ACWS 62 at paras 5-6, Tab 79 of BoA.

⁴³³ Proposed Second Amended Statement of Claim at para 55. See also paras 43 and 46.

right to govern and control their children's education and ensure their care.⁴³⁴ They have pleaded at paragraphs 43(a) and 46(a) that Canada and the Province allowed a systemic program of forced integration of Innu children through the institution of Innu Day Schools that they knew or ought to have known would cause permanent cultural injury (among other harms) to Class Members. At paragraph 59 the Plaintiffs have pleaded that the system of education punished the use of their traditional languages and made them feel ashamed of their traditional language and way of life.⁴³⁵ By reason of the attendance at Innu day schools the Plaintiffs have further pleaded at paragraph 59 that the ability of Class Members to speak their traditional languages and practice their spiritual, religious, and cultural activities were seriously impaired.⁴³⁶

306. The Plaintiffs have pleaded at paragraph 55 that these interferences with Innu language, culture, and control over their children's education and welfare failed to advance reconciliation of Innu rights and interests with the Crown's asserted sovereignty.⁴³⁷ Further, they have pleaded that these interferences demonstrate that Canada and the Province did not exercise diligence in ensuring education was delivered in a way that protected, or alternatively did not harm, Innu Language and Culture rights and the welfare of Innu children.⁴³⁸

307. The pleadings are sufficient to support the claim of breaches of the honour of the Crown.

⁴³⁴ Proposed Second Amended Statement of Claim at para 43(p) and 46(o).

⁴³⁵ Proposed Second Amended Statement of Claim at para 59.

⁴³⁶ Proposed Second Amended Statement of Claim at para 59.

⁴³⁷ Proposed Second Amended Statement of Claim at para 55.

⁴³⁸ Proposed Second Amended Statement of Claim at para 55.

C. The s. 5(1)(b)-(e) criteria

(i) The Supplemental Record and its admissibility to demonstrate the basis in fact for the proposed common issues

308. In addition to the Plaintiffs' affidants' evidence, the Plaintiffs rely on the documents attached to their Supplemental Record to demonstrate the basis in fact for the existence and commonality of the proposed common issues. The Supplemental Record is admissible and reliable for this use.

309. At an application for certification, the Court does not make findings of fact or liability binding on the parties. The Court's assessment of the record is limited to determining whether a "basis in fact" exists for the section 5(1)(b)-(e) criteria.

310. The fundamentally procedural nature of certification and the Court's limited factual assessment "must be kept in mind" when evaluating admissibility, and a broad scope of evidence not otherwise admissible for the truth of its contents may nevertheless be "considered and assessed" by the Court in determining whether a basis in fact exists for the certification requirements.⁴³⁹ In particular, hearsay evidence may be admissible to determine whether a basis in fact exists.⁴⁴⁰

311. The Plaintiffs have delivered a notice to admit their 27 Tab Supplemental Record,⁴⁴¹ to which the Defendants have responded by admitting the authenticity of six documents,⁴⁴² namely

⁴³⁹ *Tippett v Canada*, 2019 FC 869 at para 24, Tab 81 of BoA citing *Johnson v Ontario*, 2016 ONSC 5314 at paras 54-67, Tab 82 of BoA.

⁴⁴⁰ *Sweet v Canada, 2022 FC 1228 (CanLII)*, 2022 FC 1228 at paras 49-50, Tab 83 of BoA; see also *Canada v Greenwood, 2021 FCA 186 (CanLII)*, 2021 FCA 186, Tab 84 of BoA.

⁴⁴¹ Notice to Admit, December 20th, 2024.

⁴⁴² Attorney General of Canada's Response to Notice to Admit, January 20, 2025 and Response to Notice to Admit of hi Majesty the King in the Right of the Province of Newfoundland and Labrador, January 21, 2025.

those found at Tabs 2, 3, 4, 6, 7 and 8. The Province further admitted Tab 14, and Canada admitted Tab 19.

312. Three Plaintiffs' affiants have testified as to the authenticity and reliability of the remaining 21 documents that the Defendants did not admit.

313. Dr. Adrian Tanner is an Honorary Research Professor at Memorial University. He earned his PhD in Anthropology from the University of Toronto in 1976 and his MA in Anthropology from the University of British Columbia in 1969. He has conducted multiple periods of field research with the Innu of Labrador and has been closely involved in Innu-related issues since the mid-1970s.⁴⁴³ Dr. Tanner's affidavit authenticates Tabs 1, 7, 9-21 and 23-25 of the Supplemental Record. He further confirms that he would rely on the authenticated documents in his work as an academic.⁴⁴⁴

314. Caitlin Urquhart is the Lead Commission Counsel for the ongoing Inquiry Respecting the Treatment, Experiences and Outcomes of the Innu in the Child Protection System (the "Inquiry").⁴⁴⁵ Ms. Urquhart's affidavit confirms that Tabs 26 and 27 of the Supplemental Record are true copies of the transcripts of sworn and affirmed testimony given by members of the Mushuau and Sheshatshiu Innu First Nations before the Inquiry's commissioners. Ms. Urquhart also explains the basis for the redactions of personal identifying information in the transcripts.

⁴⁴³ Affidavit of Dr. Adrian Tanner, sworn March 6, 2025 ("Tanner Affidavit") at para 2, **SAR**.

⁴⁴⁴ Tanner Affidavit at paras 5-10, **SAR**.

⁴⁴⁵ Affidavit of Caitlin Urquhart, sworn February 18, 2025 ("Urquhart Affidavit") at para 1, **SAR**.

315. The third affiant is Rahma Musaa Faisal. Ms. Faisal's affidavit confirms that she located the document found at Tab 5 of the Supplemental Record at the Library and Archives Canada where the document was available for public access.⁴⁴⁶

(a) Tabs 2-6, 13: Party admissions by officers of Canada and the Province

316. Tabs 2–6 of the Supplemental Record⁴⁴⁷ consist of communications by officials of Canada and/or the Province made in their official capacity, and therefore fall squarely within the party admissions exception to the rule against hearsay, under which a party's own statements are admissible against it for the truth of their contents.⁴⁴⁸

317. Tab 13, *Constitutional Responsibility for the Aboriginal Peoples of Newfoundland*, is a report authored by Wendy Moss and prepared for Jack Harris, MP by the Research Branch of the Library of Parliament.⁴⁴⁹ Dr. Wade Locke prepared an expert report for the Defendant, the Province of Newfoundland and Labrador, in these proceedings. Dr. Locke cites Tab 13 in his expert report. The Province's reliance on Dr. Locke's expertise underscores the reliability of his work and the sources on which he relies, including Tab 13. The Plaintiffs' rely on Tab 13 only for a discrete factual point, namely the 1947 representation by Canada's representative to Newfoundland that

⁴⁴⁶ Affidavit of Rahma Musaa Faisal Faisal, sworn March 18, 2025 ("Faisal Affidavit") at paras 3-8, **SAR**.

⁴⁴⁷ FP Varcoe, Deputy Minister, Justice Department, Legal Opinion to Secretary to Cabinet (14 April 1950), Ottawa, National Archives of Canada (MG 31-D163, vol 23, file 23-3) ("Varcoe"), **SAR, Tab 2**; Letter from JW Pickersgill, Secretary of State of Canada, to Herbert L Pottle, Minister of Public Welfare of Newfoundland (12 April 1954) ("Pickersgill"), **SAR, Tab 3**; Letter from Herbert L Pottle, Minister of Public Welfare of Newfoundland, to JW Pickersgill, Secretary of State of Canada (26 April 1954), ("Pottle"), **SAR, Tab 4**; Department of Justice 204595 Re: Indians and Eskimos in Newfoundland (23 November 1964), Ottawa, National Archives of Canada (MG 31-D163, vol 23, file 23-3) ("DOJ Re: Indians and Eskimos"), Exhibit "A" to the Faisal affidavit, **SAR, Tab 5**; Letter from Lester B Pearson, Prime Minister, to Joseph R Smallwood, Premier of the Province of Newfoundland (25 May 1965) ("Pearson"), **SAR, Tab 6**.

⁴⁴⁸ *R v Evans*, 1993 CanLII 86 (SCC) (1993), 108 DLR 32 (SCC), Tab 85 of BoA at 653-664.

⁴⁴⁹ Wendy Moss, *Constitutional Responsibility for the Aboriginal Peoples of Newfoundland*, Report prepared for Jack Harris, MP by the Research Branch of the Library of Parliament (7 April 1988) ("Moss"), Exhibit "H" to the Tanner affidavit, **SAR, Tab 13**.

Canada would assume responsibility for Indigenous peoples in the province. As such, this representation should also be admitted under the party admissions exception.

(b) Tabs 1, 8, 12 and 22: Reports generated by ministries and government departments

318. Tabs 1, 8, 12 and 22 comprise reports made by, or for, government officials, ministries and departments. At common law, copies of public documents are admissible under s. 24(a) of the *Canada Evidence Act* (CEA) as an exception to the rule against hearsay.⁴⁵⁰ The public documents exception “applies to written statements prepared by public officials in the exercise of their public duty.”⁴⁵¹

319. In *Yahey v. British Columbia*, a series of similar reports and assessments “commissioned by government officials in furtherance of their public duties” were admitted under the public documents exception. The judge reasoned that “the circumstances surrounding the creation of the documents provide guarantees of inherent reliability or trustworthiness.” These documents were created “for the purpose of conveying information to Ministers and senior government officials or other departments of government,” meaning it is reasonable to expect that “a high premium would be placed on their accuracy.”⁴⁵² The same applies to the reports at issue here, whose provenance and purpose similarly provide the necessary assurances for admission.

320. To qualify for this exception, the following criteria must be met: (a) the document must have been made by a public official, that is a person on whom a duty has been imposed by the public; (b) the public official must have made the document in the discharge of a public duty or

⁴⁵⁰ *Canada Evidence Act*, RSC 1985, c C-5, s 24 [*Canada Evidence Act*], Tab 138 of BoA.

⁴⁵¹ *Syngenta AG v Van Wijngaarden*, 2025 BCCA 334 at para 89, Tab 86 of BoA

⁴⁵² *Yahey v British Columbia*, 2021 BCSC 1287 at paras 822, 826-833, Tab 87 of BoA.

function; (c) the document must have been made with the intention that it serve as a permanent record, and (d) the document must be available for public inspection.⁴⁵³ These reports clearly satisfy each of these criteria and fall within the scope of the public-documents exception.

321. Tab 1, the *Report on the Native of Northern Labrador* (October 1949), was authored by Harold Harwood, a member of the House of Assembly, at the request of the Premier, and is publicly available at the Library and Archives Canada.⁴⁵⁴

322. Tab 22, *Peenamin McKenzie School Sheshatshiu, Labrador: Facility and Environmental Assessment*, is a report produced by Public Works and Government Services Canada at the request of Indian and Northern Affairs. The report's purpose includes assessing the condition of the school's facilities and the surrounding environment to inform necessary improvements and planning.⁴⁵⁵ It is publicly available in the Library and Archives Canada.

323. Tabs 8 and 12 consist of reports and assessments prepared for government officials by hired consultants.⁴⁵⁶

(c) Tabs 7 and 14: Reports of Royal Commissions

324. Tabs 7 and 14 of the Supplemental Record contain Reports prepared by Royal Commissions of the Province. Canada and the Province admit the authenticity of Tab 7.

⁴⁵³ *R v AP* (1996), [1996] OJ, Tab 88 of BoA

⁴⁵⁴ Harold Horwood, *Report on the Natives of Northern Labrador* (October 1949), Ottawa, National Archives of Canada (RG 85-D-1-A, vol 2079, file 1006-5, pt 2) ("Horwood"), Exhibit "B" to the Tanner Affidavit, **SAR, Tab 1.**

⁴⁵⁵ *Peenamin McKenzie School Sheshatshiu, Labrador: Facility and Environmental Assessment* (April 2000) Ottawa, National Archives of Canada (R216, RG 10, box 2, file AMH-E 4700-033), ("Peenamin Assessment") at 1, **SAR, Tab 22.**

⁴⁵⁶ Indian and Northern Affairs Canada, *Evaluation Assessment: Canada-Newfoundland Native Peoples of Labrador Agreement*, by Coastal Associates and Consultants Limited (9 May 1983) ("INAC, Evaluation Assessment"), **SAR, Tab 8;** Edward Tompkins, *Pencilled Out: Newfoundland and Labrador's Native People and Canadian Confederation, 1947-1954*, Report prepared for Jack Harris, MP (31 March 1988) ("Tompkins"), Exhibit "G" to the Tanner Affidavit, **SAR, Tab 12.**

325. These reports are the product of formal inquiries established under the statutory authority of the *Public Enquiries Act*. They are admissible to establish “some basis in fact” for the section 5(1)(b)-(e) certification criteria.

326. The Royal Commission on Labrador was formed in 1972 pursuant to *The Public Enquiries Act*, RSN 1952, c 24 (the “*Public Enquiries Act*”) to inquire broadly into the “economic and sociological conditions of life in Labrador”. Its Report, at Tab 7, was delivered in 1974, and was the product of:

16 months of work by four Commissioners and a research, clerical, typing and editing staff, which ranged from four to more than 20 members in the course of Commission activities. The final draft represents the distillation of several thousand pages of assigned research and hundreds of hours of testimony at public and private hearings in more than 36 Labrador communities, as well as scores of briefs submitted in a variety of forms, from the backs of envelopes to video-tape and glossy industrial presentations, and in four languages.⁴⁵⁷

327. The Royal Commission of Inquiry into the Delivery of Programs and Services in Primary, Elementary, Secondary Education was commissioned in 1990 pursuant to the *Public Enquiries Act*. It delivered its report, titled “Our Children Our Future” in 1992. Tab 14 of the Record contains excerpts of the report.

328. Reports of Royal Commissions and similar bodies have frequently been admitted into evidence and relied upon in certification proceedings.⁴⁵⁸

⁴⁵⁷ *Report of the Royal Commission on Labrador*, vol 1 (February 1974) (Donald Snowden) “Education” (131–234) (“Royal Commission on Labrador”) at 1, Exhibit “C” to the Tanner affidavit, **SAR, Tab 7**.

⁴⁵⁸ *GG v Ontario*, 2025 ONSC 3011 at para 115, Tab 49 of BoA the plaintiffs relied on the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* to fulfil the “some basis in fact” requirement for certification]; and *Seed v Ontario*, 2012 ONSC 2681 at paras 69-72, Tab 89 of BoA [the plaintiff relied on two public reports, the *Report of the Royal Commission on Education in Ontario 1950* and the *Report of the Review of Student Care at the Provincial School for the Deaf and Blind and Demonstration Schools*, to provide evidence of the systemic conditions at a residential school. The Court admitted the evidence, concluding that “[t]hey are not being tendered for the truth of the contents, but rather to satisfy the some evidence”] *Seed v Ontario*, 2012

(d) **Tabs 17, 23 and 25: Reports prepared for the Canadian Human Rights Commission**

329. Tabs 17, 23 and 25⁴⁵⁹ consist of the reports to the Canadian Human Rights Commission (the “CHRC”) by Professor Donald McRae, who served as the CHRC’s Special Investigator in respect of complaints made to the CHRC in 1992 by the Innu of Labrador. Professor McRae set out his mandate and terms of reference in his initial report (at Tab 17), delivered to and published by the CHRC in 1993:

In June 1992, representatives of the Innu Nation requested that the Canadian Human Rights Commission. (CHRC) carry out an investigation into certain aspects of their treatment by the governments of Canada and Newfoundland. The particular allegations were set out in a letter of July 16, 1992 from the President of the Innu Nation to the Commission and in a further letter of July 27, 1992. In November 1992, the Commission, with the agreement of the Innu Nation and the Department of Indian Affairs and Northern Development (DIANO), asked me to act as a Special Investigator, "to examine the grievances of the Innu of Labrador against the governments of Canada and Newfoundland and to recommend such corrective measures as may be warranted. [...]

The Terms of Reference require the Special Investigator:

- to undertake a review of the reports and other documentation collected by the CHRC;
- to interview individuals with direct knowledge of the matters under study including representatives of the governments of Canada and Newfoundland, the Innu Nation and residents of the communities concerned;
- to visit the Innu communities and such other locations as may be relevant to carrying out a full investigation.

ONSC 2681 at paras 69-72, Tab 89 of BoA. See also: [Canada v Greenwood, 2021 FCA 186 \(CanLII\)](#), 2021 FCA 186 at para 96, Tab 84 of BoA.

⁴⁵⁹ Donald M McRae, *Report on the Complaints of the Innu of Labrador to the Canadian Human Rights Commission* (18 August 1993) (“McRae”), Exhibit “L” to the Tanner Affidavit, **SAR, Tab 17**; Constance Backhouse & Donald McRae, *Report to the Canadian Human Rights Commission on the Treatment of the Innu of Labrador by the Government of Canada* (26 March 2002), (“Backhouse & McRae”), Exhibit “Q” to the Tanner Affidavit, **SAR, Tab 23**; Celeste McKay Consulting Inc & Donald McRae, *Follow-up Report to the Canadian Human Rights Commission on the Human Rights of the Innu of Labrador* (9 August 2021), (“McKay & McRae”), Exhibit “S” to the Tanner Affidavit, **SAR, Tab 25**.

330. Professor McRae delivered his first report in respect of his mandate as Special Investigator on August 18, 1993. As Professor McRae set out in his 1993 report, his investigative mandate was undertaken with Canada's agreement. Professor McRae and Professor Constance Backhouse delivered two follow-up reports, on March 26, 2002 (at Tab 23) and August 9, 2021 (at Tab 25) monitoring implementation of the recommendations in the 1993 report and conducting a follow-up review. Dr. Locke's Expert Report also cites both the 1993 and 2002 CHRC reports, which further supports the reliability of these reports.⁴⁶⁰

331. Courts often rely on investigative reports, such as the CHRC reports, to satisfy the "some basis in fact" threshold at the certification stage. In *Rumley*, the Supreme Court of Canada upheld the certification of a class of students who attended a residential school for the deaf and blind. The Court's decision drew on reports from the British Columbia Ombudsman and from special counsel appointed to investigate sexual abuse at the school, which were admitted and used to assess whether the class certification criteria were met.⁴⁶¹ In *Greenwood*, the Federal Court of Appeal upheld the admission of a collection of investigative, oversight, and policy reports addressing systemic issues within the RCMP, which the plaintiffs relied on to establish the final four certification criteria.⁴⁶²

(e) Tabs 10 and 19: Research Reports prepared for Royal Commissions

332. Tabs 10 and 19 are background and research reports prepared for Royal Commissions to support the fulfillment of their mandates. They are admissible for the purpose of establishing a 'basis in fact' at the certification stage.

⁴⁶⁰ Locke Expert Report, Exhibit "B" of the Locke Affidavit, at 11 footnote 3, **RRDNL, Tab 3, p 79.**

⁴⁶¹ *Rumley v British Columbia, 2001 SCC 69 (CanLII)*, 2001 SCC 69 at paras 2-10, Tab 29 of BoA

⁴⁶² *Canada v Greenwood, 2021 FCA 186 (CanLII)*, 2021 FCA 186 at paras 59, 97, Tab 84 of BoA.

333. *Renewable Resource Use and Wage Employment in the Economy of Northern Labrador* is a report prepared by Carol Brice-Bennett for the Royal Commission on Employment and Unemployment, Newfoundland and Labrador.⁴⁶³ Dr. Tanner has noted that Ms. Brice-Bennett's work generally, and this background report in particular, are reliable sources.⁴⁶⁴

334. *Fiscal Alternatives for Funding the Inuit and Innu of Labrador* is a research report prepared for the Royal Commission on Aboriginal Peoples.⁴⁶⁵ As outlined in the executive summary, the report is an economic evaluation of three foundational federal-provincial funding agreements to which the Inuit and Innu of Labrador are beneficiaries. The "ultimate objective of this work is to provide [the Commission] with recommendations for revising funding agreements that facilitate community decision-making and self-government while satisfying widely accepted economic criteria."⁴⁶⁶

335. Dr. L. Wade Locke is both the author of Dr. Locke's Expert Report and Tab 19, *Fiscal Alternatives for Funding the Inuit and Innu of Labrador*. Again, the Province's reliance on Dr. Locke's expertise, and Canada's choice not to cross examine Dr. Locke, underscores that the reliability of his work is not in dispute.

(f) Tabs 15, 16 and 18: Reports prepared by the Innu Nation

336. Tabs 15, 16, and 18 consist of reports prepared by the Innu Nation.

⁴⁶³ Carol Brice-Bennett, *Renewable Resource Use and Wage Employment in the Economy of Northern Labrador*, Background Report prepared for the Royal Commission on Employment and Unemployment, Newfoundland and Labrador (September 1986) ("Brice-Bennett"), Exhibit "E" to the Tanner affidavit, **SAR, Tab 10**.

⁴⁶⁴ Tanner Affidavit at para 7, **SAR**.

⁴⁶⁵ L Wade Locke & Peter GC Townley, *Fiscal Alternatives for Funding the Inuit and Innu of Labrador*, Research Report prepared for the Royal Commission on Aboriginal Peoples (1995) ("Locke and Townley"), Exhibit "N" to the Tanner Affidavit, **SAR, Tab 19**.

⁴⁶⁶ Locke and Townley at i, Exhibit "N" to the Tanner Affidavit, **SAR, Tab 19**.

337. Tab 15, *Canada-Newfoundland Agreements: An Innu Perspective*, was authored by James Roche.⁴⁶⁷ It was relied upon in the *Anderson* decisions at the Supreme Court of Newfoundland and Labrador and the Court of Appeal.⁴⁶⁸ The references to Roche's report by both courts demonstrate that it was treated as a credible source and support the position that the document is reliable and uncontroversial.

338. Tabs 16 and 18 consist of two reports that form the Gathering Voices materials. The 1995 publication *Gathering Voices: Finding Strength to Help Our Children* is the first of the two *Gathering Voices* reports.⁴⁶⁹ Although published as a book in 1995 by Douglas & McIntyre, the report itself was written in 1992 following the Davis Inlet fire in which six children died.⁴⁷⁰ The second report, *Gathering Voices: Discovering Our Past, Present and Future*, was prepared in 1993 in response to the first report, includes material from Davis Inlet and Sheshatshiu, and was funded by the Royal Commission on Aboriginal Peoples.⁴⁷¹

339. Both reports arise from extensive community-led processes in which a team of commissioners was appointed to conduct interviews, gather testimony, and synthesize findings.⁴⁷²

⁴⁶⁷ James Roche, *Canada-Newfoundland Agreements: An Innu Perspective* (Sheshatshit: Innu Nation, July 1992) ("Roche"), Exhibit "J" to the Tanner Affidavit, **SAR, Tab 15**.

⁴⁶⁸ *Canada (Attorney General) v Anderson*, 2011 NLCA 82 at para 10, Tab 9 of BoA; see also *Anderson v Canada (Attorney General)* (2013), 2013 CanLII 14093 at para 8, Tab 90 of BoA.

⁴⁶⁹ Innu Nation and Mushuau Innu Band Council, *Gathering Voices: Finding Strength to Help Our Children (Mamunitau Staanimuanu: Ntuapatetau Tshetshi Uitshiakuts Stuassiminuts)*, ed by Camille Fouillard (Vancouver: Douglas & McIntyre, 1995) ("Innu Nation and Mushuau Innu Band Council"), Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**.

⁴⁷⁰ Innu Nation and Mushuau Innu Band Council, *Gathering Voices: Finding Strength to Help Our Children (Mamunitau Staanimuanu: Ntuapatetau Tshetshi Uitshiakuts Stuassiminuts)*, ed by Camille Fouillard (Vancouver: Douglas & McIntyre, 1995) ("Innu Nation and Mushuau Innu Band Council"), Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**, page 1.

⁴⁷¹ Innu Nation, *Kamamuetimak: Tshentusentimak Nte Steniunu Utat, Nitshish, Kie Nte Nikan (Gathering Voices: Discovering our Past, Present and Future)* (Ottawa: Royal Commission on Aboriginal Peoples, 1993) ("Innu Nation"), Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

⁴⁷² Innu Nation and Mushuau Innu Band Council at 3-7, Exhibit "M" to the Tanner Affidavit, **SAR, Tab 18**; Innu Nation at 3-5, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

They contain lengthy verbatim quotations from community members, providing an unfiltered account of their experiences and concerns. As a result, these reports offer valuable insight into Innu community sentiment and conditions at the time they were created.

340. The inquiries involved a rigorous, weeks-long process of interviews, questionnaires, group workshop sessions, and document review. In particular, the 1993 report was assembled by trained researchers and subjected to peer review to ensure the accuracy of its findings.⁴⁷³ Collectively, the Gathering Voices materials constitute a substantial and credible body of community-generated knowledge. There is no principled reason to treat these reports differently from the other investigative reports previously canvassed.

341. Dr. Adrian Tanner's evidence is that he has been familiar with the Gathering Voices materials for some time and would be confident relying on them in his work as an academic.⁴⁷⁴

(g) Tabs 9, 11, 20, 21 and 24: Academic Publications

342. Tabs 9, 11, 20, 21, and 24 contain academic publications and book chapters addressing education in Newfoundland and Labrador.⁴⁷⁵ Dr. Tanner has attested that he is familiar with these publications and would be confident relying on them in his work as an academic.

⁴⁷³ Innu Nation at 3, Exhibit "K" to the Tanner Affidavit, **SAR, Tab 16**.

⁴⁷⁴ Tanner Affidavit at para 6, **SAR**.

⁴⁷⁵ Brian William Vardy, *An Examination of English Language Teaching Practices in an Innu Setting from 1951 to 1982* (MEd Thesis, Memorial University of Newfoundland, 1983), chapter II ("Vardy"), Exhibit "D" to the Tanner affidavit, **SAR, Tab 9**; James J Ryan, "Economic Development and Innu Settlement: The Establishment of Sheshatshit" (1988) 8:1 *Canadian Journal of Native Studies* 1 ("Ryan"), Exhibit "F" to the Tanner affidavit, **SAR, Tab 11**; Adrian Tanner, "The Aboriginal Peoples of Newfoundland and Labrador and Confederation" (1998) 14:2 *Newfoundland Studies* 238 ("Tanner"), Exhibit "O" to the Tanner Affidavit, **SAR, Tab 20**; Colin Samson, "Teaching Lies: The Innu Experience of Schooling" (2000) 16 *London Journal of Canadian Studies* 89, ("Samson"), Exhibit "P" to the Tanner Affidavit, **SAR, Tab 21** and Andrea Procter, *A Long Journey: Residential Schools in Labrador and Newfoundland* (St. John's: ISER, 2020) chapter 13, ("Procter"), Exhibit "R" to the Tanner Affidavit, **SAR, Tab 24**.

343. *The Aboriginal Peoples of Newfoundland and Labrador and Confederation* was authored by Dr. Tanner himself, and is therefore not hearsay, making it admissible for the truth of its contents. He was available for cross-examination, and the Defendants chose not to.

344. The remaining sources are relied upon primarily to provide uncontroversial background information. They are also cited for direct quotations from public officials, which constitute party admissions. To the extent that these materials contain opinion evidence, they should nevertheless be admitted for the limited purpose of corroborating the Survivor affidavits.

345. In *Johnson*, a class action involving the alleged mistreatment of inmates at Elgin-Middlesex Detention Centre, the court admitted inquest materials, newspaper articles, and an Ontario Ombudsman report to reinforce the primary evidence in the representative plaintiffs' affidavits, which described in detail their personal experiences, and to provide additional support for the plaintiffs' assertion that their experiences were not isolated.⁴⁷⁶

346. The Survivor affidavits here similarly provide detailed, first-person descriptions of life in the Innu Day Schools and constitute the primary evidence on which the Plaintiffs rely. The academic materials help situate those individual narratives within a broader historical and institutional context and show that the conditions described by Survivors are consistent with patterns identified by researchers.

⁴⁷⁶ [*Johnson v Ontario*](#), 2016 ONSC 5314, Tab 82 of BoA.

(h) **Tabs 26 and 27: Transcripts of the Inquiry Respecting the Treatment, Experiences and Outcomes of the Innu in the Child Protection System;**

347. The Inquiry Respecting the Treatment, Experiences and Outcomes of the Innu in the Child Protection System was commissioned by the Government of Newfoundland and Labrador pursuant to the *Public Inquiries Act*, 2006, by Order in Council (O.C. 2022-103).⁴⁷⁷

348. The Inquiry has held Community Meetings in Sheshatshiu and Natuashish pursuant to Part VI of its Rules of Procedure. These Rules establish that the purpose of Community Meetings is to provide Commissioners with an opportunity to hear the Innu, as a community, describe the impact of the child protection system on their children, parents, families, and communities, and to allow the Innu to share their experiences, treatment, and outcomes within that system.⁴⁷⁸

349. The transcripts in Tab 26 record the Inquiry's formal hearings held on February 14, 15, and 16, 2023, and January 22, 2024.⁴⁷⁹ All witnesses were either sworn or affirmed.⁴⁸⁰ The transcripts in Tab 27 record the Inquiry's Community Meetings held on April 17–20, 2023, June 7, 2023, October 23, 2023, and June 24, 2024. The Inquiry remains ongoing and has not yet submitted its final report.

350. Consistent with the approach taken in *Johnson*, the Inquiry transcripts serve as important corroborative evidence. They document recurring experiences reported by community members in a formal setting, demonstrating that the harms described by Survivors in their affidavits were

⁴⁷⁷ Urquhart Affidavit at para 1, **SAR**.

⁴⁷⁸ Urquhart Affidavit at para 2, **SAR**.

⁴⁷⁹ Formal Hearing Transcripts (English) from Inquiry Respecting the Treatment, Experiences and Outcomes of Innu in the Child Protection System, ("Formal Hearing Transcripts"), Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

⁴⁸⁰ See, for example: Formal Hearing Transcripts, vol 2, February 14, 2023 at 3, Exhibit "B" to the Urquhart Affidavit, **SAR, Tab 26**.

not isolated incidents but consequences of broader systemic failings. They should therefore be admitted for this corroborative purpose.

(ii) There are identifiable classes: 5(1)(b)

351. The Proposed Representative Plaintiffs propose two classes which satisfy s 5(1)(b).

352. Section 5(1)(b) of the *CAA* requires the moving parties to demonstrate “there is an identifiable class of 2 or more persons.” An “identifiable class” is one that is defined “by reference to objective criteria”⁴⁸¹ and where membership “of the class can be determined without reference to the merits of the action.”⁴⁸² The bounds of the class definition “should bear a rational relationship to the common issues asserted by all class members.”⁴⁸³

353. The identifiable class requirement has been held to be “not difficult to satisfy” and constitutes a technical, rather than substantive, challenge.⁴⁸⁴

354. The proposed Survivor Class is defined at para 4 of the Application to Certify the Class Action as:

every person who:

is or was registered or eligible to be registered as a member of Sheshatshiu Innu First Nation or of Mushuau Innu First Nation, or who is or was otherwise a member of the Innu Nation of Labrador, wherever they may reside or be domiciled; and

attended a school in Sheshatshiu, Old Davis Inlet, Davis Inlet, and/or Natuashish, anytime from and including March 31, 1949 and ending on August 1, 2009.

⁴⁸¹ *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 17, Tab 11 of BoA.

⁴⁸² *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 17, Tab 11 of BoA.

⁴⁸³ *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 38, Tab 91 of BoA.

⁴⁸⁴ *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534, Tab 92 of BoA; *Hollick v Toronto (City)*, 2001 SCC 68, [2001] 3 SCR 158 at para 17, Tab 11 of BoA; *Waldman v Thomson Reuters Corporation*, 2012 ONSC 1138 at para 122, Tab 93 of BoA.

355. The Survivor Class consists of more than two persons and is objectively defined based on two criteria: (1) membership in one of two First Nations (or eligibility to be a member of one of these First Nations) or membership in the Innu Nation of Labrador; and (2) attendance at schools in a closed set of specific Innu communities over the course of the Class Period.

356. On criterion 1, membership in the Innu Nation of Labrador is determined by the criteria described in the affidavit of Florence Milley, and since Sheshatshiu Innu First Nation and Mushuau Innu First Nation have both been declared as bands for the purposes of the *Indian Act*, membership or eligibility for membership in these First Nations is objectively determined by the *Indian Act*. Criterion 2 is also an objective criterion, since whether an individual attended a school in a specific area during a specific time period is an objective fact. Further, these criteria are rationally connected to the common issues asserted by the class members.⁴⁸⁵

357. Gregory Rich's uncontroverted evidence is that "nearly all Innu young people attended an Innu Day School from early village life" and that the estimated Survivor Class size is approximately 2,000 people.⁴⁸⁶

358. The proposed Innu Governments Class is defined at paragraph 4 of the Application to Certify the Class Action as:

the government organizations that formally represent the Innu of Labrador, this class being composed of the Innu Nation, Sheshatshiu Innu First Nation, and Mushuau Innu First Nation.

359. The Innu Governments Class consists of three members. The Innu Governments Class is objectively defined based on one criterion: being a government organization that formally

⁴⁸⁵ *Indian Act*, RSC 1985, c I-5; SOR/2002-414, s 2, Tab 119 of BoA.

⁴⁸⁶ Gregory Rich Affidavit, at para 43, **AR**.

represents the Innu of Labrador, these organizations being enumerated in the definition for further clarity. Further, this criterion is rationally connected to the common issues asserted by the class members.

360. This is a more narrow and defined criterion than the Band Class certified in *Gottfriedson*, which was represented by the Chiefs of two Indian Bands, who brought the claims on their own behalf and on behalf of all members of their Bands, and defined the class to include any other Indian Band which had members who are or were members of the Survivor Class, or whose community had a Residential School.⁴⁸⁷

361. Both classes meet the requirements of s 5(1)(b).

(iii) The claim raises common issues: 5(1)(c)

362. The commonality analysis is concerned with “whether allowing the suit to proceed as a representative one will avoid duplication of fact-finding or legal analysis. Section 2(b) of the *CAA* defines “common issues” as: (i) common but not necessarily identical issues of fact, or (ii) common but not necessarily identical issues of law that arise from common but not necessarily identical facts.⁴⁸⁸ Thus, an issue will be ‘common’ only where its resolution is necessary to the resolution of each class member’s claim.”⁴⁸⁹

363. To establish commonality, the moving party must lead evidence of some basis in fact that (i) the proposed common issue actually exists, and (ii) the proposed issue can be answered in

⁴⁸⁷ *Gottfriedson v Canada*, 2015 FC 766 at paras 1-2, Tab 94 of BoA.

⁴⁸⁸ *CAA*, s 2(b), Tab 137 of the BoA.

⁴⁸⁹ *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 39, Tab 92 of BoA.

common across the class. The existence of the common issues means “that there is some factual basis for the claims made to which the common issues are connected.”⁴⁹⁰

364. A common issue must be “a substantial ingredient” of each class member's claim and its resolution must be necessary to the resolution of each class member's claim. Ultimately, the Court must be satisfied that its resolution will avoid duplication of fact-finding or legal analysis, in the interests of access to justice and judicial economy.⁴⁹¹

365. Although “the class members’ claims must share a substantial common ingredient to justify a class action,”⁴⁹² per Goudge JA in *Cloud*, “an issue can constitute a substantial ingredient of the claims and satisfy s. 5(1)(c) even if it makes up a very limited aspect of the liability question and even though many individual issues remain to be decided after its resolution.”⁴⁹³

366. It is not necessary that the common issues be determinative of each class member’s claim or form the dominant issues of the litigation. Rather, as Cumming JA explained in *Campbell*, “they need only be issues of fact or law that move the litigation forward. The resolution of a common issue does not have to be, in and of itself, sufficient to support relief.”⁴⁹⁴ The fact that there may be numerous individual issues to be determined in addition to the common issues does not undermine the commonality conclusion; rather, per Goudge JA in *Cloud*, “that is to be considered in the assessment of whether a class action would be the preferable procedure.”⁴⁹⁵

⁴⁹⁰ *Crotty v Aviva General Insurance Company*, 2024 NLSC 54 at para 138, Tab 95 of BoA, quoting *Heller v Uber Technologies Inc*, 2022 ONSC 1997 at para 17, Tab 96 of BoA.

⁴⁹¹ *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at paras 39-40, Tab 92 of BoA.

⁴⁹² *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 39, Tab 92 of BoA.

⁴⁹³ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at para 53, Tab 4 of BoA.

⁴⁹⁴ *Campbell v Flexwatt Corp* (1997), 44 BCLR (3d) 343 at para 53, Tab 97 of BoA.

⁴⁹⁵ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at para 58, Tab 4 of BoA; *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 39, Tab 92 of BoA.

367. Institutional abuse cases, which tend to involve highly individualized issues, are routinely certified and, as the Supreme Court held in *Rumley*, the common thread of these cases – the defendants’ liability – may nonetheless be predominant.⁴⁹⁶

368. Commonality is central to class actions as a procedure: individuals with common litigation concerns ought to be able to resolve those common concerns in a consolidated proceeding, rather than through many individual lawsuits.⁴⁹⁷

369. If necessary, the common issues can be refined as the litigation moves forward.⁴⁹⁸

(a) The proposed common issues

370. In the present case, the Plaintiffs propose the following common issues:

- (1) Did the Defendants, or either of them, owe a duty of care to the Survivor Class and/or the Innu Governments Class through the purpose, funding, supervision, operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- (2) If the answer to (1) is “yes”, what was the standard of care?
- (3) If the answer to (1) is “yes”, did either Defendant breach the standard of care?
- (4) Did the Roman Catholic School Board for Labrador and the Labrador School Board (together, the “School Boards”), or either of them, owe a duty of care to the Survivor Class and/or the Innu Government Class through the purpose, funding, supervision, operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- (5) If the answer to (4) is “yes,” what was the standard of care?
- (6) If the answer to (4) is “yes,” did the School Boards, or either of them, breach the standard of care?
- (7) Did the Defendants, or either of them, owe a fiduciary duty to the Survivor Class and/or the Innu Governments Class through the purpose, funding, supervision,

⁴⁹⁶ *Rumley v British Columbia*, 2001 SCC 69 (CanLII), 2001 SCC 69 at para 36, Tab 29 of BoA.

⁴⁹⁷ *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57, [2013] 3 SCR 477 at para 106, Tab 19 of BoA.

⁴⁹⁸ *Robertson v Thomson Corp* (1999), 43 OR (3d) 161 at para 34, Tab 98 of BoA; *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at para 72, Tab 4 of BoA.

operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?

- (8) If the answer to (7) is “yes,” did the Defendants, or either of them, breach their fiduciary duty?
- (9) Did the School Boards, or either of them, owe a fiduciary duty to the Survivor Class and/or the Innu Governments Class through their purpose, funding, supervision, operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- (10) If the answer to (9) is “yes,” did the School Boards, or either of the School Boards, breach their fiduciary duty?
- (11) If the answers to (6) and/or (10) are “yes,” is the Province liable for the breach of duty of care or fiduciary duty by the School Boards, or either of the School Boards?
- (12) Did the Survivor Class and/or the Innu Governments Class hold an Aboriginal right to learn, practice, exercise, develop, use, teach, transmit, and revitalize their culture and language, and/or an Aboriginal right to control and govern the education and welfare of their children?
- (13) If the answer to (12) is “yes,” did the Defendants, or either of them, infringe the Aboriginal rights of the Survivor Class and/or the Innu Governments Class through the purpose, funding, supervision, operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- (14) If the answer to (13) is “yes,” was the infringement of Aboriginal rights justified?
- (15) Did the Defendants, or either of them, owe duties flowing from the honour of the Crown to the Survivor Class and/or the Innu Government Class through the purpose, funding, supervision, operation, or management of the Innu Day Schools in Sheshatshiu, Old Davis Inlet, Davis Inlet, and Natuashish throughout the Class Period?
- (16) If the answer to (15) is “yes,” what were the duties owed by the Defendants, or either of them, flowing from the honour of the Crown?
- (17) If the answer to (15) is “yes,” did the Defendants, or either of them, breach their duties flowing from the honour of the Crown?
- (18) If either or both Defendants are liable to the Class Members in either Class in respect of any of the causes of action alleged:
 - (i) Can the Court make an aggregate assessment of the damages suffered by the Class as part of the common issues trial?
 - (ii) If the answer to (i) is “yes,” in what amount?

- (iii) Are the Defendants guilty of conduct that warrants the award of the remedies of aggravated and/or punitive damages available in the circumstances?
- (iv) If the answer to (iii) is “yes,” in what amount?
- (v) Are the remedies of general damages, constitutional damages, reconciliatory damages, special damages, and/or equitable compensation available in the circumstances, and should those remedies be awarded?

(b) The proposed common issues concerning the Defendants’ liability are appropriate for certification

371. The proposed common issues are essential and rationally connected to the Class Members’ claims and can be resolved without the involvement of individual Class Members. Determining these issues once, at the common issues trial, will avoid duplicative fact finding and duplicative determination of legal issues.

372. The proposed common issues’ bearing on liability would obviate the need for each Class Member to independently prove the elements of their respective claims of negligence, breach of fiduciary duty, infringement of Aboriginal rights, and breaches of duties flowing from the honour of the Crown (besides individual causation of a Class Member’s own idiosyncratic injuries, if any). The proposed common issues’ bearing on damages would resolve the Class Members’ aggregate damages should liability be established, as well as the types of damages available to the Class Members.

373. The proposed common issues would significantly advance the Class Members’ claims. Resolution of the proposed common issues could very well be dispositive of some portion of the Defendants’ liability, if the common issues judge determined that the Class Members’ damages could be assessed in the aggregate. In any event, answering the common issues will leave only individual causation of injury as the remaining question to determine the Defendants’ liability.

374. The proposed common issues would also address the liability of the School Boards to the Class Members, subject to any necessary determinations of individual causation of injury, and whether this liability has vested in the Province.

(c) The proposed common issues concerning remedies are appropriate for certification

375. If the Court finds the defendants to be liable in negligence or for breach of fiduciary duties, as alleged, whether they owe compensatory damages is a common issue. These damages, if owing, can be assessed individually. It is no obstacle to certification that some Class Members may have suffered different adverse consequences from others.

376. Proposed common issue (18)(i) would certify a question about the availability of an aggregate assessment of damages as part of the common issues trial. The Proposed Representative Plaintiffs seek to certify a common issue related to aggregate damages, i.e. the portion of the Defendants' liability "to some or all class members [that] can reasonably be determined without proof by individual class members."⁴⁹⁹ The *CAA* provides a process for determining aggregate monetary relief pursuant to sections 29 and 30, and if such relief is granted at the common issues trial, sections 31 through 34 of the *CAA* provide mechanisms for the distribution of the award to class members.⁵⁰⁰

377. Certification of an aggregate damages common issue requires a "workable method" for the Court's class-wide assessment of damages.

⁴⁹⁹ *Class Actions Act*, SNL 2001, c C-18.1, s 29(1)(c), Tab 137 of BoA.

⁵⁰⁰ *Class Actions Act*, SNL 2001, c C-18.1, ss 29–34, Tab 137 of BoA.

378. This proposed class proceeding has a relatively narrow scope, encompassing only the Innu Day Schools operated in Sheshatshiu and Old Davis Inlet/Davis Inlet/Natuashish during the Class Period. At the common issues trial, it will be workable for the Court to make findings about the irreducible “core experience” of any given Class Member attending an Innu Day School during the Class Period, and whether that “core experience” would attract a base amount of general, constitutional, reconciliatory, or equitable damages.

379. In *Richard v. The Attorney General of Canada*,⁵⁰¹ an aggregate damages common issue was certified in respect of claims sounding in negligence and breach of the *Charter* arising from Canada’s practice of housing immigration detainees in prisons. The Court concluded that the certification record disclosed a basis in fact that “a base amount that could be determined without evidence from any individual class member, based on evidence of a core experience suffered by all or part of the class who suffered damages or on principles of deterrence and vindication for damages under s. 24 of the *Charter*.”⁵⁰²

380. Class-wide common experience payments are a feature of the IRSSA and the settlements in the *McLean* and *Gottfriedson* class actions. While these common experience payments were the result of negotiated settlements, they were court-approved and spanned nationwide classes of survivors who attended schools across the country.

381. In *Good v. Toronto (Police Services Board)*,⁵⁰³ the Ontario Court of Appeal upheld certification of a common issue for assessment of aggregate damages at the common issues trial,

⁵⁰¹ *Richard v The Attorney General of Canada*, 2024 ONSC 3800, Tab 99 of BoA, affirmed *Richard v Canada (Attorney General)*, 2025 ONCA 713, Tab 100 of BoA.

⁵⁰² *Richard v Canada (Attorney General)*, 2025 ONCA 713 at para 364, Tab 100 of BoA.

⁵⁰³ *Good v Toronto (Police Services Board)*, 2016 ONCA 250, Tab 101 of BoA.

noting that the Supreme Court of Canada had, in *Pro-sys*, determined that the availability of aggregate damages should generally be left to the common issues trial judge for determination following the resolution of any liability-related common issues.

382. The Ontario Court of Appeal commented further that, if the liability common issues were resolved in the class's favour in *Good* (which concerned alleged *Charter* breaches committed by the police at a public protest) then it was likely that the common issues judge could assess a minimum amount of damages owing to each class member for the breach of their *Charter* rights, without any individual inquiry into each class member's circumstances.

383. In *Neal*, the Federal Court certified an aggregate damages common issue on the basis that the "workable methodology" for determining aggregate damages would be a "sampling of the harm experienced by individual class members".⁵⁰⁴

384. Proposed common issues (18)(iii) and (18)(iv) ask whether related to punitive damages are available, and in what amount. Courts routinely certify the question of punitive damages as a common issue prior to assessing compensatory damages for individual class members. The focus of an assessment of punitive damages is on the conduct of the defendants. The inquiry involves two determinations:

- a. whether there has been high-handed, malicious, arbitrary, or reprehensible conduct that departs to a marked degree from ordinary standards of decent behaviour justifying an award of punitive damages; and, if so
- b. the punitive damages awarded are no greater than necessary to rationally accomplish their non-compensatory purposes of retribution, deterrence, and denunciation.⁵⁰⁵

⁵⁰⁴ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 303-305, Tab 30 of BoA; see also *Gionet v Syngenta*, 2024 BCSC 1440 at paras 179-180, Tab 102 of BoA.

⁵⁰⁵ *Whiten v Pilot Insurance Co*, 2002 SCC 18, [2002] 1 SCR 595 at para 96, Tab 103 of BoA; *Bernstein v Peoples Trust Company*, 2019 ONSC 2867 at paras 320-323, Tab 104 of BoA.

385. The factors to be considered in the assessment of punitive damages are inherently defendant-focused and common. While it is true that the full extent of compensatory damages may not be known until the conclusion any required individual damage assessments, this does not preclude the class-wide assessment of whether a base level punitive damages is owed. In *Good*,⁵⁰⁶ the ONCA suggested that approach was possible and such assessments at the common issues stage of certified class proceedings are not uncommon.⁵⁰⁷

386. Proposed common issue (18)(v) asks whether various types of damages, including general, constitutional, equitable, and reconciliatory damages, are available and should be awarded to the Class Members.

387. The Supreme Court of Canada has identified the availability of constitutional damages to remedy a breach of the honour of the Crown. As Jamal J noted in *Ontario (Attorney General) v Restoule*, “[a]s the guardians of the Constitution and guarantors of constitutionally entrenched rights, courts are responsible for ensuring that Aboriginal and treaty rights are protected by adequate, effective, and meaningful remedies.”⁵⁰⁸ Further, in the same decision, Jamal J also noted that “Where the Crown has breached ... the duties arising from the honour of the Crown, the full range of remedies, including damages and other coercive relief, is available to remedy that breach.”⁵⁰⁹ The availability of damages to remedy a breach of the honour of the Crown was

⁵⁰⁶ *Good v Toronto (Police Services Board)*, 2016 ONCA 250 at para 75, Tab 101 of BoA.

⁵⁰⁷ *Bernstein v Peoples Trust Company*, 2019 ONSC 2867 at paras 318-323, Tab 104 of BoA; *Sharifi v WestJet Airlines Ltd.*, 2020 BCSC 1996, Tab 105 of BoA; *Brazeau v Attorney General (Canada)*, 2019 ONSC 1888 at para 450, Tab 106 of BoA; *Reddock v Canada (Attorney General)*, 2019 ONSC 5053 at para 467, Tab 107 of BoA; *Francis v Ontario*, 2020 ONSC 1644 at para 630, Tab 108 of BoA.

⁵⁰⁸ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 275, Tab 60 of BoA.

⁵⁰⁹ *Ontario (Attorney General) v Restoule*, 2024 SCC 27 at para 276, Tab 60 of BoA.

reiterated by the Supreme Court of Canada in *Quebec (Attorney General) v. Pekuakamiulnuatsh Takuhikan*,⁵¹⁰ where the Court commented on the purpose of damages in this circumstance:

Under the public law regime, the analysis must be focused on restoring the honour of the Crown, which was marred by its wrongful conduct. The purpose of this exercise is not to remedy the consequences of a civil fault, but rather to impose a measure that restores balance to the relationship between the parties and thus places them back on the path to reconciliation.⁵¹¹

388. In this case, the Class Members all hold the Aboriginal rights described above, and are owed the duties flowing from the honour of the Crown described above, so to the extent that these rights have been infringed and these duties breached, whether the breach entitles the Class Members to constitutional damages is an issue common to the Class Members.

389. Equitable compensation is available where the Crown breaches a fiducial duty owed to Indigenous peoples. In *Southwind v Canada*,⁵¹² Karakatsanis J set out the principles governing the availability of equitable compensation:

The trial judge must begin by closely analyzing the nature of the fiduciary relationship so as to ensure that the loss is assessed in relation to the obligations owed by the fiduciary. The loss must be caused in fact by the fiduciary's breach, and the causation analysis is not limited by foreseeability... When the Crown breaches its fiduciary duty, the remedy will seek to restore the plaintiff to the position the plaintiff would have been in had the Crown not breached its duty.⁵¹³

390. In this case, should the Class Members prove a breach of fiduciary duties owed by the Crown, whether equitable compensation should be paid would be an issue common to the Class Members.

⁵¹⁰ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39, Tab 68 of BoA.

⁵¹¹ *Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan*, 2024 SCC 39 at para 210, Tab 68 of BoA.

⁵¹² *Southwind v Canada, 2021 SCC 28 (CanLII)*, 2021 SCC 28, Tab 74 of BoA.

⁵¹³ *Southwind v Canada, 2021 SCC 28 (CanLII)*, 2021 SCC 28 at paras 66, 68, Tab 74 of BoA.

(d) Supportive authorities for the proposed common issues

391. The proposed common issues are very similar to common issues certified in the Indigenous residential and day school class actions from which the Innu Day Schools and their Survivors were excluded (*McLean*, *Gottfriedson*, the IRSSA and *Andersen*), canvassed above at Part I, Section E. As Canada's affiant, Kimberlee Ford, admitted in cross-examination, *McLean* and *Gottfriedson* were complex class proceedings of national scope.⁵¹⁴ Both implicated Canada's involvement in hundreds of schools across multiple provinces and territories over a longer time period than the Class Period proposed here.⁵¹⁵ The proposed common issues are also similar to the common issues certified in the authorities reviewed in Part III, Section B.

392. In *McLean*, *Gottfriedson*, *Andersen* and *Cloud*, common issues were certified relating to:

- a. the existence and breach of a duty of care owed to Indigenous children attending school to protect them from harm;⁵¹⁶
- b. the existence and breach of fiduciary duties owed to students to protect them from actionable physical and/or mental harm, and/or fiduciary duties owed to students not to destroy their language and culture;⁵¹⁷
- c. whether the operation and management of the schools breached the Aboriginal rights of the various class members;⁵¹⁸ and

⁵¹⁴ Ford Cross-Examination at pp 54-55, ll 19-6.

⁵¹⁵ *Gottfriedson v Canada*, 2015 FC 766, Tab 94 of BoA, Schedule "A"; *McLean v Canada*, 2019 FC 1074, Tab 109 of BoA, Appendix "A".

⁵¹⁶ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at paras 42-43, 72, Tab 4 of BoA; *Gottfriedson v Canada*, 2015 FC 706 at para 97, Tab 6 of BoA; *Gottfriedson v Canada*, 2015 FC 766, Tab 94 of BoA (order) at para. 1(e)(d); *McLean v Canada (Attorney General)*, 2018 FC 642, Tab 47 of BoA (order), at para. 5(a)-(b); *Anderson v Canada (Attorney General)* (2013), 2013 CanLII 73498 at para 6, Tab 110 of BoA.

⁵¹⁷ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at paras 42-43, 72, Tab 4 of BoA; *Gottfriedson v Canada*, 2015 FC 706 at paras 95-97, Tab 6 of BoA; *Gottfriedson v Canada*, 2015 FC 766, Tab 94 of BoA (order) at para. 1(e)(a) and 1(e)(c); *Anderson v Canada (Attorney General)* (2013), 2013 CanLII 73498 at para 6, Tab 110 of BoA; *McLean v Canada (Attorney General)*, 2018 FC 642, Tab 47 of BoA (order) at 5(c).

⁵¹⁸ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at para 72, Tab 4 of BoA; *McLean v Canada (Attorney General)*, 2018 FC 642, Tab 47 of BoA (order), at para 5(e); *Gottfriedson v Canada*, 2015 FC 766, Tab 94 of BoA (order) at para. 1(e)(b).

d. questions about damages, including whether an aggregate assessment of damages could be made, and whether punitive damages were appropriate and if so in what amount.⁵¹⁹

(a) In *Gottfriedson*, two common issues were also certified in respect of the “Band Class”, the First Nations Bands who either had a residential school in their community or had members who attended a residential school: (1) whether Canada breached a fiduciary duty owed to the Band Class not to destroy their language and culture; and (2) whether Canada breached the cultural and/or linguistic rights, be they Aboriginal Rights or otherwise, of the Band Class.⁵²⁰

(b) In *Brown*, a common issue concerning Canada’s negligence and breach of fiduciary duty to “Indian children” in Ontario apprehended into foster care or placed for adoption was certified as follows:

When the Federal Crown entered into the Canada-Ontario Welfare Services Agreement in December 1, 1965 and at any time thereafter up to December 31, 1984:

(1) Did the Federal Crown have a fiduciary or common law duty of care to take reasonable steps to prevent on-reserve Indian children in Ontario who were placed in the care of non-aboriginal foster or adoptive parents from losing their aboriginal identity?

(2) If so, did the Federal Crown breach such fiduciary or common law duty of care?⁵²¹

393. In *Varley*, common issues were certified in respect of Canada’s duty of care and fiduciary duty to “take reasonable steps to prevent all Indigenous persons, excluding Indian (as defined in the *Indian Act*) and Inuit persons, who were placed in the care of non-Indigenous foster or adoptive

⁵¹⁹ *Cloud v Canada (Attorney General)* (2004), 73 OR 401 at para 72, Tab 4 of BoA; *Gottfriedson v Canada*, 2015 FC 766, Tab 94 of BoA (order) at para 1(e)(f)-(g); *Anderson v Canada (Attorney General)* (2013), 2013 CanLII 73498 at para 6, Tab 110 of BoA; *McLean v Canada (Attorney General)*, 2018 FC 642, Tab 47 of BoA (order), at para. 5(f).

⁵²⁰ *Gottfriedson v Canada*, 2015 FC 766 at para 1, Tab 94 of BoA(e)(a), 1(e)(b).

⁵¹⁵ *Brown v Canada (Attorney General)*, 2013 ONSC 5637 at para 75, Tab 111 of BoA.

parents from losing their Indigenous identities”, and whether damages for the breaches of those duties (1) could be assessed in aggregate, and (2) included punitive damages.⁵²²

394. In *Neal*, the Federal Court certified common issues in respect of the existence, content and breach of Canada’s fiducial duties and duties of care to a class of Indigenous children and parents resident in British Columbia not ordinarily residing on-reserve and who came within the provincial child welfare system during the “Millennium Scoop”. The Federal Court also certified common issues relating to assessment of aggregate damages and punitive damages.⁵²³

395. In *Fisher River*, common issues regarding Canada’s negligence, breach of fiduciary duty, breach of Honour of the Crown, and breach of constitutional Aboriginal rights were certified on behalf of an opt-in class of all First Nations in Canada (either bands registered under the *Indian Act* or First Nations with a modern treaty or land agreement) in respect of a very broad scope of “Impugned Conduct”, characterized by the Court as including “Canada’s conduct and practices involved with (a) the Residential Schools program; (b) the ‘Sixties Scoop’; (c) the FNCFS [First Nations Child and Family Services] Program; (d) the conduct wherein the CHRT found that Canada systemically discriminated against First Nations children on-reserve and in the Yukon contrary to the *Canadian Human Rights Act*, RSC, 1985, c H-6.”⁵²⁴

(e) There is some basis in fact for the proposed common issues

396. As set out in detail in Part I, the Plaintiffs’ Certification Record, including the Supplemental Record, discloses some basis in fact that each of the common issues existed

⁵²² *Varley v Canada (Attorney General)*, 2021 FC 589 at para 11, Tab 112 of BoA

⁵²³ *Neal v Canada (Attorney General)*, 2025 BCSC 1498 at paras 285-292, 297-305, Tab 30 of BoA.

⁵²⁴ *Fisher River Cree Nation v Canada (Attorney General)*, 2025 FC 561 at paras 2, 89, Tab 113 of BoA.

throughout the Class Period and can be resolved on a common basis. Part I reviews the basis in fact for:

- a. the Innu of Labrador's status as an Aboriginal people under s. 35 of the *Constitution Act, 1982* and their traditional culture and way of life prior to European contact;⁵²⁵
- b. Canada, Province's and the School Boards' constitutional and/or statutory obligations in respect of the Innu Day Schools, and Canada's failure to uphold these constitutional obligation;⁵²⁶
- c. the Defendants' joint assimilative program for the Innu of Labrador, and the Innu Day Schools' role in that assimilative program;⁵²⁷
- d. the Defendants' discretionary control over education for the Innu of Labrador and the Innu Day Schools, including how this control was enshrined in their joint agreements and exercised through their joint committees and their funding, operation and management of the Innu Day Schools;⁵²⁸
- e. the systematically assimilative, deculturating, coercive, mandatory and dysfunctional aspects of the Innu Day Schools, including systemic failures of oversight and supervision by the Defendants;⁵²⁹
- f. the repeated criticism of the Innu Day Schools throughout the Class Period by Commissions of Inquiry, members of the Mushuau and Sheshatshiu Innu Nations, academic publications, and outside investigators like Professors McRae, Backhouse, and Philpott;⁵³⁰ and,

⁵²⁵ At Part I, Section C. (i).

⁵²⁶ At Part I, Section C. (ii) and Section D. (i).

⁵²⁷ At Part I, Section C. (iii) and Section D.

⁵²⁸ At Part I, Section D. (iii)

⁵²⁹ At Part I, Section D. (ii) and (iii).

⁵³⁰ At Part I, Section D. (iii).

- g. the harms caused by the Innu Day Schools, both to Survivors and their families and communities.⁵³¹

(iv) A class proceeding is the preferable procedure: 5(1)(d)

397. Class proceedings have been commonplace in litigation involving Indigenous individuals and groups adversely affected by various kinds of Indigenous schools across Canada and is best suited to resolve the common issues in this case. Section 5(1)(d) of the *CAA* directs the Court to certify a class proceeding if that procedure is preferable to alternative procedures for the fair and efficient resolution of the dispute. Section 5(2) provides a non-exhaustive list of factors that the court may consider in determining whether a class action would be the preferable procedure for the fair and efficient resolution of the common issues.

398. The analysis must keep in mind the three principal advantages of class actions: judicial economy, access to justice, and behaviour modification.⁵³² The preferability determination requires an examination of the common issues in their context, taking into account the importance of the common issues in relation to the claim as a whole.⁵³³

399. Core liability issues predominate over individual issues in this institutional claim against government, satisfying s 5(2)(a). Common issues may predominate, even in a claim with substantial individual issues.⁵³⁴

400. Although, as noted above, there have been a number of similar actions that have resulted in settlements for Indigenous individuals who attended schools of various kinds across Canada,

⁵³¹ At Part I, Section D. (iv).

⁵³² *Markson v MBNA Canada Bank*, 2007 ONCA 334 at para 69, Tab 114 of BoA; *Pearson v Inco Ltd, et al* (2006), 78 OR (3d) 641 at para 67, Tab 115 of BoA.

⁵³³ *Markson v MBNA Canada Bank*, 2007 ONCA 334 at para 69, Tab 114 of BoA; *Pearson v Inco Ltd, et al* (2006), 78 OR (3d) 641 at para 67, Tab 115 of BoA.

⁵³⁴ *Pearson v Inco Ltd, et al* (2006), 78 OR (3d) 641 at para 67, Tab 115 of BoA.

the Innu of Labrador who attended Day Schools have been excluded to date. For the purposes of s 5(2)(c), the claims at issue have not been the subject of another action.

401. Pursuing individual claims would be difficult, costly, and inefficient, making the other means of resolving the claim less practical and efficient, as considered under s 5(2)(d). The individual actions would be duplicative, the high costs of litigation would be a barrier to many class members, and the pursuit of individual claims would burden the Courts. While some individuals have pursued individual claims, George Rich gave evidence that in his experience bringing those cases forward was psychologically difficult, and a lot of pressure on one person to “go through an adversarial process about some of the most traumatic experiences of their lives.” He noted the lack of supports available in individual proceedings and viewed a class action as a better option because “[t]ogether we are stronger and can work to minimize trauma and protect the most vulnerable class members.”⁵³⁵ The Supreme Court of Canada stated in *AIC Limited v Fischer* that in order for an alternative procedure to be preferable to the class action it should provide both procedural and substantive access to justice to the claimants.⁵³⁶

402. Regarding the factor described in s 5(2)(e) of the *CAA*, the administration of this class action would not create greater difficulties than those likely to be experienced if relief were sought by other means, as evidenced by the successes of previous class action suits to settle claims for harms experienced by Indigenous individuals and groups due to similar schools. Although certification was contested in *Rumley*, *Cloud*, *Anderson*, and *Gottfriedson*, these class actions were

⁵³⁵ George Rich Affidavit at para. 14.

⁵³⁶ *AIC Limited v Fischer*, 2013 SCC 69, [2013] 3 SCR 949 at para 24, Tab 116 of BoA.

ultimately approved by courts and all resulted in settlements. Further, *Gottfriedson* also included a band class in addition to individuals.

**(v) There are suitable representative plaintiffs and a workable litigation plan:
5(1)(e)**

403. The proposed representative plaintiffs and the litigation plan meet the final certification criterion. In accordance with s 5(1)(e) of the *CAA*, the proposed representative plaintiffs are able to fairly and adequately represent the interests of the class, (ii) they have a workable plan for advancing the action on behalf of the class members and providing them with notice; and (iii) they do not have a conflict of interests with the other class members on the common issues.⁵³⁷

404. The central consideration in determining whether a proposed representative plaintiff is an appropriate representative plaintiff are: (1) whether the proposed representative plaintiff has a common interest with other class members; and (2) whether the proposed representative plaintiff will prosecute the claim vigorously.⁵³⁸

405. Each of the Proposed Representative Plaintiffs is familiar with the substance of the issues and has committed to the role of representative plaintiff.

406. The Plaintiffs Gregory Rich, Marie Martha Andrew, and Magdaline Benuen seek to be appointed as Representative Plaintiffs on behalf of the Survivor Class. Each attended at least one school that operated in a location specified by the Statement of Claim during the Class Period, and

⁵³⁷ *Class Actions Act*, SNL 2001, c C-18.1, s 5(1)(e), Tab 137 of BoA.

⁵³⁸ *Anderson v Canada (Attorney General)*, 2010 NLTD 106 at para 128, Tab 13 of BoA, quoting *Campbell v Flexwatt Corp* (1997), 44 BCLR (3d) 343 at para 75, Tab 97 of BoA; *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 41, Tab 92 of BoA.

each has sworn or affirmed an affidavit confirming the physical and cultural harms they suffered at these schools.

407. The Plaintiff Innu Nation, by its representatives Prote Poker and George Rich, seeks to be appointed as the Representative Plaintiff for the Innu Governments Class.

408. Each of the Proposed Representative Plaintiffs has offered affidavit evidence of their willingness to serve as representative plaintiffs, including *inter alia* their awareness of their duties and responsibilities to the Court and the Classes, their commitment to meeting these duties and responsibilities, and their lack of any interest that is in conflict with the interests of any other Class Member.⁵³⁹

409. The Proposed Representative Plaintiffs on behalf of the Innu Governments Class have adduced evidence that members of the Class share a common interest with each other in the resolution of the common issues because:

- (a) their members attended schools that operated in Sheshatshiu, Old Davis Inlet, Davis Inlet, or Natuashish during the Class Period; and
- (b) Prote Poker and George Rich, on behalf of Innu Nation, which represents the Innu Governments Class, have sworn or affirmed affidavits on behalf of Innu Nation that confirm the harm inflicted by the Day Schools on Innu Nation and Innu communities by undermining their culture, autonomy, sovereignty, and well-being, and by causing physical and cultural harm to their members.⁵⁴⁰

⁵³⁹ George Rich Affidavit, at paras 1-2, 17-18, **AR**; Benuen Affidavit, at paras 1-2, 20-24, **AR**; Andrew Affidavit, at paras 1-2, 12-15, **AR**.

⁵⁴⁰ George Rich Affidavit, at paras 10-14, **AR**; Poker Affidavit, at paras 8-14, **AR**.

410. The proposed litigation plan demonstrates that the Proposed Representative Plaintiffs and class counsel have thought through the process of the proceeding and its complexities. Any deficiencies identified as the case progresses can be addressed by modifying the plan.

411. A litigation plan is a proposal for the manageable prosecution of the class action, including a plan to address the specific complexities of the case. A generous approach is required in assessing the litigation plan. It need not outline every issue to be anticipated throughout litigation. It is a “work in progress” and can be amended to address any shortcomings after certification under the supervision of the case management judge.⁵⁴¹

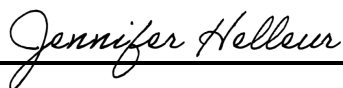
412. The Proposed Representative Plaintiffs’ Litigation Plan satisfies the final component of s 5(1)(e) of the *CAA*.

PART IV - ORDER REQUESTED

413. The Proposed Representative Plaintiffs therefore request the following relief:

- (a) an order certifying this action as a class action, including the appointment of the Proposed Representative Plaintiffs as Representative Plaintiffs, certifying the proposed common issues, and approving the plaintiff’s litigation plan; and
- (b) costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of December, 2025.



**William Hiscock, Paul Kennedy, and
Jennifer Helleur**
BUDDEN HISCOCK LAWYERS

⁵⁴¹ [*Pearson v Inco Ltd, et al*](#) (2006), 78 OR (3d) 641 at para 97, Tab 115 of BoA; [*Cloud v Canada \(Attorney General\)*](#) (2004), 73 OR 401 at para 95, Tab 4 of BoA.

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**Solicitors for the Proposed
Representative Plaintiffs**

APPENDIX “A” – AUTHORITIES

Tab	Title	Pinpoints
1	<i>Tk'emlúps te Secwépemc First Nation v Canada</i>, 2023 FC 327	7, 103-104
2	<i>Warkentin Building Movers Virden Inc v LaTrace</i>, 2021 ABCA 333	29-34
3	<i>Beniey v Canada (Border Services Agency)</i>, 2025 FC 1445	13
4	<i>Cloud v Canada (Attorney General)</i> (2004), 73 OR 401	6, 42-43, 45, 52-53, 58, 72, 95-96
5	<i>Baxter v Canada (Attorney General)</i> (2006), 83 OR 481	3-5, 13, 85
6	<i>Gottfriedson v Canada</i>, 2015 FC 706	1-3, 6, 18, 39, 95-97
7	<i>Tk'emlúps te Secwépemc First Nation v Canada</i>, 2021 FC 988	74-78
8	<i>McLean v Canada</i>, 2019 FC 1075	1-3, 6, 19
9	<i>Canada (Attorney General) v Anderson</i>, 2011 NLCA 82	3, 9, 123, 69, 76., 77, 78, 79, 54, 63, 10
10	<i>Anderson v Canada (Attorney General)</i> (2016), 2016 CanLII 76817	
11	<i>Hollick v Toronto (City)</i>, 2001 SCC 68, [2001] 3 SCR 158	15-18
12	<i>McKenna v Gammon Gold Inc</i>, 2010 ONSC 1591	124
13	<i>Anderson v Canada (Attorney General)</i>, 2010 NLTD 106	44-46, 52-56, 62-63, 128
14	<i>Spring v Goodyear Canada Inc</i>, 2020 ABQB 252	39
15	<i>Jensen v Samsung Electronics Co Ltd</i>, 2023 FCA 89	78
16	<i>Palmer v Teva Canada Limited</i>, 2024 ONCA 220	104
17	<i>Lilleyman v Bumble Bee Foods LLC</i>, 2024 ONCA 606	71
18	<i>Atlantic Lottery Corp Inc v Babstock</i>, 2020 SCC 19	14, 19, 138
19	<i>Pro-Sys Consultants Ltd v Microsoft Corporation</i>, 2013 SCC 57, [2013] 3 SCR 477	105-106
20	<i>Toronto District School Board v Toronto (City of)</i>, 2025 ONSC 4167	32
21	<i>Hunt v Carey Canada Inc</i>, [1990] 2 SCR 959	971-972
22	<i>Dewey v Corner Brook Pulp and Paper Limited</i>, 2025 NLCA 8	43-46
23	<i>PMC York Properties Inc v Siudak</i>, 2022 ONCA 635	31, 34
24	<i>Chiasson v Nalcor Energy</i>, 2021 NLCA 34	8
25	<i>Krishnan v Jamieson Laboratories Inc</i>, 2021 BCSC 1396	45
26	<i>Gilani v BMO Investments Inc</i>, 2021 ONSC 3589	70
27	<i>Dow Chemical Company v Ring</i>, 2010 NLCA 20	10-11
28	<i>Robertson v Ontario</i>, 2022 ONSC 5127	40, 42

Tab	Title	Pinpoints
29	<u>Rumley v British Columbia, 2001 SCC 69 (CanLII), 2001 SCC 69</u>	2-10, 30, 34, 36
30	<u>Neal v Canada (Attorney General), 2025 BCSC 1498</u>	68, 79, 102-103, 184, 202, 204, 285-292, 297-305
31	<u>Cooper v Hobart, 2001 SCC 79 (CanLII), 2001 SCC 79</u>	31, 34
32	<u>Aylmer Meat Packers Inc v Ontario, 2022 ONCA 579</u>	24
33	<u>Syl Apps Secure Treatment Centre v BD, 2007 SCC 38, [2007] 3 SCR 83</u>	28
34	<u>Nelson (City) v Marchi, 2021 SCC 41 (CanLII), 2021 SCC 41</u>	42-49, 61-67, 79
35	<u>R v Imperial Tobacco Canada Ltd, 2011 SCC 42 (CanLII), 2011 SCC 42</u>	21, 43, 45, 90
36	<u>Gibot v British Columbia (Public Guardian and Trustee), 2023 BCSC 1597</u>	102
37	<u>Elizabeth Fry Society of Greater Vancouver v British Columbia (Public Guardian and Trustee), 2025 BCSC 610</u>	71-72
38	<u>Leroux v Ontario, 2023 ONCA 314</u>	102-103
39	<u>Price v Smith & Wesson Corporation, 2025 ONCA 452</u>	68
40	<i>St. Theresa Point First Nation et al. v His Majesty the King</i> , 2025 FC 1926	2, 125, 127, 154, 159, 166-175, 194-198, 248, 251, 305-306
41	<i>Shamattawa First Nation et al. v Attorney General of Canada</i> , 2025 FC 1927	4, 167-171, 177-180, 190
42	<u>Varley v Canada (Attorney General), 2025 FC 753</u>	1-4, 27-32, 168, 174-177
43	<u>Brown v Canada (Attorney General), 2017 ONSC 251</u>	5, 54, 78, 80-81
44	<u>Boucher et al v The Government of Manitoba et al, 2023 MBKB 182</u>	30
45	<u>Riddle v Canada, 2018 FC 641</u>	
46	<u>Francis v Ontario, 2021 ONCA 197</u>	100
47	<u>McLean v Canada (Attorney General), 2018 FC 642</u>	
48	<u>Papassay v The Queen (Ontario), 2015 ONSC 3438</u>	43
49	<u>GG v Ontario, 2025 ONSC 3011</u>	75-77, 85-101, 115
50	<u>Robertson Estate v Ontario, 2024 ONCA 86</u>	15
51	<u>LR v British Columbia, 1999 BCCA 689</u>	18
52	<u>CO v Williamson, 2020 ONSC 3874</u>	98-100
53	<u>Myers v Peel County Board of Education, 1981 CanLII 27 (SCC) (1981), 123 DLR 1 (SCC)</u>	

Tab	Title	Pinpoints
54	<u>EDG v Hammer (1998), 53 BCLR 89</u>	40
55	<u>EDG v Hammer, 2003 SCC 52 (CanLII), 2003 SCC 52</u>	
56	<u>Galambos v Perez, 2009 SCC 48 (CanLII), 2009 SCC 48</u>	77
57	<u>Alberta v Elder Advocates of Alberta Society, 2011 SCC 24 (CanLII), 2011 SCC 24</u>	46, 48
58	<u>Ross v Canada (Attorney General), 2018 SKCA 12</u>	62-70
59	<u>Wewaykum Indian Band v Canada, 2002 SCC 79 (CanLII), 2002 SCC 79</u>	79-81, 96, 104
60	<u>Ontario (Attorney General) v Restoule, 2024 SCC 27</u>	71, 219, 234, 238, 254-259, 275-276
61	<u>Williams Lake Indian Band v Canada (Aboriginal Affairs and Northern Development), 2018 SCC 4 (CanLII), 2018 SCC 4</u>	46, 76
62	<u>Manitoba Metis Federation Inc v Canada (Attorney General), 2013 SCC 14 (CanLII), 2013 SCC 14</u>	47, 65-66, 73, 79
63	<u>Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis, 2022 QCCA 185</u>	46-55, 422-425, 475, 486-489, 494
64	<u>R v Van der Peet, 1996 CanLII 216 (SCC) (1996), 137 DLR 289 (CA)</u>	19, 46
65	<u>Beckman v Little Salmon/Carmacks First Nation, 2010 SCC 53, [2010] 3 SCR 103</u>	33, 62
66	<u>R c Montour, 2023 QCCS 4154</u>	1371-1372
67	<u>R v Gladstone, [1996] 2 SCR 723</u>	43, 54
68	<u>Quebec (Attorney General) v Pekuakamiulnuatsh Takuhikan, 2024 SCC 39</u>	12, 147-148, 156, 161, 163, 168, 177, 185, 188, 210
69	<u>Mikisew Cree First Nation v Canada (Governor General in Council), 2018 SCC 40</u>	21-22
70	<u>Haida Nation v British Columbia (Minister of Forests), 2004 SCC 73, [2004] 3 SCR 511</u>	17-18, 32
71	<u>Dickson v Vuntut Gwitchin First Nation, 2024 SCC 10</u>	51
72	<u>Reference re An Act respecting First Nations, Inuit and Métis children, youth and families, 2024 SCC 5</u>	112
73	<u>First Nations Child and Family Caring Society of Canada et al v Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada), 2016 CHRT 2</u>	
74	<u>Southwind v Canada, 2021 SCC 28 (CanLII), 2021 SCC 28</u>	60-64, 66, 68
75	<u>R v Sparrow, [1990] 1 SCR 1075</u>	

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76	<i>Manitoba Metis Federation Inc v Brian Pallister et al</i>, 2021 MBCA 47	56
77	<i>Saskatchewan (Attorney General) v Witchehan Lake First Nation</i>, 2023 FCA 105	130
78	<i>Mohawk Council of Akwesasne v Canada (Public Safety and Emergency Preparedness)</i>, 2015 FC 611	17
79	<i>Shubenacadie Indian Band v Canada (Attorney General)</i> (2001), 104 ACWS 62	5-6
80	<i>Tsilhqot'in Nation v British Columbia</i>, 2014 SCC 44, [2014] 2 SCR 256	20-21, 23
81	<i>Tippett v Canada</i>, 2019 FC 869	24
82	<i>Johnson v Ontario</i>, 2016 ONSC 5314	54-67
83	<i>Sweet v Canada</i>, 2022 FC 1228 (CanLII), 2022 FC 1228	49-50
84	<i>Canada v Greenwood</i>, 2021 FCA 186 (CanLII), 2021 FCA 186	59, 96-97
85	<i>R v Evans</i>, 1993 CanLII 86 (SCC) (1993), 108 DLR 32 (SCC)	
86	<i>Syngenta AG v Van Wijngaarden</i>, 2025 BCCA 334	89
87	<i>Yahey v British Columbia</i>, 2021 BCSC 1287	822, 826-833
88	<i>R v AP</i> (1996), [1996] OJ	
89	<i>Seed v Ontario</i>, 2012 ONSC 2681	69-72
90	<i>Anderson v Canada (Attorney General)</i> (2013), 2013 CanLII 14093	8
91	<i>Western Canadian Shopping Centres Inc v Dutton</i>, 2001 SCC 46, [2001] 2 SCR 534	38
92	<i>Western Canadian Shopping Centres Inc v Dutton</i>, 2001 SCC 46, [2001] 2 SCR 534	39-41
93	<i>Waldman v Thomson Reuters Corporation</i>, 2012 ONSC 1138	122
94	<i>Gottfriedson v Canada</i>, 2015 FC 766	1-2
95	<i>Crotty v Aviva General Insurance Company</i>, 2024 NLSC 54	138
96	<i>Heller v Uber Technologies Inc</i>, 2022 ONSC 1997	17
97	<i>Campbell v Flexwatt Corp</i> (1997), 44 BCLR (3d) 343	53, 75
98	<i>Robertson v Thomson Corp</i> (1999), 43 OR (3d) 161	34
99	<i>Richard v The Attorney General of Canada</i>, 2024 ONSC 3800	
100	<i>Richard v Canada (Attorney General)</i>, 2025 ONCA 713	364
101	<i>Good v Toronto (Police Services Board)</i>, 2016 ONCA 250	75
102	<i>Gionet v Syngenta</i>, 2024 BCSC 1440	179-180
103	<i>Whiten v Pilot Insurance Co</i>, 2002 SCC 18, [2002] 1 SCR 595	96

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104	<i>Bernstein v Peoples Trust Company</i>, 2019 ONSC 2867	318-323
105	<i>Sharifi v WestJet Airlines Ltd</i>, 2020 BCSC 1996	
106	<i>Brazeau v Attorney General (Canada)</i>, 2019 ONSC 1888	450
107	<i>Reddock v Canada (Attorney General)</i>, 2019 ONSC 5053	467
108	<i>Francis v Ontario</i>, 2020 ONSC 1644	630
109	<i>McLean v Canada</i>, 2019 FC 1074	
110	<i>Anderson v Canada (Attorney General)</i> (2013), 2013 CanLII 73498	6
111	<i>Brown v Canada (Attorney General)</i>, 2013 ONSC 5637	75
112	<i>Varley v Canada (Attorney General)</i>, 2021 FC 589	11
113	<i>Fisher River Cree Nation v Canada (Attorney General)</i>, 2025 FC 561	2, 89
114	<i>Markson v MBNA Canada Bank</i>, 2007 ONCA 334	69
115	<i>Pearson v Inco Ltd, et al</i> (2006), 78 OR (3d) 641	67, 97
116	<i>AIC Limited v Fischer</i>, 2013 SCC 69, [2013] 3 SCR 949	24

APPENDIX “B” – LEGISLATION

Tab	Title
117	<i>Mushuau Innu First Nation Band Order</i> (SOR/2002-415) made under the <i>Indian Act</i> , RSC 1985, c I-5
118	<i>Sheshatshiu Innu First Nation Band Order</i> (SOR/2002-414) made under the <i>Indian Act</i> RSC 1985, c I-5
119	<i>Indian Act</i> , RSC 1985, c I-5
120	<i>Constitution Act, 1982</i> , being Schedule B to the <i>Canada Act 1982</i> (UK), 1982, c 11
121	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>
122	<i>Constitution Act, 1867</i> , s. 91(24)
123	<i>Terms of Union of Newfoundland with Canada, s 3, being Schedule to The Newfoundland Act, 1949</i> (UK), 12 & 13 Geo VI, c 22.
124	<i>The Education Act</i> , SN 1952, c. 101
125	<i>The Education (Departmental) (Amendment) Act, 1950</i> , SN 1950, No. 13
126	<i>The Education Act, 1960</i> , S.N. 1960, No. 50
127	<i>The Department of Education Act</i> , RSN 1968, No. 58
128	<i>The Schools Act</i> , RSN 1970, c 346
129	<i>The Education (Teacher Training) Act, 1968</i> , S.N. 1968, No. 94
130	<i>Schools Act, 1997</i> , SN 1997, C S-12.2
131	<i>Education Act</i> , SNL 1996, c. E-2.2
132	<i>School Boards Dissolution Order</i> , NLR 116/96
133	<i>Boundaries of School Districts Order</i> , NLR 79/96
134	<i>An Act to Amend the Schools Act and the Education Act</i> , RSN 1996, c. 13
135	<i>School Boards Dissolution Order</i> , NLR 95/13
136	<i>Boundaries of School Districts Order</i> , NLR 93/13
137	<i>Class Actions Act</i> , SNL 2001, c C-18.1
138	<i>Canada Evidence Act</i> , RSC 1985, c C-5, s 24
139	<i>Public Enquiries Act</i> , RSN 1952, c 24
140	<i>Public Inquiries Act, 2006</i> , by Order in Council (O.C. 2022-103)

