

Information Note
Department of Justice and Public Safety

BN-2018-00015

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January 26, 2018	

Title: Innu Nation Inc. et al v. Newfoundland and Labrador and Canada

Issue: On December 8, 2017 the Department of Justice and Public Safety accepted service of a Statement of Claim commenced by the following Plaintiffs: Innu Nation Inc, Sebastian Benuen, Damiana Benuen, and Joanna Michel on their own behalf and also on behalf of the estate of Matthew Rich, (AKA Napesh Rich). The Benuens and Michel are Napesh's grandparents. The Defendants are Newfoundland and Labrador and Canada.

Background and Current Status:

- The claim emanates in part from the death of four month old Napesh Rich on October 15, 2015. Napesh's cause of death was blunt force trauma to the head which resulted in his father, Thomas Michel, being charged with second degree murder. The charges were subsequently withdrawn as a result of the Office of the Chief Medical Examiner (OCME) losing key evidence (Napesh's brain and other tissue).
- These circumstances led to two investigations. An external review of the OCME was commenced in July 2016. A report released in July 2017 concluded that there were numerous problems with the OCME and that it was, "an accident waiting to happen." On November 30, 2016, the Child and Youth Advocate (the CYA) released a report entitled, *A Stolen Life*. The CYA's report concluded that:

. . . [S]ervices providers worked and lived in close proximity to each other, collaboration and communication amongst these professionals was severely lacking. The RCMP failed to report serious child protection concerns to DCSSD (Dept. of Child Seniors & Social Development). DCSSD failed to complete comprehensive assessment, with each child protection intervention for this family being treated in isolation from previous interventions. Previous file information was not reviewed by DCSSD staff upon receipt of new CPRs (Child Protection Reports) to ensure previous interventions had been adhered to by the children's caretakers prior to a new protection measure being put into place. Furthermore DCSSD documentation was often incomplete and response to child protection concerns was delayed. Follow-up with this family was CPR-driven and case planning was non-existent, largely due to lack of resources and a lack of provincial DCSSD support for employees in the Labrador region.

- Further context for this claim arises from the July 2017 commitment by the Province to the Labrador Innu to participate in an inquiry into the treatment of Innu children in the child protection system. The federal government has declined to be involved and the start of the inquiry has been delayed. It will likely commence during 2018.
- The Statement of Claim makes a number of allegations. The claim alleges that the federal and provincial governments are responsible for the death of Napesh Rich. The claim alleges negligence on the part of CSSD vis-à-vis child protection, negligence on the part of the federal government vis-à-vis funding of child protection services and negligence by the Province vis-à-vis the treatment of Napesh Rich's remains. The claim also alleges breach of fiduciary duty, and breaches of the ss. 7 and 15 of the *Charter*.

- The claim seeks \$11,000,000 in compensation, \$750,000 for the grandparents, \$250,000 for Innu Nation Inc. related to Napesh Rich's death, and \$10,000,000 for Innu Nation Inc. as compensation for alleged substandard child protection services.

- [REDACTED]

Analysis:

- The pleading contains four claims. A claim by Napesh Rich's grandparents arising from his death, a claim on behalf of the estate of Napesh Rich in his own right, a claim by Innu Nation Inc. arising from the death of Napesh Rich, and a claim by Innu Nation Inc. in respect of alleged substandard child protection services. With the exception of the negligence alleged in respect of the OCME these claims are directed against both governments.

- [REDACTED]

he CYA's report suggests that there was negligence on the part of CSSD and other agencies.

- The *Fatal Accidents Act* allows recovery of pecuniary special damages such as future loss of: shared family income, family work and loss of wealth. [REDACTED]

- The Estate's Claim. The statement of claim indicates that the grandparents are also bringing an action on behalf of the estate of Napesh Rich. Actions and causes of action survive death pursuant to the *Survival of Actions Act* RSNL 1990 c. S-33, however, the *Act* limits the damages which may be claimed by the estate primarily to special damages. [REDACTED]

- Innu Nation Inc.'s claim re: Napesh Rich. Innu Nation Inc. seeks compensation for the death of Napesh Rich. Specifically the Innu Nation claims, "general and special damages, and including but not limited to funeral costs, the pain and suffering and/or emotional distress of other Innu, and loss of care guidance and companionship . . ."

- Innu Nation Inc.'s claim re: Alleged Substandard Child Protection Services. Innu Nation Inc.'s other claim seeks compensation for losses arising from alleged substandard child protection services. [REDACTED]

- Legislative jurisdiction in relation to “Indians, and Lands reserved for the Indians” is given exclusively to Parliament under s. 91(24) of the *Constitution Act*, 1867. However, provincial laws of general application, such as child welfare laws, apply by virtue of s. 88 of the *Indian Act* (to the extent the provincial law is not inconsistent with treaty rights, federal laws or the *Indian Act*). In addition, there exists a funding agreement between the federal and provincial governments wherein funding for child protection activities related to the Innu, and others, is provided by the federal to the provincial government.

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

Action Being Taken:

- A conference call between counsel for all parties was convened on January 18, 2018.

[REDACTED]

- This litigation is still in its early stages. There has not yet been any exchange of documents or discovery of witnesses.

[REDACTED]

- [REDACTED]

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Ministerial Approval: Received from Hon. Andrew Parsons QC

January 26, 2018