

COURT FILE
NUMBER

KBG 1263-2022

COURT OF KING'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE Saskatoon

KING'S BENCH
Jud. Centre of SASKATOON

DEC 27 2022

FILED

PLAINTIFF(S) Louis Gardiner, Margaret Aubichon, Melvina Aubichon,
Emile Janvier, Duane Favel, and Donna Janvier

DEFENDANT(S) The Attorney General of Canada and His Majesty the
King in Right of the Province of Saskatchewan

Brought under *The Class Actions Act*, S.S. 2001, c. C-12.01

NOTICE TO DEFENDANTS

1. The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The King's Bench Rules* unless, in accordance with paragraph 2, you:

- (a) serve a Statement of Defence on the plaintiff; and
- (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.

2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):

- (a) 20 days if you were served in Saskatchewan;
- (b) 30 days if you were served elsewhere in Canada or in the United States of America;
- (c) 40 days if you were served outside Canada and the United States of America.

3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.

4. This Statement of Claim is to be served within 6 months from the date on which it is issued.

5. This Statement of Claim is issued at the above-named judicial centre on the
27th day of December, 2022.


Local Registrar

STATEMENT OF CLAIM

THE PARTIES

The plaintiffs

1. The plaintiffs bring this action on their own behalf and on behalf of the following classes of people:
 - a. any Aboriginal person, being a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, who attended as a student or for educational purposes at the Île-à-la-Crosse residential school (the “Survivor Class” or “Survivor Class Members”); and
 - b. any spouse, parent, child, grandchild, or sibling of a Survivor Class Member, or the surviving spouse of a deceased Survivor Class Member (the “Family Class” or “Family Class Members”).
2. The plaintiff, Louis Gardiner, is a resident of Île-à-la-Crosse, Saskatchewan. Louis was raised for the first years of his life in a rural area outside of Île-à-la-Crosse. His family spoke Michif at home, and he was taught traditional Métis cultural practices.
3. Louis attended the Île-à-la-Crosse residential school (the “Île-à-la-Crosse School” or the “School”) from 1961 to 1969, and is a member of the proposed Survivor Class. While he attended the Île-à-la-Crosse School, Louis endured psychological, physical and sexual abuse from the School staff, including psychologically and physically abusive discipline for speaking Michif. Louis was ultimately expelled from the Île-à-la-Crosse School after fighting back against the physically abusive discipline inflicted by the School staff.

4. The plaintiff, Margaret Aubichon, is a resident of Patuanak, Saskatchewan. She grew up in an isolated rural community near Dipper Lake in Northern Saskatchewan. Margaret was raised in a traditional Métis lifestyle by her grandparents, and spoke Dene as a child.

5. Margaret attended the Île-à-la-Crosse School from in or around 1955 to 1962, and is a member of the proposed Survivor Class. While she attended the Île-à-la-Crosse School, Margaret endured psychological, physical and sexual abuse from the School staff including denigration of her heritage, culture and ethnicity. The abusive conduct of the School staff caused Margaret to feel ashamed of herself and of being a Métis person.

6. The plaintiff, Emile Janvier, is a resident of La Loche, Saskatchewan, where he was born and raised. Emile's family spoke only Dene, but he and his siblings were coerced to attend the Île-à-la-Crosse School approximately 160 kilometres away. A priest from the Roman Catholic Mission in Île-à-la-Crosse informed Emile's parents that the police would come to take the children away by force if they did not send the children to the School.

7. Emile attended the Île-à-la-Crosse School from 1954 to 1964, and is a member of the proposed Survivor Class. While he attended the Île-à-la-Crosse School, Emile endured psychological and physical abuse from the School staff. He remembers his time at the School as being in a constant state of apprehension and fear, where he was malnourished, uncared-for, and made to feel like his Métis language and culture were meaningless.

8. The plaintiff, Melvina Aubichon, is a resident of Prince Albert, Saskatchewan. Melvina's family is from English River First Nation in Northern Saskatchewan. She and her five siblings grew up speaking Dene, and learning traditional ways from their parents, including hunting, fishing and trapping.

9. Melvina attended the Île-à-la-Crosse School from in or around 1967 to in or around 1972, and is a member of the proposed Survivor Class. While she attended the Île-à-la-Crosse School, Melvina endured psychological and physical abuse from the School staff. In her experience, the School staff treated the Aboriginal students as subhuman. By characterizing the students as an inferior race, the School staff justified their violent behaviour towards the students, and the unhealthy living conditions in the dormitories.

10. The plaintiff, Duane Favel, is a resident of Île-à-la-Crosse, Saskatchewan. His father, Jim Favel, attended the Île-à-la-Crosse School for approximately four school years in the late 1940s and early 1950s, and therefore Duane is a member of the Family Class.

11. The plaintiff, Donna Janvier, is a resident of St. George's Hill, Saskatchewan. Her parents, Patrick Desjarlais and Aldina Desjarlais, both attended the Île-à-la-Crosse School in the 1940s, and therefore Ms. Janvier is a member of the Family Class.

The Defendants

12. The Attorney General of Canada is the legal entity liable for torts committed by agents and servants of His Majesty the King in Right of Canada ("Canada") pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and equivalent provisions of predecessor legislation.

13. At all material times, Canada was, or ought to have been, responsible for the operation, maintenance, funding, oversight, support and management of the Île-à-la-Crosse School.

14. In 2021, Canada affirmed the *United Nations Declaration on the Rights of Indigenous Peoples*, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007), 46 I.L.M. 1013 (2007) ("UNDRIP") as part of Canadian law and committed to implementing the UNDRIP by passing into law the *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c.

14. The legislation echoes Article 43 of the UNDRIP in its preamble, stating that the rights and principles affirmed in the UNDRIP constitute “minimum standards” for the survival, dignity and well-being of Aboriginal peoples of the world, and must be implemented in Canada.

15. The defendant His Majesty the King in Right of the Province of Saskatchewan (“Saskatchewan”) is liable for torts committed by its agents and servants pursuant to s. 5(1) of *The Proceedings Against the Crown Act, 2019*, S.S. 2019, c. P-27.01, and equivalent provisions of predecessor legislation.

16. As described below, at various times, Saskatchewan, solely or jointly together with Canada, contributed to the operation, maintenance, funding, oversight, support and management of the Île-à-la-Crosse School.

STATEMENT OF FACTS

The residential schools system and Canada’s residential schools policy

17. Residential schools were boarding schools established in Canada in the 19th century ostensibly for the education of Aboriginal children. Children resided at the schools all year, or for significant periods of the year.

18. Commencing in the early 20th century, Canada began entering into formal agreements with various Christian religious organizations (the “Churches”) for the operation of residential schools. Pursuant to these agreements, Canada controlled, regulated, supervised and directed the operation of residential schools, while the Churches assumed responsibility for the day-to-day operation of many of the residential schools, for which Canada paid the Churches a *per capita* grant.

19. As of 1920, Canada’s residential schools policy included compulsory attendance at residential schools for all Aboriginal children aged 7 to 15, meaning that Canada removed most Aboriginal children from their homes and communities and transported them to residential schools.

Failure to attend could result in fines or imprisonment of both parent and child, strictly enforced by use of truant officers.

20. The purpose of Canada's residential schools policy was the complete integration and assimilation of Aboriginal children into Euro-Canadian culture and society. To achieve this purpose, the residential schools policy was designed to eradicate traditional Aboriginal language, culture, religion and way of life, including by applying rigid discipline.

21. Having been stripped of their culture, language and identity, as well as their connections with their families, communities and traditional lands, residential school survivors thereby lost their ability to pass on their spiritual, cultural and linguistic heritage to succeeding generations. In other words, as a result of the success of the residential schools policy, Canada eroded the foundations of identity for generations of Aboriginal children, families, and communities.

22. In addition to loss of their Aboriginal identity and culture, students who attended residential schools were subjected to systematic child abuse, neglect, and maltreatment. They often endured psychological, physical and/or sexual abuse at the hands of teachers, administrators and other employees of these schools. That was the experience of the Survivor Class Members.

Education of Métis children

23. Canada historically viewed Métis people as "half-breeds" because of their mixed ancestry. Especially following the North-West Resistance in 1885 and the Red River Resistance of 1869-70, the Métis were considered by Canada, Saskatchewan and the Churches alike as a particularly rebellious and dangerous people in need of being "civilized" and assimilated.

24. In 1876, Bishop Vital-Justice Grandin, now known as a key architect of Canada's residential school system, wrote to the federal Department of Indian Affairs, requesting funding

for more “Indian Schools” in part due to the importance of instilling in Métis children “pronounced distastes for native life so that they will be humiliated when reminded of their origin”.

25. Unlike with First Nations and Inuit children, however, Canada refused to acknowledge its constitutional duties to Métis children as Aboriginal children. When then-Prime Minister Sir John A. Macdonald authorized the official creation of a federally funded residential schools system in 1883, Canada took the position that the provinces should be responsible for educating and assimilating Métis children and that Métis children therefore should not attend federally funded residential schools.

26. The provinces, including Saskatchewan, were reluctant to commit the funding and other resources necessary to educate Métis children. The Churches, by contrast, were eager to take on the task of assimilating Métis children alongside other Aboriginal children. As a result, and despite Canada’s official position that Métis children should attend only provincially funded schools, Métis children nevertheless often attended federally funded residential schools as a result of the Churches’ admissions policies. Since detailed attendance records were kept in support of the Churches’ requests for funding, these attendances occurred with Canada’s knowledge.

27. In addition to condoning—and funding—the attendance of Métis children at federally funded residential schools, Canada also provided funding and support to provincially operated residential schools which had Métis children in attendance.

28. Thus, in Saskatchewan from the 19th century until the 1940s, Métis education was funded by both Canada and the province through a combination of federally and provincially operated institutions. In the 1940s, Saskatchewan assumed full operational responsibility for educating Métis children within the province, but federal funding continued for some schools, including the Île-à-la-Crosse School, as described below.

29. Canada funded the operations of the Île-à-la-Crosse School because it was furthering Canada's objective of cultural repression and assimilation of the Aboriginal children who were coerced and compelled to attend.

30. Like Canada, Saskatchewan also engaged in coercive practices to ensure that Métis parents sent their children to residential schools rather than educating them within their communities or at public schools. For example, in 1945, Saskatchewan instituted a provision making receipt of family allowances contingent upon school attendance. Because of the high rates of poverty and unemployment in Métis communities, this threat of withholding social assistance was highly effective at compelling Métis children's attendance at government schools, including residential schools like the Île-à-la-Crosse School.

History of the Île-à-la-Crosse School

31. The Île-à-la-Crosse School was one of the oldest residential schools in Canada. It was located in the village of Île-à-la-Crosse, Saskatchewan, which was formerly a Métis settlement called Sakitawak, and now falls within Treaty Ten territory.

32. Sakitawak is a Cree name meaning "big opening where the waters meet", reflecting that Île-à-la-Crosse occupies a central location amidst the surrounding network of lakes and rivers. Because of this, and because Sakitawak was situated near the border between the Cree and Dene people, the settlement was a natural meeting place for people in what is now Northern Saskatchewan. When European settlers arrived in Northern Saskatchewan, they built numerous trading posts near Sakitawak and established Île-à-la-Crosse as a central place to organize trading throughout the Northern Prairies.

33. The initial iteration of the School was a day school opened by the Oblates' Roman Catholic Mission in 1847.

34. Concerned with low attendance rates, the Oblates sought the assistance of the Sisters of Charity. In 1860, the Sisters of Charity, also known as the Grey Nuns, arrived at Île-à-la-Crosse and transformed the School into a boarding/residential school. Nine girls and six boys comprised the first class of resident students.

35. In 1874, a new school building was built on the site and the School became known as Notre-Dame-du-Sacré-Coeur.

36. The Île-à-la-Crosse School received federal funding in 1875 and 1876, but was denied further federal funding since it lay outside of Treaty Six territory, and Treaty Ten had not yet been signed. Nevertheless, in 1880, then-Prime Minister John A. Macdonald described the Île-à-la-Crosse School as one of four federal “Indian schools” setting the standard for other educational facilities.

37. In 1901, the Mission grounds were flooded and by 1905, the poor living conditions led the Grey Nuns to leave the Île-à-la-Crosse School. The school was relocated in 1906 to the nearby community of Lac la Plonge, where it was known as Beauval or St. Bruno’s. Beauval eventually became a formally recognized Indian Residential School and its students were included in the Indian Residential Schools Settlement Agreement (as described below).

38. In 1917, the Grey Nuns returned to Île-à-la-Crosse and Father Marius Rossignol reopened the Île-à-la-Crosse School, now renamed the School of the Holy Family.

39. Because the Mission managed the day-to-day operations of both the Beauval school and the Île-à-la-Crosse School, the two schools quickly became companion institutions. The Mission took in Aboriginal students from across Northern Saskatchewan, then sent the First Nations students to Beauval and the Métis students to the Île-à-la-Crosse School. Because this system was

never strictly enforced, however, a significant number of Métis students attended Beauval, and a significant number of First Nations students attended the Île-à-la-Crosse School.

40. Over the years, students from many communities across Northern Saskatchewan attended the School, including: Clear Lake, Old Lady's Point, Buckley's Point, Dore Lake, Sled Lake, Green Lake, Jans Bay, Cole Bay, Beauval, Patuanak, Pine House Lake, Sapwagamik, Canoe River, Buffalo Narrows, St. Georges Hill, Michel Village, Turner Lake, Bear Creek, Black Point, Descharm Lake, Garson Lake and La Loche. Students from Île-à-la-Crosse usually attended the School as day students (also known as "day schoolers") while students from these neighbouring communities usually attended as resident students.

41. Between 1917 and 1945, the Grey Nuns and the Mission carried out the day-to-day operations of the Île-à-la-Crosse School, while Canada provided funds for the School's operations.

42. The Mission also continued to operate Beauval during this time period, and frequently shared federally funded resources between Beauval and the Île-à-la-Crosse School, including supplies and staff who travelled back and forth between the two schools.

43. In 1920, a fire destroyed the Île-à-la-Crosse School, and it reopened in 1921. The School grew after this time and, by 1929, there were over 42 resident students.

44. Also in 1920, the *Indian Act* was amended to make it mandatory for every "Indian" (First Nations) child between the ages of seven and sixteen to attend a residential school. Consequences for failing to comply included fines and forcible removal of children from their homes. Members of the Royal Canadian Mounted Police acted as truant officers, who searched for and apprehended students who attempted to avoid attendance.

45. The Mission staff (who also managed the operation of the Beauval school for First Nations students) and Île-à-la-Crosse School administrators and staff (who were often also Beauval

administrators and staff) treated the two schools interchangeably for purposes of compelling mandatory attendance. Although the *Indian Act* did not apply to Métis people, the Mission and School staff nevertheless informed nearby families and communities that it was mandatory for Métis children to attend the Île-à-la-Crosse School, and threatened forcible removal of their children if they did not comply. RCMP members acting as truant officers were dispatched by the Mission to search for and apprehend students, regardless of whether they attended Beauval or the Île-à-la-Crosse School, and regardless of whether they were Métis or First Nations.

46. Many families of School students from other communities moved to Île-à-la-Crosse so that they would not be separated from their children, and were thus forced to give up their traditional land base and land-based teachings, often losing their economic viability and self-sufficiency.

47. In 1930, the Saskatchewan Department of Education began providing grants to the School for board and tuition of students and teacher salaries.

48. The School closed in 1933 due to lack of government funding, but reopened in 1935. By 1939, the School comprised two classes. There were 45 resident students and a few day students from the settlement. A third class was added in 1942.

49. In 1945, the Saskatchewan Department of Education officially assumed the administration of the Île-à-la-Crosse School and began renting the classrooms from the Mission. The Mission continued to manage the dormitories, and received a provincial government allowance at a rate of 60 cents per day for each child it housed.

50. In 1947, 168 students attended the school and 124 of these were resident students.

51. In 1951, 191 students attended the school and 120 of these were resident students.

52. In 1959, another new school building was built that accommodated 231 students, of whom 113 were resident students.

53. In 1964, the boys' dormitory burned down and had to be rebuilt. At that time, there were 331 students at the School, about 100 of whom were resident students.

54. The Île-à-la-Crosse School caught fire again in 1972 and was shut down. Although the building was rebuilt in 1976, the Saskatchewan Department of Education transferred the administration of the school to a locally run school board that year, and the residential school closed its doors.

55. In total, approximately 1,500 Aboriginal students attended the Île-à-la-Crosse School between 1860 and 1972.

Conditions at the Île-à-la-Crosse School

56. While at the Île-à-la-Crosse School, the Survivor Class Members were forcibly confined and deprived of their heritage, their support networks and their way of life, forced to adopt a foreign language and culture, and punished severely for non-compliance. They were not allowed to speak their Aboriginal languages or practice their culture. They were taught instead to be ashamed of their Aboriginal languages, culture, spirituality and practices, with the ultimate purpose of supplanting their Aboriginal identity and instead imposing the Euro-Canadian identity upon them.

57. In particular, the Île-à-la-Crosse School administrators, staff and other employees:

- a. forcibly separated and isolated the Survivor Class Members from their families and communities;
- b. prevented the Survivor Class Members from speaking with or seeing their families;
- c. prevented the Survivor Class Members from engaging in traditional cultural or religious activities;

- d. punished the Survivor Class Members with psychological and/or physical abuse when they engaged in traditional cultural or religious activities;
- e. prevented the Survivor Class Members from speaking their Aboriginal languages;
- f. punished the Survivor Class Members with psychological and/or physical abuse when they spoke their Aboriginal languages;
- g. disrespected and disparaged Aboriginal religion, culture and language in front of Survivor Class Members;
- h. referred to Survivor Class Members as “savages”, “heathens”, “half-breeds”, and other similar racial epithets; and
- i. taught the Survivor Class Members that their traditional heritage, ancestry, languages, culture and spirituality were wrong, and should not be followed or recognized, and instilled shame in the Survivor Class Members for these fundamental aspects of their personhood.

58. In all cases, Survivor Class Members were psychologically abused by School administrators, staff, and/or other employees. In many cases Survivor Class Members were also physically and/or sexually abused by School administrators, staff, and/or other employees.

59. The education provided by the School to the Survivor Class Members was inadequate and fell below the provincial standards of education provided at public schools.

60. The Survivor Class Members who attended as resident students also endured many other forms of mistreatment. They received substandard care and endured poor living conditions, including inadequate resources such as clothing and food, leading to malnourishment, as well as other illnesses and injuries.

Reconciling with the legacy of residential schools

61. On January 7, 1998, Canada issued a Statement of Reconciliation acknowledging and apologizing for the failures of the residential schools system. It admitted that its residential schools policy was designed to assimilate Aboriginal persons and that it was wrong to pursue that goal. Canada also admitted that the residential schools system did, in fact, lead to a weakening of Aboriginal identity and a suppression of Aboriginal culture and values.

62. The Statement of Reconciliation by Canada is an admission by Canada of the facts and duties set out therein and is relevant to the plaintiffs' claim for damages, including, without limitation, punitive damages.

63. In March 2007, the Indian Residential School Settlement Agreement ("IRSSA") was granted court approval. The IRSSA, which resolved a number of lawsuits that had been commenced across Canada, provided benefits (including compensation, commemoration activities, and healing supports) to survivors of certain federally funded residential schools which were recognized as "Indian Residential Schools".

64. Despite having received funding from Canada numerous times, Île-à-la-Crosse School was not recognized as an Indian Residential School, and the Survivor Class Members were not class members under the IRSSA.

65. On June 11, 2008, then-Prime Minister Stephen Harper delivered an apology on behalf of Canada for the harm done specifically by Indian Residential Schools. In it, he acknowledged that the primary objectives of the residential schools system were to remove children from the influence of their homes, families, traditions and cultures and to assimilate them into the dominant culture, and that Canada built an educational system that deprived Aboriginal children of the care and

nurturing of their families and communities. This apology did not include an apology to the Survivor Class.

66. Like the survivors of the formally recognized Indian Residential Schools, the Survivor Class Members were separated from their families at Île-à-la-Crosse School, isolated and deprived of their Aboriginal heritage, their support networks and their way of life, and endured maltreatment and abuse.

67. Unlike the survivors of the formally recognized Indian Residential Schools, however, the Survivor Class Members have received no recognition, compensation or apology from those responsible for their experiences at the Île-à-la-Crosse School, including from the defendants.

68. Despite acknowledging the extraordinary wrong of the residential schools system through public statements, the IRSSA, and other lawsuit settlements subsequent to the IRSSA, Canada has continued to exclude many members of Aboriginal communities in Canada, including the Survivor Class Members, from receiving any measure of justice or reconciliation.

69. The Truth and Reconciliation Commission of Canada (“TRCC”) was established as part of the IRSSA. On December 15, 2015, the TRCC released its Final Report listing 94 “Calls to Action” to redress the legacy of Indian Residential Schools and to advance the process of reconciliation between Canada and Aboriginal peoples. TRCC Call to Action #29 specifically urges Canada to work with survivors excluded from the IRSSA to resolve their claims expeditiously.

70. Canada has committed to fully implementing the TRCC calls to action to support the healing journey of residential school survivors, their families and communities, including as recently as July 25, 2022, in a statement from Prime Minister Justin Trudeau. That statement, made in recognition of Pope Francis’ personal apology to residential school survivors—including the Survivor Class Members—explicitly acknowledged the courage, advocacy, and perseverance of

Métis survivors. Yet, to date, Canada has not provided any compensation to the Class for the harms that they suffered at Île-à-la-Crosse School.

LEGAL BASIS

71. As Aboriginal persons and children under their control and care, the plaintiffs and the Class Members were owed the highest fiduciary, constitutional and common law duties by the defendants. In all of their dealings with the plaintiffs and the Class Members, the defendants had the obligation of upholding the Honour of the Crown.

72. At all material times, the defendants owed the plaintiffs and the Class Members a special duty of care, good faith, honesty and loyalty, pursuant to their constitutional obligations and the Crown's duty to act in the best interests of Aboriginal people, and especially vulnerable Aboriginal children.

73. The defendants' participation in, or neglect in respect of the operation and maintenance of the Île-à-la-Crosse School was in breach of their fiduciary and other equitable obligations owed to the plaintiffs and Class Members, as well as a breach of the defendants' constitutional and common law duties owed to the plaintiffs and the Class.

Canada's breach of its fiduciary, statutory and common law duties

74. At all material times, Canada possessed exclusive legislative and executive responsibility over Aboriginal persons in Canada, including the Survivor Class Members. As "Indians" for purposes of s. 91(24) of the *Constitution Act, 1867* and Aboriginal persons for purposes of s. 35 of the *Constitution Act, 1982*, the Survivor Class Members were all subjects of federal jurisdiction and responsibility.

75. The nature of Canada's relationship with Aboriginal persons gives rise to a fiduciary duty and a common law duty of care to preserve, protect and promote the welfare and education of Aboriginal children.

76. In particular, since Canada's fiduciary responsibility to Aboriginal people, including the welfare and education of Aboriginal children, is, and was, categorical in nature, Canada was prohibited from attempting to cede or delegate such duties to any other entity, including to Saskatchewan, or to the Churches.

77. Canada was therefore vested with legal control of the Île-à-la-Crosse School for the duration of its existence, with attendant responsibilities relating to funding, auditing, visitation, oversight, decision-making and monitoring of the School to ensure that it was operated at all times in the best interests of the students.

78. Accordingly, while the Île-à-la-Crosse School operated, Canada was responsible for:

- a. the promotion of the health, safety and well-being of the students at Île-à-la-Crosse School, including the Survivor Class Members;
- b. the decisions made, procedures and regulations promulgated, operations and actions taken by the Department of Indigenous and Northern Affairs Canada ("INAC") and its predecessors, as well as its employees, servants, officers and agents, with regard to the residential schools system and the education of First Nations and Métis children, including at the Île-à-la-Crosse School;
- c. the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Île-à-la-Crosse School and for the creation, design and implementation of the program of education for its Aboriginal students;

- d. the selection, control, training, supervision and regulation of the designated operators of the Île-à-la-Crosse School and their employees, servants, officers and agents;
- e. the care and supervision of the students at Île-à-la-Crosse School, including the Survivor Class Members, and for the supply of all the necessities of life to the students, including the Survivor Class Members, *in loco parentis*;
- f. the provision of educational services and opportunities to the students at Île-à-la-Crosse School, including the Survivor Class Members; and
- g. preserving, promoting, maintaining and not interfering with the rights of the students at Île-à-la-Crosse School, particularly the Survivor Class Members' Aboriginal rights, including the rights to learn, retain and practice their Aboriginal culture, spirituality, language and traditions.

79. The Survivor Class Members were systematically deprived of the essential components of a healthy childhood. They were subjected to abuse by those who were responsible for their well-being. The conditions and abuses at the Île-à-la-Crosse School were well-known to Canada, but it took no steps to prevent the abuse or to ensure the safety and well-being of the children in its care.

80. Canada breached its fiduciary duty and common law duty of care to the Survivor Class by failing to meet its responsibilities to the students in a meaningful or effective way.

81. In particular, Canada:

- a. through its residential schools policy, undertook a systemic program of forced integration of Aboriginal children, including at the Île-à-la-Crosse School, when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury;

- b. failed to properly select, supervise, evaluate, monitor or control the organizations and individuals to which it delegated the day-to-day operations of the Île-à-la-Crosse School;
- c. failed to properly monitor and oversee the provision of funding that it made to the Île-à-la-Crosse School;
- d. failed to provide adequate funding to the Île-à-la-Crosse School in comparison with the funding being provided for the education of other children across Canada;
- e. failed to take proper steps to ameliorate the harmful effects of attendance at the Île-à-la-Crosse School;
- f. failed to adequately supervise and control the INAC agents operating under its jurisdiction;
- g. deliberately and chronically deprived the Survivor Class Members of the education to which they were entitled;
- h. failed to provide funding for the Île-à-la-Crosse School that was adequate or sufficient to supply the necessities of life to the Survivor Class Members;
- i. failed to respond adequately, or at all, to disclosure of abuses and/or serious systemic failures at the Île-à-la-Crosse School;
- j. permitted Survivor Class Members to be abused, assaulted and battered at the Île-à-la-Crosse School; and
- k. failed to inspect or audit the Île-à-la-Crosse School adequately, or at all.

82. During time periods when Canada did not materially fund, operate or manage the Île-à-la-Crosse School, it breached its fiduciary duty and duty of care to the Survivor Class by failing to do so at all, as Canada possessed singular and exclusive jurisdiction and responsibility over

Aboriginal persons in Canada, including the education of Aboriginal persons, and including the predominantly Métis people who comprise the Survivor Class.

83. By failing to take any appropriate steps within its mandate and ability to oversee, fund and audit the School to protect the Survivor Class Members and their rights, Canada's acts and omissions were fundamentally disloyal and betrayed the Survivor Class Members, and breached the Honour of the Crown.

84. Canada not only failed to act when it should have done so, it acted in its own self-interest and contrary to the interests of the Survivor Class Members. Canada pursued the residential schools policy, and engaged in the funding, operation and maintenance of residential/boarding schools like the Île-à-la-Crosse School to eradicate what Canada saw as the “Indian Problem” – more specifically, Canada sought to relieve itself of its moral and financial responsibilities for Aboriginal people, the expense and inconvenience of dealing with cultures, languages, habits and values different from Canada's predominant Euro-Canadian heritage, and, by eradicating identities and cultures, to assume control over Aboriginal lands.

85. Canada's fiduciary duties obliged it to act as a protector of the Class Members' Aboriginal rights, including the protection and preservation of their language, culture and their way of life, and the duty to take corrective steps to restore the plaintiffs and Survivor Class Members' culture, history and status, or assist them to do so. At a minimum, Canada's duty to Aboriginal persons included the duty not to deliberately reduce the number of the beneficiaries to whom Canada owed its duties.

86. Further, Canada has at all material times committed itself to honour international law in relation to the treatment of people within its territory, which obligations form minimum commitments to Aboriginal peoples in Canada, including the Survivor Class Members, and which

have been breached. In particular, Canada's breaches include the failure to comply with the terms and spirit of:

- a. the *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, entered into force January 12, 1951, particularly Articles 2(b), (c) and (e), by engaging in the intentional destruction of the culture of Aboriginal children and communities, causing profound and permanent cultural, psychological, emotional and physical injuries to the Survivor Class Members;
- b. the *Declaration of the Rights of the Child* (1959) G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354, by failing to provide Aboriginal children with the means necessary for normal development, both materially and spiritually, and failing to put them in a position to earn a livelihood and protect them against exploitation;
- c. the *Convention on the Rights of the Child*, G.A. res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 1577 UNTS 3; 28 ILM 1456 (1989), particularly Articles 29 and 30, by failing to provide Aboriginal children with education that is directed to the development of respect for their parents, their cultural identities, language and values, and by denying the right of Aboriginal children to enjoy their own cultures, to profess and practise their own religions and to use their own languages;
- d. the *International Covenant on Civil and Political Rights*, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, particularly Articles 1 and 27, by interfering with Survivor Class Members' rights to retain and practice their culture, spirituality,

language and traditions, the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities and the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities;

e. the *American Declaration of the Rights and Duties of Man*, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in *Basic Documents Pertaining to Human Rights in the Inter-American System*, OEA/Ser.L.V//II.82 doc.6 rev.1 at 17 (1992), particularly Article XIII, by violating Survivor Class Members' right to take part in the cultural life of their communities; and

f. the UNDRIP, particularly Article 8(2), which commits to the provision of effective mechanisms for redress for, *inter alia*:

- i. any action which has the aim or effect of depriving Aboriginal people of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- ii. any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- iii. any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; and
- iv. any form of forced assimilation or integration.

87. Canada's obligations under international law inform Canada's common law, statutory, fiduciary, constitutionally mandated and other duties. A breach of these international obligations, particularly the UNDRIP, constitutes a breach under domestic law.

Saskatchewan's breach of its fiduciary and common law duties

88. To the extent that Saskatchewan funded, operated or maintained the Île-à-la-Crosse School, Saskatchewan owed the Survivor Class members a fiduciary duty to act in accordance with the best interests of the Survivor Class at all times and in a manner upholding the Honour of the Crown.

At the material times, Saskatchewan was responsible for:

- a. the decisions made, procedures and regulations promulgated, operations and actions taken by the Department of Education, as well as its employees, servants, officers and agents, with regard to the education of Métis children;
- b. the construction, operation, maintenance, ownership, financing, administration, supervision, inspection and auditing of the Île-à-la-Crosse School and for the creation, design and implementation of the program of education for its Aboriginal students;
- c. the selection, control, training, supervision and regulation of the designated operators of the Île-à-la-Crosse School and their employees, servants, officers and agents;
- d. the care and supervision of the Survivor Class Members, and for the supply of all the necessities of life to Survivor Class Members, *in loco parentis*;
- e. the provision of educational services and opportunities to the Survivor Class Members; and
- f. preserving, promoting, maintaining and not interfering with the Survivor Class Members' Aboriginal rights, including the rights to learn, retain and practice their Aboriginal culture, spirituality, language and traditions.

89. The conditions and abuses at the Île-à-la-Crosse School were well-known to Saskatchewan, but it took no steps to prevent the abuse or to ensure the safety and well-being of the children in its care.

90. During time periods when Saskatchewan did materially fund, operate and/or manage the Île-à-la-Crosse School, it breached its fiduciary duty and common law duty of care to the Survivor Class by failing to meet its responsibilities to the students in a meaningful or effective way, including as particularized above with regard to Canada.

91. As with Canada, by failing to take any steps within its mandate and ability to oversee, fund and audit the School to protect the Survivor Class Members and their rights, Saskatchewan's acts and omissions were fundamentally disloyal and betrayed the Survivor Class Members. By failing to act when it should have done so, Saskatchewan breached its fiduciary duties, and breached the Honour of the Crown.

The defendants' breach of their constitutional duties

92. The defendants also breached the Survivor Class Members' Aboriginal rights pursuant to the *Constitution Act, 1987*, s. 35.

93. As set out above, while the Survivor Class Members attended the Île-à-la-Crosse School, they were punished for speaking their traditional languages and were made to feel ashamed of their traditional culture, identity and heritage. The Survivor Class Members' ability to speak their traditional Aboriginal languages and to practice their spiritual, religious and cultural activities was seriously impaired by their experiences at the Île-à-la-Crosse School, and in some cases, was lost entirely.

94. At all material times, the defendants each had a duty not to impair the Class Members' Aboriginal rights. The defendants' individual and joint interference in the Aboriginal rights of the

Survivor Class Members was made without justification and has resulted in losses for the Survivor Class Members, as well as for their descendants and communities.

Damages

95. As a consequence of the breaches of fiduciary, constitutional and common law duties by Canada, Saskatchewan and their respective agents, for which Canada and Saskatchewan are vicariously liable, the Survivor Class Members suffered injury and damages including:

- a. assault and battery;
- b. sexual abuse;
- c. serious and prolonged emotional and psychological harm, in some cases amounting to a permanent disability;
- d. loss of Aboriginal language, culture, spirituality, and identity;
- e. deprivation of the fundamental elements of an education, including basic literacy;
- f. an impaired ability to trust other people, to form or sustain intimate relationships, to participate in normal family life, or to control anger;
- g. a propensity to addiction;
- h. alienation and isolation from community, family, spouses and children;
- i. an impaired ability to enjoy and participate in recreational, social, cultural, athletic and employment activities;
- j. an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- k. deprivation of skills necessary to obtain gainful employment;
- l. the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the residential school experience;

- m. sexual dysfunction;
- n. depression, anxiety and emotional dysfunction;
- o. suicidal tendencies;
- p. pain and suffering;
- q. loss of self-esteem and feelings of degradation, shame, fear and loneliness;
- r. nightmares, flashbacks and sleeping problems;
- s. fear, humiliation and embarrassment as a child and adult;
- t. sexual confusion and disorientation as a child and young adult;
- u. impaired ability to express emotions in a normal and healthy manner; and
- v. loss of ability to participate in, or fulfill, cultural practices and duties.

96. As a result of their experiences at the Île-à-la-Crosse School, the plaintiffs Louis Gardiner, Margaret Aubichon, Melvina Aubichon and Emile Janvier, who are Survivor Class Members, each suffered injury and damages. All of them experienced loss of their Métis language, culture and identity, and were subjected to assault and battery by the School staff. Louis and Margaret were also subjected to sexual assault by the School staff.

97. Each of the Survivor Class Member plaintiffs suffered serious and prolonged emotional and psychological harm as a result of the defendants' breaches. As adults, they each have struggled with a variety of long-term mental health impacts arising from their experiences at the Île-à-la-Crosse School, including: depression and anxiety; feelings of uncontrollable anger, fear and/or inadequacy; an inability to trust others including family members and a corresponding inability to form and sustain intimate relationships; and, in some cases, alcohol dependency, misuse and addiction.

The Family Class

98. As a consequence of the various breaches by Canada and Saskatchewan as described above, the Family Class Members, including the plaintiffs Donna Janvier and Duane Favel, have suffered injury and damages including:

- a. their relationships with the Survivor Class Members were impaired and/or damaged as a result of the experiences of the Survivor Class Members at the Île-à-la-Crosse School, resulting in loss of care, guidance and companionship, and loss of traditional heritage, culture and feelings of self-worth;
- b. their traditional culture and languages were undermined, and in some cases destroyed, by the forced assimilation of the Survivor Class Members through attendance at the Île-à-la-Crosse School;
- c. they were unable to experience normal family life with the Survivor Class Members, as a result of the Survivor Class Members' injuries resulting from attendance at the Île-à-la-Crosse School;
- d. they were deprived of pecuniary support from Survivor Class Members as the direct, and indirect, consequence of impairments caused by the Survivor Class Members' attendance at the Île-à-la-Crosse School; and
- e. they have incurred special and out-of-pocket expenses in their support of, and care for, Survivor Class members

99. The defendants knew or ought to have known that their actions would result in the Survivor Class Members suffering significant mental, emotional, psychological and spiritual harm which would adversely affect the Family Class Members.

Punitive, aggravated and exemplary damages

100. The defendants' high-handed and callous conduct warrants the condemnation of the court through awards of both aggravated and punitive damages.

101. The defendants deliberately abused their positions of total power and control over vulnerable children. They had specific and extensive knowledge of the systemic failures—including the prevalence of emotional, physical, and sexual abuse—that were occurring at the Île-à-la-Crosse School.

102. In the alternative, the Class Members plead that the defendants were grossly negligent or negligent and/or wilfully blind to these abuses.

103. Despite this, the defendants continued to operate and maintain the Île-à-la-Crosse School and took no reasonable steps to prevent the Survivor Class Members from the resulting damages, including severe abuse. In the circumstances, the defendants' actions amount to wanton and reckless disregard for the Survivor Class Members' safety and renders punitive, aggravated and exemplary damages both appropriate and necessary.

Legislation

104. The plaintiffs plead and rely on various statutes and regulations, including:

- a. *The Class Actions Act*, S.S. 2001, c. C-12.01;
- b. *The Proceedings Against the Crown Act, 2019*, S.S. 2019, c. P-27.01;
- c. *Pre-judgment Interest Act*, S.S. 1984-85-86, c. P-22.2;
- d. *The Limitations Act*, S.S. 2004, c. L-16.1;
- e. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
- f. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (UK);
- g. *Constitution Act, 1982*, Schedule B to the *Canada Act 1982* (UK), 1982 c. 11;

- h. *International Convention on the Elimination of All Forms of Racial Discrimination*, 26 October 1966, 660 UNTS 195; and
- i. *United Nations Declaration on the Rights of Indigenous Peoples Act*, S.C. 2021, c. 14.

REMEDY SOUGHT

105. The plaintiffs claim, on their own behalf and on behalf of the proposed Class:

- a. an order certifying this action as a class proceeding and appointing them as representative plaintiffs;
- b. a declaration that the defendants breached their fiduciary, statutory and common law duties to the plaintiffs and the Class Members, and are liable for the damages caused as a result of those breaches;
- c. general and aggravated damages in such amount as may be fixed by the Court on an aggregate or individual basis;
- d. special damages in an amount to be determined at trial;
- e. punitive and exemplary damages in an amount to be determined at trial;
- f. pre-judgment interest pursuant to the *Pre-Judgment Interest Act*, S.S. 1984-85-86, c. P-22.2;
- g. post-judgment interest;
- h. costs of all notices to the Class and of administering the plan of distribution of the recovery in this action, together with applicable taxes thereon;
- i. an order directing a reference or giving such other directions as may be necessary to determine any issues not determined at the trial of the common issues;
- j. costs of this action, together with applicable taxes thereon; and

k. such further and other relief as this Honourable Court may deem just.

DATED AT TORONTO, ONTARIO, THIS 19TH DAY OF DECEMBER, 2022.



(signature of plaintiff or plaintiff's lawyer)

Margaret L. Waddell

Waddell Phillips Professional Corp.

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