
NOTICE TO CLASS MEMBERS – December 6th, 2022
of the class action concerning the “Pavillon Notre-Dame de la Route” residence in
Louvicourt, Quebec

Pénosway et al. v. Canada (Attorney General) et al.

TAKE NOTICE that the Quebec Superior Court authorized a class action against the Attorney General of Canada and Royal & Sun Alliance of Canada on behalf of the following class:

All persons who stayed at the “Pavillon Notre-Dame de la Route” residence in Louvicourt, during its years of operation from September 1975 to November 1991, while they were under 18 years of age (the “primary class”);

Excluding those whose claims exclusively concern sexual abuse committed by a member or employee of the religious congregation known as the Missionary Oblates of Mary Immaculate if it was committed outside the context of the Pavillon Notre-Dame de la Route residence’s activities; and

Including any primary class member’s spouse by marriage or civil union or a *de facto* (common law) spouse or ex-spouse, any child, grandchild, or sibling (the “family class”).

(Please note that abuse perpetrated outside the context of the residence’s activities by a member or employee of the Missionary Oblates of Mary Immaculate may nevertheless be covered by the class action known as *Noëlla Mark c. Les Oblats de Marie Immaculée*, filed by a different law firm: adwavocats.com/OblatsMI.html.)

Régis Pénosway and Véronique Papatie are the representative plaintiffs in this class action. Canada and the Royal & Sun Alliance of Canada insurance company are the defendants. The class action will be heard in the judicial district of Abitibi (Val d’Or).

SUBJECT OF THE CLASS ACTION

This class action seeks to compensate those individuals who resided at the “Pavillon Notre-Dame de la Route” residence (the “Residence”). The action alleges that Canada set up and administered a process under which children from Kitcisakik/Grand Lac Victoria were systematically placed at the Residence, where they suffered mistreatment and loss of language, culture, and identity.

The class action seeks damages for group members arising from having to stay at the Residence and for any physical, psychological, and sexual abuse suffered at the Residence while they were under the responsibility of the federal government. The class action also alleges that Royal & Sun Alliance of Canada issued an insurance policy that covered risk including the Residence’s civil liability.

These allegations have not been proven and the Court has not yet decided whether the action is well-founded.

WHAT COULD YOU RECEIVE UNDER THIS CLASS ACTION?

You could obtain monetary compensation for the damages you suffered.

The compensation is being sought to indemnify class members for the abuse, cultural and economic losses suffered (for example, reduced employment opportunities or the cost of future psychological treatment).

THE COMMON ISSUES

The action will address the following issues which are common to all class members:

Concerning the defendants' liability:

- a) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada have civil, legal, or fiduciary obligations toward the primary class or the family class members and if so, what is the nature of those obligations?
- b) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada breach those obligations or commit faults against the primary or family class members?
- c) More specifically, did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada:
 - i. owe obligations to class members in the creation, implementation, administration, or management of programs or in the decision-making which led to the primary class members residing at the Residence and if so, did they breach such obligations?
 - ii. have a duty to consult the class members' parents or guardians or the community of Kitcisakik in the creation, implementation, administration, or management of programs or in the decision-making which led to primary class members residing at the Residence and if so, did they breach such obligations?
 - iii. establish or implement policies to identify and report abuse or potential harm to primary class members? If so, did they fail to inform primary class members of the system by which abuse should be identified and reported?

- iv. breach their obligations related to management and oversight, as well as their legal and moral obligations, by failing to establish or implement policies or directives on sexual abuse, thereby causing damages to class members?
- d) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada:
- i. owe an obligation to take measures to protect and preserve class members' language, culture, identity, religion, heritage, and traditions, and if so, did they breach such obligation?
 - ii. have an obligation to supervise the Residence and its staff or management – including in the course of their selection and training – and if so, did they breach that obligation?
 - iii. know or should have known of complaints or allegations of physical, psychological, or sexual abuse suffered by primary class members at the Residence and if so, did they have an obligation to investigate up and did they fulfill that obligation?
 - iv. know of injuries suffered by primary class members while they were under the supervision of those responsible for the Residence? If so, did they adequately investigate such injuries?
 - v. provide adequate medical and psychological care to primary class members while they were under the care of the Residence's management?
 - vi. know of inappropriate punishment inflicted by the Residence's management? If so, did they allow such punishment to continue?
- e) Was sexual or physical abuse committed by one primary class member against another and if so, can one or both defendants be held liable?
- f) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada know or should have known of abuse committed by Father Brouillard, by the Residence's management or staff, by persons they allowed onto Residence premises, or by primary class members?
- g) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada illegally and intentionally breach class members' rights protected under sections 1, 4, 5, 39, 41, and 43 of the *Charter of Human Rights and Freedoms*?
- h) More specifically, did Canada or the party insured by the defendant Royal

& Sun Alliance of Canada:

- i. breach primary class members' right:
 - a. to personal security, inviolability and freedom, and to the safeguarding of their dignity and respect for their private life?
 - b. if such a right has been established, given their status as minors, to the protection, security and attention that the persons acting in their parents' stead during the school year were capable of providing, without discrimination based on their Indigenous ethnic identity?
 - ii. breach the right of each parent member of the family class, if such a right has been established, to give their children a moral education in keeping with their convictions and with proper regard for their children's rights and interests?
 - iii. breach the right of each class member, if such a right has been established, to maintain and develop their own cultural interests with the other members of Kitcisakik?
- i) If the answer to the any of the questions concerning breach of class members' rights is in the affirmative, was that breach intentional?
 - j) Did the defendants' faults, if any, breach the class members' collective rights, and if so, which rights and how so?
 - k) Was the Residence covered by an insurance policy issued by the defendant Royal & Sun Alliance of Canada during the period covered by the action and if so, does it apply in this case and who are its beneficiaries?
 - l) Is the defendant Royal & Sun Alliance of Canada, as the Residence's insurer, required to pay compensation to class members because a risk covered by the policy occurred?
 - m) Are there any common factors that could mitigate the defendants' liability, if any, such as, for example, the liability of third parties?
 - n) Are the defendants jointly liable to class members and if so, what is each defendant's respective share of liability?

Concerning the defendants' vicarious liability:

- a) Were the Residence's management or staff the employees, subordinates,

mandataries, or agents of the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada? If so, is the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada liable for negligent or intentional acts committed by management or staff?

If so:

- b) Could or should the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada, as represented by their agents or subordinates, have foreseen that those responsible for the Residence were in a position to abuse their positions of power, authority, and trust with regard to primary class members?
- c) Should the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada have taken measures to select those responsible for the Residence before entrusting primary class members to them? If so, were any such measures taken, and were they appropriate and adequate to prevent unqualified individuals from caring for primary class members at the Residence?
- d) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada have an obligation to provide adequate and appropriate training or oversight, whether upon hiring or on an ongoing basis, in order to ensure that those responsible for the Residence were able and qualified to act as employees, subordinates, or agents? If so, was such training or oversight provided?
- e) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada have an obligation to establish or implement standards of conduct for those responsible for the Residence with respect to the safety, health, and welfare of the primary class members? If so, did they meet such standards?
- f) Did the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada have an obligation to supervise and review the performance and acts of the Residence's management to ensure they act as qualified, reasonable, and careful employees, subordinates, or agents? If so, did they meet such obligation?
- g) Were the defendant Canada or the party insured by the defendant Royal & Sun Alliance of Canada aware of the wrongful acts committed by their employees, subordinates, agents, or mandataries and if so, when did they become aware of it? If not, should they have been aware of such wrongful acts?

Regarding the damages caused by the defendants' faults:

- a) Did the breaches of duty or faults attributed to the defendants, if any, cause pecuniary or non-pecuniary damages to primary or family class members? If so, are class members entitled to compensation?
- b) Did the breaches of duty or faults committed by the defendants, if any, cause damages to class members with regard to their language, culture, identity, religion, heritage and traditions and if so, are members entitled to compensation?
- c) What is the amount owed for damages (pecuniary, non-pecuniary, or punitive) that can be determined at the collective stage and what damages can be determined at the individual claim stage, if any?

Regarding limitations periods (prescription) applicable to the class action:

- a) Are there any factors common to primary class members regarding the question of imprescriptibility of the action under section 2926.1 of the *Civil Code of Québec* and inability to act?
- b) Are there any factors common to family class members regarding the question of prescription and if any, is the family class members' action prescribed?

THE RELIEF SOUGHT

The relief sought by the class action are as follows.

The plaintiffs ask the Court to:

DECLARE the defendant Attorney General of Canada liable to class members for the damages suffered due to the breach of his fiduciary duty, his duty to act as a parent mindful of their child's welfare, and his duty of loyalty owed to the plaintiffs and class members;

DECLARE the defendant Royal & Sun Alliance of Canada liable to compensate the plaintiffs and class members for damages caused by its insured party, the Residence "Pavillon Notre-Dame de la Route", on the basis of its liability for the acts of its directors, its vicarious liability for the acts of its subordinates, and its liability arising from exercising parental authority over the children entrusted to it;

DECLARE the defenants jointly liable for the compensation of primary and family class members for the damages suffered;

DECLARE the defendants liable for the compensation of the plaintiffs and class members for the negligent and intentionally wrongful acts of its employees, subordinates and agents;

ORDER the defendants to pay each class member compensatory, moral, and punitive damages, and **ORDER** the individual and collective recovery of such damages;

ORDER the defendants to compensate each class member for all damages suffered due to the defendants' faults and to the faults of its employees, subordinates, and agents;

AND TO THAT END:

DECLARE the defendants liable for costs, fees and extrajudicial disbursements, including expert's fees, incurred in this class action by the plaintiffs and class members and **ORDER** the individual and collective recovery of such fees and costs;

ORDER the defendants to pay the plaintiffs and class members the above-mentioned amounts with interest at the legal rate, plus the additional indemnity provided for by law, as of the date of service of this action;

ORDER the defendants to file in the Superior Court registry of the district of Montreal an amount equal to the compensatory, punitive, and exemplary damages owed due to the defendants' faults during the period covered by this class action; and **ORDER** the individual and collective recovery of that amount, the whole in accordance with the evidence at trial, with interest at the legal rate, plus the additional indemnity provided by law, as of the date of service of this class action;

ORDER the individual liquidation in favour of the plaintiffs and class members of an amount equivalent to their share of the damages sought or, if that process is ineffective or impractical, **ORDER** the defendants to take any remedial measures this Court may deem in the interest of the plaintiffs and class members;

MAKE any other order this honourable Court may deem just and appropriate;

THE WHOLE WITH COSTS, including costs of notification.

STATUS OF THE CLASS ACTION AND NEXT STEPS

No compensation has been awarded yet. The class action is still at a preliminary stage.

The two most likely outcomes are that:

- 1) The plaintiffs will argue their case before the Court at a trial and the judge will determine whether Canada and/or Royal & Sun Alliance must compensate class members and if so, the amount of the compensation;

and/or

- 2) The parties could negotiate a settlement agreement that would determine the compensation amount and process, if any. Such an agreement would have to be approved by the Court.

It is also possible that the parties may settle some aspects of the action but proceed to trial on others, or that settlement negotiations may take place while a trial is heard.

COUNSEL FOR CLASS MEMBERS

The law firm of Dionne Schulze represents the class members in this class action. Class members do not have to pay any legal or court fees. **Being a member of the class does not cost you anything.**

Lawyers' fees will only be collected if a favourable judgment is rendered or if a settlement agreement is reached. Those fees will be calculated based on the compensation granted to class members and will be subject to the Court's approval.

STAYING IN THE CLASS OR OPTING OUT OF THE ACTION

You are automatically a class member if you fall under the description of the class in the "WHO IS INCLUDED?" section of this notice, namely: if you stayed at the Residence between 1975 and 1991 while you were under 18 years; or if one of your immediate family members did so. Any judgment rendered in this action will be binding on you. If you wish to continue being part of this class action, you do not have to do anything.

However, **if you wish to opt-out of the class**, you must fill the opt-out form attached to this notice and send it to the Quebec Superior Court Registry **before February 6th, 2023**, along with a copy to class counsel, at the following addresses:

Quebec Superior Court Registry
1 Notre-Dame East
Montréal (Quebec) H2Y 1B6

DIONNE SCHULZE
507 Place d'Armes, #502
Montréal (Quebec) H2Y 2W8
Fax: 514-842-9983
Email: louvicourt@dionneschulze.ca

YOU CAN ASK TO INTERVENE

Class members can ask the Court for permission to intervene in the class action. The Court will authorize the intervention if it decides that it would be useful to the class. If you hire your own lawyers, you must pay their legal fees.

FOR MORE INFORMATION

You can read the pleadings and sign up for this class action's mailing list on Dionne Schulze's website in order to receive updates on the status of the case. To do so, fill out the form at the

following address: www.dionneschulze.ca/class-action/abuse-and-mistreatment-at-the-notre-dame-de-la-route-residence-in-louvicourt/

WARNING: When you fill out the online form, you are only registering for the mailing list to receive updates. **You are not filing a claim.**

You can also consult the registry of class actions where the pleadings are posted: www.registredesactionscollectives.quebec/en#.

You can also contact class counsel directly by phone, email, or mail:

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