

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

ADRIENNE JÉRÔME

Plaintiff

AND:

HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court:

WITHIN THIRTY DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN SIXTY DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

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

IF YOU DO NOT CONTEST THE INSTANCE, judgment may be given against you in your absence and without further notice to you.

Date:

Issued by:

(Registry Officer)

Address of local office

30 McGill Street
Montreal, QC
H2Y 3Z7

TO:

The Attorney General of Canada
Department of Justice, Quebec Regional
Office
Guy-Favreau Complex, East Tower, 9th
floor
200 René-Lévesque Blvd W
Montreal, QC
H2Z 1X4

I. Relief Sought

1. The Plaintiff Adrienne Jérôme claims on behalf of herself and other members of the proposed classes as defined below:
 - a) an order pursuant to r. 334.16 of the *Federal Courts Rules*, SOR/98-106 certifying this action as a class proceeding and appointing the Plaintiff as representative of the Class or, in the alternative, an order permitting the present proceeding to continue as one or more proceedings pursuant to r. 334.2;
 - b) a declaration that the Defendant, the Crown:
 - i. owed to the Plaintiff and the Class, and was in breach of, fiduciary, constitutional, statutory, common law and international law duties;
 - ii. owed to the Plaintiff and the Class, and was in breach of, a duty of care and fiduciary duty in the funding, oversight, operation, supervision, control, maintenance and support of Indigenous medical boarding homes;
 - iii. is liable to the Plaintiff and the Class for damages caused by its breach of its duties;
 - c) a just and appropriate remedy under s. 24(1) of the *Charter*, including damages in a total amount to be perfected at trial;
 - d) general, aggravated and special damages, in a total amount to be perfected at trial;
 - e) punitive and exemplary damages in an amount to be perfected at trial;
 - f) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to r. 334.38 of the *Federal Courts Rules*;

- g) an order that any undistributed portion of the award be paid to class members;
- h) 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;
- i) prejudgment and post-judgment interest;
- j) costs of this action, together with applicable taxes; and
- k) any other order this Court may deem just.

II. Nature of this Action

2. This action concerns the establishment and operation by the Defendant of a system for housing and transporting Indigenous persons for medical treatment. Through this system, the Defendant placed persons, often minors, in boarding homes or foster homes (hereinafter generally referred to as “Indigenous medical boarding homes”) while awaiting treatment or convalescing.
3. The Defendant established, funded, oversaw, vetted, supervised, controlled, maintained and supported the system of Indigenous medical boarding homes through common national policies and procedures.
4. The Defendant failed to properly operate, manage and supervise the system of Indigenous medical boarding homes. As a result of the Defendant’s systemic negligence and breach of fiduciary duty in the funding, oversight, operation, supervision, control, maintenance and support of the system of medical placements, members of the Class were physically, sexually and psychologically abused while at Indigenous medical boarding homes.
5. The Defendant’s breach of its duties in the operation of the Indigenous medical boarding homes has caused enormous harm to the Class for which members of the Class are entitled to compensation.

III. Class Description

6. The Plaintiff brings this proceeding on her own behalf and on behalf of following proposed classes (collectively, the “Class”):

Primary Class: “Any Indigenous person housed in a boarding home operated, contracted, or funded by the Medical Services Branch of the Department of National Health and Welfare, and/or by any of its predecessors or successors.”

Family Class: “Any spouse or common-law partner or civil union spouse, ex-spouse, ex-common law partner or ex-civil union spouse, child, grandchild, brother or sister of a Primary Class Member.”

IV. The Parties

A. The Plaintiff

7. Adrienne Jérôme was born on May 27, 1968 in the Anishinaabe community of Lac Simon, Quebec, where she also grew up and attended primary day school.
8. Her mother tongue is Anishinaabe and her second language is French. She was Chief of the Lac Simon Band Council from 2016 to 2023. She is currently director of the band council's natural resources department and negotiator for the Algonquin Moose Committee.
9. When she was eleven years old, the Plaintiff was housed in a home in the network of Indigenous medical boarding homes operated by Canada.

B. The Defendant

10. The Defendant is represented by the Attorney General of Canada who is, pursuant to sections 2 and 23(1) of the [*Crown Liability and Proceedings Act*](#), R.S.C. 1985, c. C-50, the representative of His Majesty the King in Right of Canada.
11. Under sub-paragraph 3(a)(i) of the same statute, the “Crown is liable for the damages for which, if it were a person, it would be liable... in respect of... damage caused by the fault of a servant of the Crown.”

12. The Attorney General of Canada is also acting in this matter on behalf of the successor or successors to the Department of Indian Affairs and Northern Development Canada (hereinafter “DIAND”) and the Department of Health Canada, formerly known as the Department of National Health and Welfare (hereinafter “DNHW”).
13. DIAND or its predecessors exercised powers and duties that “extend[ed] to and include[ed] all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to... Indian affairs” under the [*Department of Indian Affairs and Northern Development Act*](#), R.S.C. 1985, c. I-6, s. 4(a), and the [*Department of Citizenship and Immigration Act*](#), S.C. 1949, c. 16, s. 5.
14. The Minister of Health or his predecessors exercised the powers and duties that “extend[ed] to and include[ed] all matters over which Parliament has jurisdiction relating to the promotion and preservation of the health of the people of Canada not by law assigned to any other department, board or agency of the Government of Canada”: [*Department of Health Act*](#), S.C. 1996, c. 8, s. 4, and *Department of National Health and Welfare Act*, S.C. 1944, c. 22, s. 5.
15. In August 2017, the Prime Minister announced the dissolution of DIAND and the creation of two new departments: Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs (CIRNAC). Since the coming into force of the [*Department of Indigenous Services Act*](#), S.C. 2019, c. 29, s. 336, responsibility for health services to Indigenous peoples is assigned to ISC, as set out in s. 6.

V. Federally operated Indigenous medical boarding homes

A. History of federal health services for Indigenous peoples

16. The Defendant has responsibility for the provision of health services to Indigenous peoples. As set out in the [*Indian Health Policy*](#) adopted in 1979, this responsibility is based on the “special relationship” that exists between

Indigenous peoples and the Defendant. More specifically, this responsibility derives from: federal jurisdiction over “Indians” (including the Inuit)¹ under s. 91(24) of the [Constitution Act, 1867](#); jurisdiction over “medical treatment and health services for Indians”, “the spread of diseases on reserves, whether or not the diseases are infectious or communicable” and “compulsory hospitalization and treatment for infectious diseases among Indians” under ss. [73](#)(1)(f), (g) and (h) of the [Indian Act](#); as well as from the “medicine clause” in Treaty No. 6 of 1876, and similar promises made during the negotiations prior to the conclusion of subsequent numbered treaties.

17. As of 1936, Indian Health Services was a section of the Indian Affairs Branch of the Department of Mines and Resources. In 1945, this service, also known as the Indian and Northern Health Services, was transferred to the DNHW by Order-in-Council no. 6495 of November 1, 1945. Other health-related programs, however, remained the responsibility of the Indian Affairs Branch and later DIAND, such as housing, education, social assistance, sanitary facilities, and several aspects of community health.
18. In 1962, Indian Health Services was merged with six other federal health programs to form the Medical Services Branch of the DNHW. Following the creation of Health Canada, which resulted from the dissolution of DNHW in 1993, Health Canada continued to assume responsibility for Indigenous peoples’ health services in general, and the First Nations and Inuit Health Branch (FNIHB) in particular, until the creation of Indigenous Services Canada in 2017.
19. Prior to 1930, Indigenous peoples’ health care was provided by a combination of Indian Affairs officials, missionaries and Royal Canadian Mounted Police officers who were, according to the *Report of the Royal Commission on Aboriginal Peoples*, “semi-trained” and followed by “a growing number of

¹ Reference as to whether “Indians” in s. 91 (24) of the B.N.A. Act includes Eskimo inhabitants of the Province of Quebec, [\[1939\] SCR 104](#).

nurses and doctors in the full- or part-time employ of the federal government.”² From the opening of the first on-reserve nursing station in 1930, the Indian and Northern Health Services expanded to the point where, by 1960, there were 22 so-called “Indian hospitals” (segregated facilities for status Indians and Inuit), 30 clinics, 37 nursing stations and 83 health centres.

20. DNHW services included sending Indigenous persons with serious illnesses to medical facilities far from their communities: in some regions, these were Indian hospitals under DNHW control; in other regions, DNWH sent Indigenous persons to hospitals under provincial jurisdiction.
21. The provinces’ creation of public hospital insurance (1957) and health insurance (1968) programs led the Defendant to close Indian hospitals, except for a few institutions in northern and remote regions. Nevertheless, the Defendant continued to provide so-called non-insured health care, that is, services not covered by provincial health insurance plans such as drugs, dental care, and medical transportation and accommodation.
22. After a wave of protests when the federal government announced in 1978 that it wanted to reduce its financial responsibility for non-insured health benefits, the [*Indian Health Policy*](#) was adopted in 1979. It is based on the following three pillars:
 - a) “community development”;
 - b) “the traditional relationship of the Indian people and the Inuit to the federal government”; and
 - c) “a single interrelated Canadian health system consisting of federal, provincial and community-based elements”.

² Royal Commission on Aboriginal Peoples, *Report*, Volume 3, [*Gathering Strength*](#), Chapter 3, “Health and Healing”, Part 1.1, “The Burden of Ill Health: From the Past to the Present”, text corresponding to footnote 19 (at p. 114).

23. Following the [Report of Advisory Commission on Indian and Inuit Health Consultation](#), signed by Justice Thomas Berger in 1980, the Defendant committed itself to ensuring more active participation by Indigenous persons in the planning and delivery of health services to Indigenous people.
24. A process of transferring administrative responsibility for certain health-related programs to Indigenous communities ensued, beginning in 1980-1981 with the National Native Alcohol and Drug Abuse Program and the Community Health Representative Program. However, important elements of the health care system were not included in the transfer agreements, notably non-insured health services provided off-reserve, including medical transportation.
25. A “First Nations and Inuit Health Transfer Policy” was designed by Health Canada and presented to First Nations and Inuit communities in 1989 and subsequently implemented. Progressively and at different times, various First Nations took over their community nursing services or other roles carried out in the community, as well as a certain proportion of positions carried out at the level of the regions and zones established by the DNHW.
26. In the North, among the Inuit, the transfer of services generally took place on a regional basis, by local health boards or the ministries of health of the territorial governments.

B. Canada’s program of Indigenous medical boarding homes

27. As part of non-insured services, the Defendant operated a network of Indigenous medical boarding homes for Indigenous persons who required care outside their communities. These homes existed for both status Indians living on reserve and Inuit living in northern villages.
28. Through the Indigenous medical boarding homes program, the Defendant would send Indigenous persons requiring medical care outside their community, but not eligible for a hospital stay, to live at private homes located

near while they received treatment or convalesced. The program included sending children to Indigenous medical boarding homes without their parents.

29. The Defendant was responsible for selecting, vetting and supervising these Indigenous medical boarding homes, providing accompaniment and interpreter services, and, in the case of children, ensuring a liaison between children and their families and parental visits. If children needed to be placed for an extended period, the Defendant was also responsible for providing them with necessary education and other social services.
30. This network was ill-adapted to the highly vulnerable situation in which these patients found themselves while waiting for care or after receiving care, far from their families and communities, in unfamiliar surroundings and often cared for in a language that was not their own. The problems included, amongst other things: substandard conditions; overcrowding; lack of cleanliness; insufficient and low-quality food; and a lack of interpretation services. In the case of children, problems included loss of contact with children who did not return to their families; failure to provide accompaniment and supervision to children as young as nine; children living in homes that had no provincial permit; and dubious methods of recruiting boarding homes for children, such as newspaper advertisements.
31. Conditions in Indigenous medical boarding homes were substandard. Conditions in Indian Hospitals, which themselves were substandard, were generally better than those in Indigenous medical boarding homes.
32. The federally operated system of Indigenous medical boarding homes created an environment conducive to abuse. Due to the Defendant's systemic failures, the Primary Class members were subjected to widespread, common and systemic physical, sexual and psychological abuse. The Defendant failed to implement appropriate policies and procedures to prevent such harm, and to encourage and allow for reporting of such abuse.

33. As a result of the Defendant's failure to establish and implement adequate policies and procedures, Primary Class members were physically harmed and emotionally and psychologically traumatized.
34. The Defendant, through the DNHw, assumed responsibility for several types of accommodation, such as Indian hospitals and Indigenous medical boarding homes (also referred to as "foster homes").
35. In 1982, Dr. A. Murdock, Acting Associate Director General for Eastern Canada in the Medical Services Branch of the DNHw, provided the following description of the medical home program to the House Subcommittee on Indian Self-Government:

... [W]e have a variety of arrangements. Certainly, the one that I'm more familiar with is Manitoba. We have a boarding home committee in Manitoba that selects home. Now for children we have to work with the provincial child welfare agencies to have those homes licensed.

There is a selection process, a monitoring process. The committee advises the regional director on the suitability. We have an escort service and a translation service. If a parent goes back home, we would make arrangements for the parent to come in to visit the child—a link with our branch of the service, in other words. We take responsibility for any child who is in a child's boarding home or in fact any adult who is in an adult medical boarding home, as long as they are the responsibility for health.³

36. Nevertheless, a study carried out for the DNHw in 1969 found that not all private homes met existing provincial standards and that accommodation in hospitals under the supervision of the Medical Services Branch was generally superior to private homes. The same study recommended that only homes meeting minimum standards be used and that obstetric patients be housed in residences affiliated with hospitals.⁴

³ Sub-committee on Indian Self-Government of the Standing Committee on Indian Affairs and Northern Development, [*Minutes of Proceedings*](#), vol. n° 1, 32nd Parl., 1st Sess., October 6, 1982, p. 6:42.

⁴ Allen Booz and Hamilton Canada, "[Study of Health Services for Canadian Indians](#)",

37. Another study conducted for DNHW in 1981 found that Inuit patients from the Northwest Territories sent to the South continued to be housed in homes of all kinds, which did not meet minimum standards. Patients were “boarded with alcoholics, religious zealots, and other people regarded as unsavoury as well as in boarding houses regarded as sub-standard.”⁵
38. Also in 1982, the *Conseil Attikamek-Montagnais* (CAM) published a study on the state of health services in Atikamekw and Montagnais reserves in Québec (the Montagnais are now known as the Innu). The findings related to the network of Indigenous medical boarding homes under the responsibility of the DNHW were that:
- a) while children under 18 were entitled to the services of an escort, at the Joliette Indigenous medical boarding home, children over 9 were not accompanied by their families and were often left unsupervised;
 - b) in Roberval, residents sometimes had to share their bed, even if they did not know the other person;
 - c) “[i]n all locations, people complain about the problems involved when staying outside the reserve,” including “limited capacity, overcrowded rooms, lack of cleanliness... [and] insufficient food of questionable quality”; and
 - d) interpreter services were “almost non-existent.”⁶
39. Appendix VII of CAM’s study contains a DNHW questionnaire for evaluating applications from people wishing to provide medical foster care. The

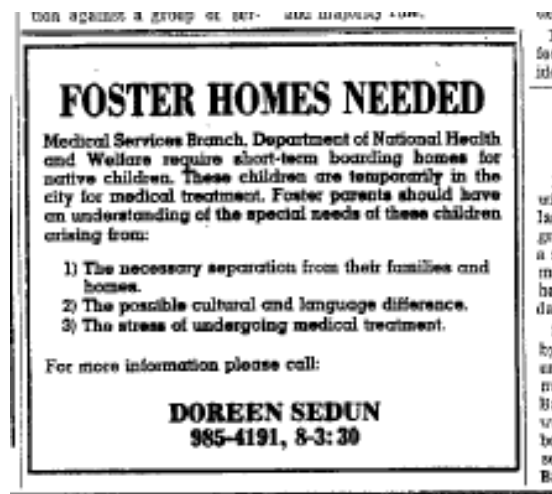
prepared for DNHW, September 24, 1969.

⁵ A. Peter Ruderman and Geoffrey R. Weller, “Report of a Study of Inuit Health and Health Services in the Keewatin Zone of the Northwest Territories”, prepared for DNHW, April 1981, pp. 68-69.

⁶ Conseil Attikamek-Montagnais, *Étude sur les services de santé des réserves attikamek et montagnaises*, April 1982, pp. 74, 111; 402-403; 404-405 [our translation].

questionnaire has no questions about the criminal record of the applicants or others living in the home, no questions about the family's possible past dealings with child welfare authorities, and no indication that such checks were carried out by the official responsible for assessing the family. In the regions being studied, the assessments were carried out by a DNHW liaison agent (except in Montreal, but the criteria remained those of the DNHW).⁷

40. For example, the following ad appeared in the Winnipeg *Free Press*, June 26, 1976, on page 16:



41. Liaison agents were also responsible for organizing patient transport between their homes, hospitals, and Indigenous medical boarding homes.⁸

VI. The Plaintiff's experience

42. When the Plaintiff Adrienne Jérôme attended the primary day school at Lac Simon, students were tested for tuberculosis. She recalls that these tests were very painful, as they involved pricking their arms with needles and then scraping their backs. Students were also X-rayed. These tests were carried out at the Louvicourt residence operated by Canada and located near the school.

⁷ *Ibid.*, pp. 16, 404.

⁸ *Ibid.*, "Appendix VI: Liaison Officer – Duties".

43. Following one of these tests, the Plaintiff was sent to the sanatorium at Macamic in November of 1978, a small town some 180 kilometres from her community. She stayed there for about three months. She recalls that many Indigenous patients were hospitalized at the Macamic sanatorium, including Anishinaabe, Atikamekw, Cree and Inuit patients.
44. The Plaintiff missed her mother very much, whom she hardly saw during her stay at Macamic and whom she could not call. At that time, she spoke a little French, but did not master it completely.
45. In October 1979, the Plaintiff was transported to Montreal to undergo an operation at Sainte-Justine Hospital to remove a pulmonary cyst. She remembers going there alone, without her parents. No interpreter accompanied her, despite her incomplete command of French.
46. The Plaintiff remembers seeing her father, mother and sister Diane when she awoke following the operation.
47. The Plaintiff was hospitalized for approximately three weeks at Sainte-Justine Hospital. When she was discharged in November of 1979, she was transferred to an Indigenous medical boarding home. Her parents were not informed of the transfer to a boarding home after her operation. The Plaintiff found herself alone in the boarding home.
48. Recovery was very painful for the Plaintiff. She had pins in her back all the way to her chest and she could not stand up. She felt very ill, as if she was losing consciousness at times, to the point where she thought she was going to die. During her stay, she was given no medication to relieve the intense pain she was feeling. Moreover, she was forbidden to get food from the refrigerator; she was only allowed to eat cookies and water. She has no recollection of receiving any kind of hygienic care during her stay.
49. The woman in charge of the home where she was staying worked, so she was rarely at home. Her son arrived before her and would beat the Plaintiff, pinching

and bruising her. She suffered greatly from this physical violence, which was added to the pain caused by recovery.

50. After a few days, the Plaintiff was rescued from this environment by her mother and her aunt Irene, who managed to find her despite the lack of information about her placement and language barriers. They removed the Plaintiff from the home and brought her back to Lac Simon, where she was able to continue her recovery near her loved ones.
51. The abuse suffered by the Plaintiff in this Indigenous medical boarding home in Montreal resulted in serious consequences including:
 - a) intense physical pain caused by the operation and the lack of pain medication, as well as by the violence exercised by the son of the woman in charge of the home;
 - b) an intense sense of insecurity during her stay, due to being alone in the home throughout the day, the fear of the son of the woman in charge of the home, the lack of food, incomprehension and language barriers;
 - c) great fear of going to the nursing station or hospital for treatment, which lasted at least until adolescence and led her to hide illnesses for fear of being sent away and not being able to return to her parents;
 - d) migraines and difficulty sleeping;
 - e) significant emotional and psychological dysfunction, including feelings of incomprehension and shame; she has kept this part of her past hidden for a long time, and has only recently started talking about it;
 - f) difficulty accepting the presence of a scar for many years, due to a lack of understanding of the medical intervention and a feeling of betrayal.
52. The Plaintiff recalls that her little sister Pierrette was also placed in a private home in Saint-Jérôme when she was hospitalized at Hôpital Sainte-Justine to

treat recurrent urinary tract infections. Pierrette was four or five years old and the Plaintiff was five or six at the time.

53. As her mother spoke little French, the Plaintiff accompanied her to help her find her sister. When they found her in Saint-Jérôme, Pierrette was alone in the private home. The Plaintiff and her mother removed her from the home and brought her back to Lac Simon.
54. The Plaintiff recalls that her sister Pierrette was very affected by this placement in a medical home in Saint-Jérôme. After her return, Pierrette never wanted to be left alone; she was with her mother all the time and the Plaintiff slept with her. When Pierrette became pregnant as a teenager, she didn't tell her mother because she was afraid of being placed in a private home. It wasn't until the 6th or 7th month of pregnancy that she had her first medical appointment at the Val d'Or hospital. The Plaintiff had to accompany her to all her medical appointments and to her delivery.

VII. Y.Z.'s experience

55. Y.Z. is a primary class member, who wishes to remain anonymous, was a child, health professionals at her community's dispensary decided she needed a medical intervention. She was sent from her community to receive the proposed treatment in a city nearly 200 kilometres from her community.
56. Y.Z. has no recollection of having received any information or explanation about how this medical placement would take place, whether in terms of transport, treatment, or accommodation. She was not accompanied by her parents, with whom she had no communication during her stay. As far as she knew, her parents never received any news of her condition until she returned home. At the time, her understanding of French was poor and no interpreter accompanied her. Y.Z. and her younger sister were accompanied by an elder for the journey between their community and the city, but the elder left upon their arrival.

57. At the time, Y.Z.'s community was not accessible by road. Y.Z. was therefore flown to a village that was connected to the road network and then transported by land to the city where she would receive the medical treatment.
58. On arrival at the hospital, Y.Z. underwent medical examinations. She remembers receiving an injection, but does not know what it was.
59. After these medical examinations, a Health Canada liaison agent accompanied her to a private home where she was to be housed during her stay, located in a nearby village. Y.Z. remembers seeing the liaison officer at least twice during visits he made to the home while she was there.
60. The liaison agent took Y.Z. to the hospital for her operation.
61. After being discharged following the operation, Y.Z. was transported to another village, where she was placed in a second private home. She stayed there for a few weeks before being able to return home, since the waters of the lake had to freeze sufficiently for the plane to land.
62. During her stay in this second home, Y.Z. did not see the Health Canada liaison agent again, nor, to her knowledge, did he communicate with the couple in charge of the home.
63. During her stay, Y.Z. was sexually assaulted by the man in charge of the home. On several occasions, he touched Y.Z.'s private parts while she was playing. When she felt the man's fingers on her private parts, Y.Z. tried hard to push him away.
64. Y.Z. was scared, alone and filled with dread. She was afraid in the presence of her abuser and found the atmosphere in the home toxic. She did not dare report the abuse to his wife. She did not trust her as Y.Z. believed that the wife already knew what was going on. She had no where to go for help. She was homesick and deeply missed her parents and her community.

65. The abuse suffered by Y.Z. in that Indigenous medical boarding home had serious consequences for Y.Z. including:
- a) emotional and psychological dysfunctions that persist to this day, including feelings of humiliation, shame, guilt, fear, anxiety, nightmares, disgust, anger, episodes of dissociative states such as flashbacks, nausea and difficulty concentrating;
 - b) difficulties in interpersonal relationships, including:
 - i. distrust of men, including male school staff, male acquaintances and, later, her spouse and the men in her children's lives;
 - ii. violence in her marital life;
 - iii. a sense of failure and powerlessness in family life;
 - iv. a tendency to isolate herself from others due to the impression that everyone knew what she had been through, and a fear that people would judge her, a tendency that persists to this day; and
 - v. loss of self-confidence in social situations;
 - c) problems with alcohol abuse;
 - d) grinding her teeth, which began as soon as she returned home and consequences of which she still suffers today, such as:
 - i. loss of one tooth and several cracked teeth;
 - ii. the need for orthodontic treatment;
 - iii. the need to wear an orthodontic appliance at night,
 - iv. the embarrassment she felt when she had to sleep elsewhere, and people noticed her grinding her teeth.

66. Y.Z.'s experience also affected her academic and professional career. When she returned from her stay in the Indigenous medical boarding home, she needed much more energy to motivate herself at school and she lacked concentration, even though she had always been a good student. She wanted to go to university to become a teacher, but her difficulties caused her to drop out of school after Secondary 2 (Grade 8). She returned to adult education for Secondary 4 (Grade 10), but in the end did not complete her secondary education. She subsequently took specific training courses for the positions she held but was never able to realize her dream of going to university.

VIII. The Defendant's failure to meet its obligations to Class Members

67. For several decades, the Defendant inadequately and negligently operated a system for transporting and housing Indigenous people in Indigenous medical boarding homes, in breach of its obligations.
68. The acute vulnerability of Indigenous patients who were transported to and housed in Indigenous medical boarding homes meant that the people who worked there had to be carefully selected and supervised to provide a safe environment for patients.
69. The Defendant knew or ought to have known that the patients were particularly at risk of physical, sexual, or psychological abuse and therefore at risk of suffering resulting harm.

A. Negligence

70. The Defendant was under a general obligation to deal with Class Members in good faith and to refrain from harmful or negligent conduct.
71. The Defendant also owed a duty of care to Class Members when establishing, financing, monitoring, administering, maintaining and supporting the Indigenous medical boarding home system.

72. Through its servants and agents, the Defendant had a relationship of proximity to Primary Class Members due to the operation of the Indigenous medical boarding home system.
73. Primary Class Members were under the care and control of the Defendant's servants and agents when they were transported to or from or accommodated in Indigenous medical boarding homes. They expected to be treated in such a way as to avoid sexual, physical or psychological abuse.
74. The standard of care expected of the Defendant is higher considering the extreme vulnerability of Primary Class Members: they often had little or no understanding of French or English, were away from their families and communities, were in medical situation that caused them concern or pain, and could not find their bearings in a health-care system with which they had little or no familiarity.
75. This standard is all the higher when it comes to the treatment of children. Once the minor members of Primary Class had been removed from their families by the Defendant, the Defendant stood *in loco parentis* to them. The Defendant was therefore responsible for ensuring that their needs were adequately met.
76. The Defendant knew or ought to have known that its negligence in establishing, financing, monitoring, administering, maintaining and supporting the Indigenous medical boarding home system would result in physical and emotional harm to Primary Class Members.
77. Pursuant to these obligations, the Defendant had an affirmative obligation to take the necessary steps to protect the safety, well-being and health of Primary Class Members.
78. The Defendant was obliged to establish, fund, monitor, administer, maintain and support the Indian boarding homes system with a reasonable standard of care, which includes, but is not limited to:

- a) ensuring the safety and well-being of Primary Class members;
- b) providing an environment free from sexual, physical, and psychological abuse;
- c) establishing, implementing and enforcing appropriate policies and procedures to ensure that Primary Class members would be free from sexual, physical, and psychological abuse;
- d) adequately vetting, monitoring, and supervising Indigenous boarding homes and boarding home providers to ensure that the Indigenous boarding homes provided appropriate environments for Primary Class members, free from sexual, physical and psychological abuse;
- e) providing a mechanism to allow for complaints and reporting of incidents of sexual, physical and psychological abuse by members of the Primary Class;
- f) investigating and reporting to appropriate law enforcement authorities complaints by Primary class Members of sexual, physical and psychological abuse;
- g) establishing and implementing policies and procedures to ensure incidents of physical, sexual and psychological abuse would not re-occur.

B. Constitutional and fiduciary obligations

- 79. The Defendant has exclusive jurisdiction over Aboriginal people under section 91(24) of the [*Constitution Act, 1867*](#), and is responsible for implementing the [*Indian Act*](#), R.S.C. 1985, c. I-5 (and its predecessor statutes).
- 80. The Defendant also has a fiduciary relationship with Canada's Aboriginal peoples which is rooted in the honour of the Crown and requires that it act at

all times honourably, fairly and in good faith in exercising its discretionary powers with respect to primary class members.

81. At all relevant times, the Defendant's relationship with Primary Class Members was one of dependence and trust, with the federal government obliged to act in their best interests.
82. Among the substantial and legal interests of the Primary Class Members were their health, well-being and safety.
83. Throughout the relevant period, the Primary Class Members were vulnerable to the Defendant's discretionary powers with respect to their legal interests in its operation of Indigenous medical boarding homes.
84. Consequently, the Defendant had a fiduciary duty to act loyally and in the best interests of Primary Class Members.
85. The context of this action is one of colonialism, where Aboriginal people were considered to be under the guardianship of the State, infantilized and deprived of any agency in decisions relating to their health because they were seen as incapable of taking care of their own health. This lack of power and control placed them in a situation of even greater vulnerability and conversely, gave the Defendant even greater control.
86. When Part 1 of the [*Canadian Human Rights Act*](#), R.S.C. 1985, c. H-6, came into force on March 1, 1978, the Defendant became obliged to respect sections 2, 3 and 5 of the *Act* and in particular, to respect the Primary Class Members' right to have their needs met without making adverse differentiations based on race, national or ethnic origin, age, sex or marital status.
87. When s. 14 of the [*Canadian Human Rights Act*](#) came into force on July 1, 1983, the Defendant became obliged by this provision to ensure that Primary Class Members were provided with services, facilities or accommodation free from harassment based on race, national or ethnic origin, age, sex or marital status,

and in particular, free from sexual harassment: *Canada Gazette*, Part I, vol. 117, no. 129 (July 16, 1983), p. 6332.

88. With the coming into force on April 17, 1985 of section 15 of the [*Canadian Charter of Rights and Freedoms*](#), Part I of the *Constitution Act, 1982* (the “*Canadian Charter*”), the Defendant became obliged to act without discrimination based on race or ethnic origin towards Primary Class Members.
89. The Defendant’s operation of the Indigenous medical boarding home system constitutes a violation of Primary Class Members’ right to equality. This violation allows for a remedy under s. 24(1) of the *Canadian Charter*.
90. The Defendant’s legal, constitutional and fiduciary obligations to Primary Class Members were, at all times relevant to the alleged facts, non-delegable obligations.

C. Vicarious liability

91. The Defendant also acts through its servants or agents and is therefore vicariously liable for damages caused by their faults or torts under section 3 of the [*Crown Liability and Proceedings Act*](#), R.S.C. 1985, c. C-50, while section 2 provides that agents are treated as servants for those purposes. The [*Civil Code of Quebec*](#) provides under article 1463 that “[t]he principal is bound to make reparation for injury caused by the fault of his subordinates in the performance of their duties” and under article 1464 that “[a] subordinate of the State or of a legal person established in the public interest does not cease to act in the performance of his duties by the mere fact that he performs an act that is illegal, beyond his authority or unauthorized... .” The common law rule is to the same effect: *Blackwater v. Plint*, 2005 SCC 58, par. [20](#).
92. The Defendant employed servants and agents who were responsible for implementing the system that transported Primary Class Members to and from Indigenous medical boarding homes and housed them in those homes. It also

had a contractual relationship with the persons who operated the homes and exercised control over them.

93. The Defendant's servants and agents were in a position of authority over Primary Class Members, who were in a highly vulnerable situation due to their state of health, their geographical distance from their family and community, and the language barrier. The proximity of the Defendant's employees to the members increased the risk of physical, sexual, and psychological abuse.
94. The servants and agents could or should have been able to inspect and monitor the conditions of transportation and accommodation. They retained or should have retained the power to remove Primary Class Members from the homes at any time, if necessary for their protection.

D. Obligations under international law

95. On November 9, 1945, the Defendant ratified the Charter of the United Nations, which "reaffirm[s] faith in fundamental human rights, in the dignity and worth of the human persons," affirms the right of peoples to equal rights, and promotes and encourages "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion": preamble, art. 1(2), 1(3).
96. On December 10, 1948, the Defendant voted in favour of the [*International Bill of Human Rights: A Universal Declaration of Human Rights*](#) ("UDHR") which proclaims the UDHR as "a common standard of achievement for all peoples and all nations" and recognizes the rights to life, liberty, security, integrity and non-discrimination: preamble, art. 2, 3, 5, 7.
97. On October 14, 1970, the Defendant ratified the [*International Convention on the Elimination of All Forms of Racial Discrimination*](#), which condemns colonialism "all practices of segregation and discrimination associated therewith" and commits its signatories to refrain from any act or practice of

racial discrimination, and more specifically to guarantee the enjoyment without discrimination of the right to health and medical care: preamble, art. 2, 5(e)(iv).

98. On May 19, 1976, the Defendant acceded to the [International Covenant on Civil and Political Rights](#), which includes the rights to security, integrity, liberty, dignity, protection of children and respect for these without distinction of any kind: art. 2(2), 7, 9, 10, 24.
99. The Defendant's breach of its obligations to members under these international instruments entitles them to compensation under Canadian common law and international law.

E. General breaches

100. The Defendant assumed responsibility for the faults and torts committed by those who operated the homes and made decisions concerning the transportation and placement of Primary Class Members. The Defendant is therefore vicariously liable for damages suffered by the members as a result of the wrongful acts or torts of these servants and agents.
101. By virtue of its fiduciary role and the rules of common law and international law, the Defendant was held to a high standard of care with regard to the selection and management of Indigenous medical boarding homes.
102. The Defendant and/or its servants and agents failed to:
 - a) ensure that Primary Class Members were provided with safe accommodation, such as by ensuring that appropriate standards of conduct and accommodation were established;
 - b) adequately establish, implement and enforcing appropriate policies and procedures to ensure that Primary Class members would be free from sexual, physical, and psychological abuse;

- c) adequately vetting, monitoring, and supervising Indigenous boarding homes and boarding home providers to ensure that the Indigenous boarding homes provided appropriate environments for Primary Class members (and in particular children), free from sexual, physical and psychological abuse;
 - d) provide a mechanism to allow for complaints and reporting of incidents of sexual, physical and psychological abuse by members of the Primary Class;
 - e) investigate and report to appropriate law enforcement authorities complaints by Primary Class members of sexual, physical and psychological abuse;
103. The Defendant and/or its servants and agents have also breached their obligations by:
- a) Failing to ensure the safety of Primary Class Members during transport to and from Indigenous medical boarding homes;
 - b) Failing to obtain the free and informed consent of members – or their parent or guardian in the case of minors – before transporting them to and placing them in an Indigenous medical boarding home;
 - c) failing to create adequate conditions for the members’ stay, including the availability of an interpreter, other people to accompany them, and clear communications and explanations concerning the process, all so as to mitigate the great vulnerability in which Primary Class Members found themselves;
 - d) failing to consult and inform communities about the operation of Indigenous medical boarding home placements for Indigenous peoples;
 - e) not providing for visits or communication with family, parents or guardians during the Indigenous medical boarding home stay;

- f) failing to set up complaint, investigation and disciplinary measures mechanisms; and by
 - g) failing to put in place appropriate resources for victims.
104. In the case of minor Primary Class Members, these omissions by the Defendant constitute breaches of a parent's duty of loyalty to his or her child and of the obligation to act in the child's best interests.
105. The Defendant's negligence in managing the Indigenous medical boarding home program as a whole was systemic in that:
- a) abuses were commonplace and existed within the Indigenous medical boarding home placement program as a whole;
 - b) the Defendant's servants and agents were or should have been aware of the abuse but no action was taken to remedy it;
 - c) there were no selection, management, or operating procedures designed to prevent abuse; and
 - d) all of the Primary Class Members were subject to the inadequate and deficient system for managing their transportation and placement in Indigenous medical boarding homes.

F. Breaches of Quebec law

106. The actions and omissions that took place in Quebec or with respect to Class Members residing in Quebec also constitute a breach of the obligations of the Defendant and its servants and agents under:
- a) sections 1, 4, 10, 16, 39 and 48 of the [*Charter of Human Rights and Freedoms*](#), R.L.R.Q. c. C-12 ("*Quebec Charter*"), from their coming into force on June 28, 1976;

- b) section 10.1 of the *Quebec Charter*, as of its coming into force on October 1, 1983: G.o.Q. II, October 5, 1983, p. 4139.
- c) articles 1457, 1463 and 1464 of the [*Civil Code of Quebec*](#), R.S.Q. c. CCQ-1991;
- d) articles 1053 and 1106 of the *Civil Code of Lower Canada* (“C.C.L.C.”); and
- e) subsection 3(1) of the [*Crown Liability and Proceedings Act*](#), R.S.C. 1985, c. C-50, and its predecessor statutes.

IX. Damages

A. Damages suffered by Class Members

107. As a result of the Defendant’s breaches of its obligations, the Plaintiff and the other members of the Primary Class have suffered damages which include but are not limited to:
- a) physical and sexual abuse;
 - b) psychological and emotional abuse;
 - c) deprivation of liberty and detention;
 - d) pain, incomprehension, frustration and a sense of injustice;
 - e) loss of self-confidence and low self-esteem, self-isolation and distrust of others;
 - f) mental health problems, up to and including suicidal thoughts;
 - g) substance abuse problems and violent behaviour;
 - h) intrusive memories (“flashbacks”), insomnia and anxiety;
 - i) sexual dysfunction;

- j) interpersonal problems;
- k) inability to care for their families;
- l) alienation from their family and community;
- m) inability to function in school and/or in the workplace and to secure an income from employment;
- n) the need for psychological and medical care;
- o) pain and suffering;
- p) loss of income;
- q) loss of enjoyment of life;
- r) a feeling of insecurity and mistrust towards public institutions, which discourages members from taking advantage of the public services to which they are entitled; and
- s) under-utilization of medical services, resulting in more frequent and intense crisis situations, delayed detection of illnesses, as well as impeding health care delivery.

108. The Defendant's actions and omissions also caused damage to Family Class Members that included:

- a) having to cope with the troubled behaviours of Primary Class Members who suffered trauma as a result of the abuse they endured while being accommodated in or transported to or from an Indigenous medical boarding home;
- b) having to adjust to substance abuse problems, interpersonal difficulties and the inability of Primary Class Members to care for their families;

- c) having to try to re-establish a climate of trust at home and in the community;
 - d) loss of support, guidance, care and companionship that Family Class Members might have reasonably expected from Primary Class Members; and
 - e) loss of income or the value of services provided to Primary Class members, including nursing and housekeeping.
109. The Defendant's breach of its duties described above was the cause of the damages, both in fact and in law.
110. These damages entitle Class Members to compensatory damages, damages under section 24(1) of the *Canadian Charter* and, in the case of breaches occurring in Quebec or to members residing in Quebec, damages under section 49 of the *Quebec Charter*.

B. Punitive and exemplary damages

111. The Defendant acted with full knowledge of the likely consequences of its actions and omissions. Such conduct deserves to be sanctioned by this Court through an award of punitive and exemplary damages.
112. The Defendant's unlawful and intentional infringement of the *Quebec Charter* occurring in Quebec or with respect to members residing in Quebec also give rise to an award of punitive damages under section 49 of the *Quebec Charter* and article 1621 of the [*Civil Code of Quebec*](#).

X. Statutes relied upon

113. Plaintiff and the members of the Class rely on, but are not limited to, the following legislation, as amended:
- a) *Federal Courts Act*, R.S.C 1985, c. F-7;

- b) *Federal Courts Rules*, SOR/98-106;
- c) [Charter of Human Rights and Freedoms](#), R.L.R.Q. c. C-12;
- d) [Civil Code of Quebec](#), R.S.Q. c. C-1991;
- e) [Family Law Act](#), RSO 1990, c F.3 and equivalent legislation in other provinces and territories in Canada, including the *Tort-feasors Act*, R.S.A 2000 c. T-5 and the *Civil Code of Quebec*;
- f) [Constitution Act, 1867](#), par. 91(24);
- g) [Canadian Human Rights Act](#), R.S.C. 1985, c. H-6;
- h) [Constitution Act, 1982](#), Part I;
- i) [Crown Liability and Proceedings Act](#), R.S.C. 1985, c. C-50, and any previous statute dealing with the same subject matter;
- j) [Department of Indian Affairs and Northern Development Act](#), R.S.C. 1985, c. I-6, or any previous statute dealing with the same subject matter;
- k) [Department of Health Act](#), S.C. 1996, c. 8;
- l) *Department of National Health and Welfare Act*, R.S.C. 1985, c. N-10, or any previous statute dealing with the same subject matter;
- m) [Indian Act](#), R.S.C. 1985, c. I-5, or any previous statute dealing with the same subject matter.

The Plaintiff proposes that this action be heard in Montreal.

Montreal and Toronto, July 26, 2024



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