

**FEDERAL COURT**

**PROPOSED CLASS ACTION**

Between:

**MATTHEW BRANDON**  
**(through his LITIGATION GUARDIAN CHRIS GARDINER)**

Plaintiff

- and -

**HIS MAJESTY THE KING**

Defendant

**STATEMENT OF CLAIM TO THE DEFENDANT**

A LEGAL PROCEEDIGN HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in 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, where 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 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days. Copies of the Federal Court 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 FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: February 28, 2024

Issued by:  
(Registry Officer)

Address of Local Office: Regina Local Office  
2425 Victoria Avenue  
Regina, Saskatchewan S4P 3V7

**TO: His Majesty the King**  
Prairie Regional Office - Saskatoon  
Department of Justice Canada  
123 – 2<sup>nd</sup> Avenue S., 10<sup>th</sup> Floor  
Saskatoon, Saskatchewan  
S7K 7E6

## CLAIM

1. The Plaintiff claims on his own behalf and on behalf of the other members of the proposed class for:

- (a) an order certifying this action as a class proceeding and appointing Chris Gardiner (Matthew Brandon) as the Representative Plaintiff for the Class;
- (b) a declaration that the Defendant breached his duties to the Plaintiff and the Class by reason of the events described in this action;
- (c) a declaration that the Defendant breached his common law duties of care owed to the Plaintiff and the Class by reason of the events described in this claim;
- (d) a declaration that the Defendant breached his fiduciary duty of care owed to the Plaintiff and the Class by reason of the special relationship between His Majesty the King and Canada's Inuit and First Nations peoples;
- (e) a declaration that the Defendant breached the Charter by reason of the events described in this claim;
- (f) damages, including but not limited to damages pursuant to s. 24(1) of the Charter, in a sufficient sum to the extent that money can compensate the Class for these wrongs, which sum will be in the billions, as this Honourable Court deems appropriate, set on an aggregate basis;
- (g) punitive damages of \$500 million, or such greater amount as this Honourable Court deems appropriate;
- (h) pre-judgment and post-judgment interest pursuant to the Federal Courts Act, R.S.C. 1985, c. F-7;
- (i) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the Federal Courts Rules, SOR/98-106; and
- (j) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

## THE PARTIES

2. Chris Gardiner (Litigation Guardian of Matthew Brandon), and the Plaintiff Matthew Brandon resides in Saskatchewan Beach, Saskatchewan.
3. The Defendant, His Majesty the King, is represented by the Attorney General of Canada.
4. The Plaintiff pleads and relies on the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 the **CLPA**], including but not limited to ss.3, 23(1) and 36 thereof.

## DEFINITIONS

5. In this claim, the capitalized terms are defined as follows:
  - (a) “**Canada**” refers to the Defendant The Attorney General of Canada, who represents His Majesty the King in Right of Canada pursuant to s. 23(1) of the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50;
  - (b) “**Dependents Statutes**” means the Family Compensation Act, R.S.B.C. 1996, c. 126; Fatal Accidents Act, R.S.A. 2000, c. F-8; Tort-Feasors Act, R.S.A. 2000, c. T-5; Fatal Accidents Act, R.S.S. 1978, c. F-11; Fatal Accidents Act, C.C.S.M. c. F50; Family Law Act, R.S.O. 1990, c. F.3; Civil Code of Québec, CQLR c CCQ-1991; Fatal Accidents Act, R.S.N.B. 1973, c. F-7; Fatal Accidents Act, RSPEI 1988, c F-5; Fatal Injuries Act, R.S.N.S. 1989, c. 163; Fatal Accidents Act, R.S.N.L. 1990, c. F-6; Fatal Accidents Act, R.S.N.W.T. (Nu) 1988, c. F-3; Fatal Accidents Act, R.S.N.W.T. 1988, c. F-3; and the Fatal Accidents Act, R.S.Y. 2002, c. 86;
  - (c) “**Indian Residential School**” refers to the schools recognized as Indian Residential Schools and for which Canada took responsibility in the Indian Residential School Settlement;
  - (d) “**Indian Residential School Settlement**” refers to the Indian Residential School Settlement executed on March 6, 2006;
  - (e) “**Indigenous**” means Inuit and Indian people;

- (f) “**Residential School Survivor**” refers to a person who attended at an Indian Residential School as a student; and
- (g) “**Second-Generation Residential School Survivor**” refers to a person where either one, or both, of their parents attended a residential school.

## NO LEGAL IMEPEDIMENTS

6. Section 11.01 of the Indian Residential School Settlement provides:

(1) The Approval Orders will declare that in the case of Class Members and Cloud Class Members:

a) Each Class Member and Cloud Class Member has fully, finally and forever released each of the Releasees from any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any such Class Member or Cloud Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions or the Cloud Class Action whether asserted directly by the Class or Cloud Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member or Cloud Class Member.

b) The Class Members and Cloud Class Members are deemed to agree that they will not make any claim or demand or take any actions or proceedings against any Releasee or other person or persons in which any claim could arise against any Releasee for damages and/or contribution and/or indemnity and/or other relief over under the provisions of the *Negligence Act*, R.S.O.1990, c. N-3, or its counterpart in other jurisdictions, the common law, Quebec civil law or any other statute of Ontario or any other jurisdiction in relation to an Indian Residential School or the operation of Indian Residential Schools;

c) Canada’s, the Church Organizations’ and the Other Released Church Organizations’ obligations and liabilities under this Agreement constitute the consideration for the releases and other matters referred to in Section 11.01(a) and (b) inclusive and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the Class Members or and Cloud Class Members are limited to the benefits provided and compensation payable pursuant to this Agreement,

in whole or in part, as their only recourse on account of any and all such actions, causes of actions, liabilities, claims and demands.

(2) Notwithstanding Section 11.01(1), no action, except for Family Class claims as set out in the Class Actions and the Cloud Class Action, capable of being brought by a Class Member or Cloud Class Member will be released where such an action would be released only by virtue of being a member of a Family Class in the Class Actions or the Cloud Class Action.

7. The court orders that were applicable flow from the following Fiats:

- (a) *Semple et al v. The Attorney General of Canada et al*, 2006 MBQB 285;
- (b) *Fontaine c. Canada (Attorney General)*, 2006 QCCS 7306 (CanLII);
- (c) *Fontaine et al. v. Canada et al.*, 2006 YKSC 63;
- (d) *Quatell v. Attorney General of Canada*, 2006 BCSC 1840;
- (e) *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ON SC);
- (f) *Sparvier v. Canada (Attorney General)*, 2006 SKQB 533 (CanLII);
- (g) *Kuptana v. Attorney Gen. of Canada*, 2007 NWTSC 01;
- (h) *Northwest v. Canada (Attorney General)*, 2006 ABQB 902.

8. In *Fontaine et al, v. Canada et al.*, 2006 YKSC 36, while discussing the general release of the claimants the court stated:

[10] This part of the Settlement Agreement requires claimants to release their court actions against the government and churches in exchange for the claims permitted under the Independent Assessment Process

9. In *Fontaine v. Canada (Attorney General)*, 2006 QCCS 7306 (CanLII):

15. THIS COURT ORDERS AND DECLARES that, subject to the provisions of the Agreement, and in particular, section 4.06 thereof, each Class Member and his or her heirs, personal representatives and assigns or their past and present agents, representatives, executors, administrators, predecessors, successors, transferees and assigns, have released and shall be conclusively deemed to have fully, finally and forever released the Defendants and the Other Released Church Organizations and each of their respective past and present parents, subsidiaries and related or affiliated entities and their respective employees, agents, officers, directors, shareholders, partners, principals, members, attorneys, insurers, subrogees, representatives, executors, administrators, predecessor, successors, heirs, transferees and assigns from any and all actions, causes of action, common law and statutory liabilities, contracts, claims and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest

which they ever had, now have or may have hereafter have, directly or indirectly or any way relating to or arising directly or indirectly by way of any subrogated or assigned right or otherwise in relation to an Indian Residential School or the operation generally of Indian Residential Schools and this release includes any such claim made or that could have been made in any proceeding including the Class Actions and including claims that belong to the Class Member personally, whether asserted directly by the Class member or by any other person, group or legal entity on behalf of or as a representative for the Class Member.

10. In *Semple et al v. The Attorney General of Canada et al*, 2006 MBQB 285 Schulman J. stated at para 13:

...It recognizes the common experience of all former students and arguably recognizes the loss of their culture, family ties and Identity. Unless the student intends to make a claim for serious physical or sexual abuse or wrongful acts which are defined, the recipient must sign a release of all claims in exchange for payment...

11. From the forgoing: “claimants” ¶9 as pled; “each Class Member and his or her heirs” ¶10. Connote entitlement to property. The settling class in the Residential School Settlement, the ancestors to the Class could not bind Matthew Brandon or any Members of the Class whether they were adults or infants at the time of the settlement.

12. They did not bind any Member of the Class who was an adult having no authority to bind another adult whether that other person were a child of the settleing class or not.

13. They did not bind Members of the Class who were minors at the time of execution of the Residential School Settlement whether that were intended or not although for a narrow set of purposes, which have no application in this claim, there are contracts related to an infant’s benefit and person over which a parent may bind an infant but that has no application here.

14. For Mathew Brandon and other Members of the Class, they are not bound by the Residential School Settlement and proscribed from pursuing recovery, and for Matthew Brandon and many Members of the Class who were minors at the time of execution, they are redundantly not proscribed from pursuing recovery.

15. The settling class in the Residential School Settlement, the ancestors to the Class, could not bind Matthew Brandon and the Members of the Class who were infants.

16. The only contracts which, if for an infant's benefit, are enforceable against him or her, are contracts related to the infant's person, such as contracts for necessities, food, clothing, and lodging, contracts of marriage, or contracts of apprenticeship and service. Contracts that purport to bind an infant for items other than necessities are voidable where the infant received no benefit from the Indian Residential School Settlement. The Residential School Settlement does not bind any Members of the Class but redundantly does not bind Matthew Brandon and other Members of the Class who were infants at the time of execution because Matthew Brandon, and the other Members of the Class received no, or alternatively negligible, benefit from the Indian Residential School Settlement.

17. The Class repudiates the Indian Residential School Settlement. The Indian Residential School Settlement was not for the benefit of Matthew Brandon or others in the Class who were infants and the Indian Residential School Settlement disregards Matthew Brandon and this part of the Residential School Settlement, even if it could be interpreted to grant a release on behalf of the Class is void as would be the release of their rights if so interpreted.

18. Although determination of whether the Indian Residential School contract is void as against Matthew Brandon and the Members of the Class who were infants or alternatively voidable and although repudiating would be an individual issue, because the Members of the Class are similarly, if not identically, situated, in that they received no benefit, or negligible irrelevant benefit, it is reasonable to expect that all Members of the Class will repudiate the Indian Residential School Settlement.

19. No Member of the Class is bound by the Indian Residential School Settlement or the court orders because:

- (a) The Residential School Settlement does not release the claim of any Member of the Class;

(b) Redundantly, for Members of the Class who were not born at the time of the Residential School Settlement, there can be no release deemed to be enforceable against them.

(c) Redundantly, for Members of the Class who were infants at the time of the Residential School Settlement, any contract that is not for the infant's benefit is void. An infant's contract containing stipulations disadvantageous to him or her is void, as is a release of an infant's rights.

20. Moreover, and regarding all three categories of the Class, the scope of a consent judgment is limited by the bounds of the consent and cannot be taken to be conclusive as against non consenting parties or children and in the alternative, particularly children not yet born;

21. Additionally, no Member of the Class is bound by the Indian Residential School Settlement or the court orders because they received no notice that they were bound and that their rights were in jeopardy and being surrendered. The notice leading to the court orders was regarding the benefits that the ancestors of the Class would receive but gave no notice whatsoever that the rights of the Class to seek the judgment seat concerning the wrongs pled herein was given up in any way.

22. In *Semple et al v. The Attorney General of Canada et al*, 2006 MBQB 285, while approving settlement in question Schulman J. Stated at para 2:

...There were 130 schools and they were located in all the provinces and territories of Canada except Newfoundland, New Brunswick and Prince Edward Island. While attending the schools many of the children were abused physically, sexually and emotionally and they suffered damage that in turn has adversely affected generations of Aboriginal People...

23. In *Baxter v. Canada (Attorney General)*, 2006 CanLII 41673 (ON SC), the Regional senior Justice Winkler of the Ontario Superior Court of Justice stated:

[18] The individual compensation aspects of the settlement are complemented by the provision of funding for three initiatives that will provide broader community-based benefits. The Aboriginal Healing Foundation will be given an initial endowment of \$125 million "to support the objective of addressing the healing needs of Aboriginal People affected by the Legacy of Indian Residential Schools,

including the intergenerational impacts, by supporting holistic and community-based healing to address needs of individuals, families and communities . . .

24. In *Kuptana v. Attorney Gen. of Canada*, 2007 NWTSC 01:

[4] The IRS system and its effect on Canada’s aboriginal Communities was summarized by the Royal Commission of Aboriginal Peoples in ten years ago as follows:

...Tragically, the future that was created is now a lamentable heritage for those children and the generations that come after, for Aboriginal communities and, indeed, for all Canadians.

25. In *Sparvier v. Canada (Attorney General)*, 2006 SKQB 533 (CanLII):

[3] The flaws and failures of the policy and its implementation are at the root of the allegations of harm suffered by the class members. Upon review by the Royal Commission on Aboriginal Peoples, it was found that the children were removed from their families and communities to serve the purpose of carrying out a “concerted campaign to obliterate” the “habits and associations” of “Aboriginal languages, traditions and beliefs,” in order to accomplish “a radical re-socialization” aimed at instilling the children instead with the values of Euro-centric civilization.

26. An issue for the common issues trial judge will be what is the impact of the Residential School Settlement Agreement, the absence of notice, and the court orders, on the right of the Class to reach the judgment seat and all three types of Class Members as pled in ¶20 above, have a common, if not identical, interest in this class action.

### **THE CLASS AND THE CLAIM**

27. Any child of a Residential School Survivor alive on the 28<sup>th</sup> day of February, 2022, or alive at any time during the period of the 28<sup>th</sup> day of February, 2022, and the date of certification.

### **THE PLAINTIFF’S HARMS**

28. The Plaintiff, Matthew Brandon, is of First Nations ancestry.

29. Matthew Brandon’s mother, Carol Brandon, is of First Nations ancestry and part of the Waywayseecappo, a First Nation in Manitoba.

30. Matthew Brandon's father, Marvin Daniels, was of First Nations ancestry, is deceased, and was a part of the George Gordon, a First Nation in Touchwood Hills, Saskatchewan.

31. Carol Brandon and Marvin Daniels both attended Residential Schools.

32. Carol Brandon and Marvin Daniels were both subjected to physical and psychological wrongdoing while attending Residential School. The discipline they received at their schools, ubiquitously common in all Residential Schools was one of violence.

33. Carol Brandon and Marvin Daniels were not trained on how to be parents. In common with all Class Members the wrongdoing of the Defendant and a policy of "take the Indian out of the Indian" *trained* them to be terrible parents, Matthew Brandon's parents, like the parents of all Class Members, lacked training and knowledge on how to parent and were *trained* that parenting, supervision, and violence were synonymous.

34. The wrongs to which Matthew Brandon was subjected were a foreseeable consequence of the psychological, physical, and sexual abuse, visited upon his parents in Residential Schools which Matthew Brandon has in common with all Members of the Class whose parents were similarly abused.

35. The loss of respect for authority, the lack of capacity to parent, the absence of learning self discipline and an ability to control emotions, learning as children through example that discipline and training were accompanied by temper and violent discipline, which impacted the parents of the Class in Residential School, foreseeably then impacted the Class.

36. Matthew Brandon was born on the 21<sup>st</sup> of June, 1991.

37. Matthew Brandon was apprehended by the Saskatchewan Ministry of Social Services at about 18 months of age. He became a permanent ward of the Ministry. From the time he was apprehended by Social Services in Regina, he had been placed into nine different placements prior to the foster home of Renee Mountstephen in July, 1993.

38. In October of 1994 Matthew Brandon was placed with foster parents Ian and Perry Workman where he lived until he was about 6 years of age.
39. Matthew Brandon was then placed with foster parents Chris Gardiner and Shannon Berard-Gardiner. He lived with them from the 2<sup>nd</sup> of December 1997 to the 16<sup>th</sup> of September 2000.
40. Matthew Brandon then lived with Mr. Baumberger for around two years.
41. In September 2002, Matthew was placed once again with Christ Gardiner and Shannon Berard-Gardiner. He has been with them ever since.
42. Until harmed by his father Marvin Daniels, Matthew Brandon was a healthy baby. He was normal.
43. On a day when Matthew Brandon was about two years old, at a time when he was being cared for by his father, Marvin Daniels, Marvin Daniels started to slap Matthew Brandon.
44. Matthew Brandon fell on his head in Marvin Daniels care as a result of the slapping. Matthew Brandon suffered acute brain injury.
45. Marvin Daniels then kicked Matthew Brandon across the floor.
46. Matthew Brandon had been crying. Marvin Daniels reacted with violence. Marvin Daniels kept kicking Matthew Brandon causing severe brain damage.
47. Matthew Brandon has a scar on his eye from being thrown by Marvin Daniels.
48. Matthew Brandon's medical condition has resulted in him suffering from intellectual disability, delirium static encephalopathy, cerebral palsy, and dysarthria, which results from the abuse he suffered at the hands of Marvin Daniels.

49. Marvin Daniels and Carol Brandon were not married but prior to these assaults on Matthew Brandon, had lived together for seven years.

50. Marvin Daniels had been abused in Residential School. This led him to abuse alcohol and drugs and he had no control over his emotions.

51. Marvin Daniels resentment for authority resulted from his mistreatment in Residential School.

52. Marvin Daniels had trouble concentrating. He would just react. Marvin Daniels would get mad often and he had a terrible temper flowing from being abused in Residential School.

53. In Residential School Marvin Daniels was disciplined with violence including hitting and beating. He carried this example with him when it came to dealing with children and his child Matthew Brandon.

54. The parents of Matthew Brandon, like the parents of other Members of the Class, were profoundly and negatively influenced by what they experienced in Residential School. The abuse and trauma that they suffered in Residential School resulted in psychological damage to all parents of Members of the Class.

55. Carol Brandon and Marvin Daniels, in common with all parents of Members of the Class lacked parenting skills and the ability to control their emotions as a result of their being systemically mistreated in Residential School, and as a result of the example that they learned in Residential School which was an example of abuse and abusive discipline.

56. What happened to Matthew Brandon, the harms suffered by Matthew Brandon and the other two children of Carol Brandon, were as a result of Marvin Daniel's and Carol Brandon being in Residential School.

57. What happened to Marvin Daniel is individually different from other Class Members in terms of the harms that he suffered, but while the harms are individualistic among the Class, the harms to Matthew Brandon and the harms to other families and Class Members have in common, that the cause was wrongdoing in Residential School to their parents for which the Defendant is responsible. The cause of the harms to Matthew Brandon and others in the Class is rooted in the wrongs of the Residential School system.

58. The Defendant owes a special duty to the Class as Indigenous or to a huge majority of the Class as Indians pursuant to the Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.), section 91(24):

24. **Indians**, and Lands reserved for the Indians.

59. Members of the Class have the right not to be subjected to any unusual treatment and have the right to security of the person. Constitution' Act, 1982, s.35(1), being Schedule "B" to the Canada Act, 1982 (U.K.), C. 11 is:

...section 12:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

...section 7:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

60. Members of the Class have the right of the safeguard of their dignity, and the right to life and personal security in an absence of discrimination. Charter of Human Rights and Freedoms, R.S.Q., c. C-12, applies insofar as the Federal Charter does not.

...section 4:

Every person has a right to the safeguard of his dignity, honour and reputation.

...section 1:

Every human being has a right to life, and to personal security, inviolability and freedom.

61. Canadian Human Rights Act, R.S.C. 1985, c. H-6:

**2. Purpose**

The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

...

**3(1) Prohibited grounds of discrimination**

For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.

62. Members of the Class were, through their Residential School Survivor parent or parents subject of genocide, “take the Indian out of the Indian”, which was also a crime against humanity and the United Nations Declaration on the Rights of Indigenous Peoples applies and should be enforced by this Honourable Court.

63. Residential School Survivors, parents of Class Members, were subjected to “systemic attempts at and impact of removing that which was Indian from the [Indian]”.<sup>1</sup>

---

<sup>1</sup> *W.R.B. v. Plint*, (2001), 93B.C.L.R. (3d) 228 ¶6

64. The Court should apply the Monist approach that customary international law applies in Canada automatically and reject the Dualist approach to customary international law. The law of Canada should be interpreted to be that the executive being a party to a treaty or declaration cannot be intended to apply to others outside of Canada and not to protect Canadians.

65. Monist means an approach internationally and nationally.

66. Dualist means to approach as separate.

67. The common issues trial judge should adopt a Monist approach and if necessary support a novel tort of wrongdoing on policy grounds.

68. Crimes Against Humanity and War Crimes Act, SC 2000, c 24:

**4(1) Genocide, etc., committed in Canada**

Every person is guilty of an indictable offence who commits

- (a) genocide;
- (b) a crime against humanity; or

...

69. United Nations Declaration on the Rights of Indigenous Peoples (Royal Assent on June 21, 2021):

...Article 7

- 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
- 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

...Article 8:

- 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
- 2. States shall provide effective mechanisms for prevention of, and redress for:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

70. The Defendant's wrongdoing was committed by the employees and agents of the Defendant for whom the Defendant is vicariously responsible. And redundantly, by statute the Crown Liability and Proceedings Act, R.S.C. 1985, c C-50 sections 3 and 10 provides:

The Crown is liable for the damages for which, if it were a person, it would be liable

...

(b) in any other province, in respect of

(i) a tort committed by a servant of the Crown, or

...

No proceedings lie against the Crown by virtue of subparagraph 3(a)(i) or (b)(i) in respect of any act or omission of a servant of the Crown unless the act or omission would, apart from the provisions of this Act, have given rise to a cause of action for liability against that servant or the servant's personal representative or succession.

71. Crown Liability Act, S.C. 1952-53, c. 30 the predecessor of the Crown Liability and Proceedings Act:

3(1) The Crown is liable in tort of the damages for which, if it were a private person of full age and capacity, it would be liable

(a) in respect of a tort committed by a servant of the Crown; or

...

(6) Nothing in this section makes the Crown liable in respect of anything done or omitted in the exercise of any power or authority that, if this section had not been passed, would have been exercisable by virtue of the Crown, or any power or authority conferred on the Crown by any statute, and, in particular, but without restricting the generality of the foregoing, nothing in this section makes the Crown liable in respect of anything done or omitted in the exercise of any power or authority exercisable by the Crown, whether in time of peace or of war, for the

purpose of the defence of Canada or of training, or maintaining the efficiency of, any of the naval, army or air forces of Canada.

## **DAMAGES**

72. As a result of the systemic negligence of the Defendant, the Class have suffered and continue to suffer damages, which include, but are not limited to, the following:

- (a) physical, psychological and emotional harm and distress;
- (b) depression;
- (c) anxiety;
- (d) post-traumatic stress disorder;
- (e) mental anguish;
- (f) suicidal ideation;
- (g) loss of opportunity;
- (h) loss of income; and
- (i) loss of enjoyment of life.

73. Further, as a result of the injuries suffered by Matthew Brandon and the Class, Matthew Brandon and the Class have sustained special damages, losses, and expenses for medical treatment, rehabilitation, psychological counselling, and other care.

## **AGGRAVATED, PUNITIVE, and EXEMPLARY DAMAGES**

74. The conduct of the Defendant was willful, arrogant, callous, and highhanded and constituted a gross violation of the rights of Matthew Brandon and the Class.

## **RELIEF SOUGHT**

75. The Plaintiff repeats the foregoing paragraphs and seeks as relief the following:

- (a) an Order certifying this proceeding as a class proceeding and appointing Chris Gardiner as the representative plaintiff;
- (b) general damages, including aggravated damages for personal injuries; and special damages;

- (c) damages for the Class on an aggregated basis if the common issues trial judge determines that damages can be aggregated;
- (d) aggravated, punitive and exemplary damages;
- (e) such further and other relief as this Honourable Court deems just.

76. This is an appropriate case for punitive, aggravated and/or exemplary damages, to demonstrate that such willfully negligent, tortuous conduct will not be tolerated and this Honourable Court, the third arm of governance in Canada, will express its opprobrium on behalf of the people of Canada through awards of exemplary, punitive, and aggravated damages.

### **GENERAL**

77. The Plaintiff pleads and relies upon the following:

- (a) Federal Courts Act, R.S.C. 1985, c. F-7;
  - (b) Federal Courts Rules, SOR/98-106;
  - (c) Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.);
  - (d) Constitution Act, 1982, s.35(1), being Schedule "B" to the Canada Act, 1982 (U.K.), c. 11;
  - (e) Crown Liability Act, S.C. 1952-53, c. 30;
  - (f) Crown Liability and Proceedings Act, R.S.C. 1985, c C-50;
  - (g) Civil Code of Quebec, S.Q. 1991, c. 64;
  - (h) Charter of Human Rights and Freedoms, R.S.Q., c. C-12;
  - (i) Canadian Human Rights Act R.S.C., 1985, c. H-6 ;
  - (j) the Dependents Statutes (defined above) and any equivalent legislation and policy documents in any of the provinces and territories of Canada, or of a federal nature.;
- and

(k) Crimes Against Humanity and War Crimes Act, SC 2000, c 24.

DATED at Regina, Saskatchewan, this 28<sup>th</sup> day of February, 2024.



---

E.F. Anthony Merchant, K.C.  
MERCHANT LAW GROUP  
Barristers and Solicitors  
2401 Saskatchewan Drive  
REGINA, SK S4P 4H8  
Phone: (306) 359-7777  
Facsimile: (306) 522-3299  
Email: [tmerchant@merchantlaw.com](mailto:tmerchant@merchantlaw.com)

Lawyers for the Plaintiff