

FEDERAL COURT  
PROPOSED CLASS PROCEEDING

DIANE NASOGALUAK AS LITIGATION GUARDIAN OF  
JOE DAVID NASOGALUAK

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

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

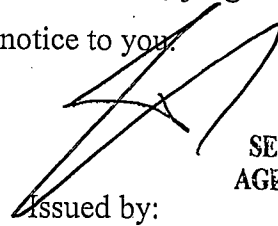
IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, 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 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 FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

December 19, 2018



**TODD DESANTI  
SENIOR REGISTRY OFFICER  
AGENT PRINCIPAL DU GREFFE**

Issued by: \_\_\_\_\_

Address of local office: 180 Queen Street West,  
Suite 200  
Toronto, Ontario M5V 3L6

TO: **THE ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
130 King Street West, Suite 3400, Box 36  
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## CLAIM

### A. RELIEF SOUGHT BY THE PLAINTIFF AGAINST CANADA

1. The plaintiff claims on behalf of himself and the other members of the proposed class:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff for the Class pursuant to rule 334.16 of the *Federal Court Rules*, SOR/98-106 (the "*Federal Court Rules*");
- (b) a declaration that Canada was, and continues to be systemically negligent in the funding, oversight, operation, supervision, control, maintenance and support of its RCMP Detachments, and RCMP Officers who committed assaults against the Plaintiff and Class Members in the course of their duties in the Territories;
- (c) a declaration that Canada breached its fiduciary duties to the Plaintiff and Class by virtue of funding, oversight, operation, supervision, control, maintenance and support of its RCMP Detachments, and RCMP Officers (defined below) who committed assaults against the Plaintiff and Class Members in the course of their duties in the Territories;
- (d) a declaration that Canada and its agents systemically violated, and continue to violate, sections 7 and 15 of the *Charter* in a way that is not demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*;
- (e) a declaration that Canada is liable to the plaintiff and Class Members for damages caused by its negligence and breach of fiduciary duty in relation to the funding, operation, supervision, control, maintenance, oversight and support of RCMP Detachments and RCMP Officers in the Territories;
- (f) a declaration that Canada is liable to the plaintiff and Class Members for damages under section 24(1) of the *Charter* for breach of sections 7 and 15 of the *Charter* in relation to the actions of RCMP Officers;
- (g) damages for negligence, and breach of the *Charter* in the amount of \$500 million;
- (h) punitive and exemplary damages in the amount of \$100 million;

- (i) prejudgment and post-judgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (j) costs of this action on a substantial indemnity scale or in an amount that provides full indemnity;
- (k) 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*; and
- (l) such further and other relief as this Honourable Court deems just and appropriate in all the circumstances.

## B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- (a) "**Aboriginal**" or "**Aboriginal Person(s)**" means any person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act, 1982 (U.K.)*, 1982. c. 11, specifically, Indian, Inuit and Métis peoples of Canada;
- (b) "**Agents**" mean the servants, contractors, officers and employees of Canada and the operators, managers, administrators, police officers, and all other staff members at RCMP Detachments in the Territories;
- (c) "**Canada**" means the Defendant in this proceeding as represented by the Attorney General of Canada;
- (d) "**Class**" or "**Class Members**" means:
  - all Aboriginal Persons who allege that they were assaulted at any time while being held in custody or detained by RCMP Officers in the Territories, and were alive as of December 18, 2016;
- (e) "**Class Period**" means the period from January 1, 1928 to the present;
- (f) "**RCMP**" means the Royal Canadian Mounted Police;
- (g) "**RCMP Detachments**" means the various local RCMP police stations and offices operated by Canada in the Territories;
- (h) "**RCMP Officers**" means Agents of Canada with exclusive jurisdiction over policing in the Territories;
- (i) "**Territories**" means the Northwest Territories, Nunavut and the Yukon Territory.

### C. OVERVIEW OF THIS ACTION

3. The action is brought to preserve and affirm the fundamental civil and constitutional rights of all Aboriginal Persons who were harmed as a result of the improper use of force by RCMP Officers in the Territories.

4. Aboriginal Persons are regularly assaulted by RCMP Officers because they are Aboriginal. The Defendant has long known that these events commonly take place in the Territories, and has taken no action to prevent them.

5. The RCMP has exclusive jurisdiction over policing in the Territories. The Defendant establishes, funds, oversees, operates, supervises, controls, maintains, and supports the RCMP, RCMP Detachments, and RCMP Officers in the Territories. The RCMP is responsible for the epidemic of police assaults that take place in the Territories.

6. The lives of Class Members have been permanently impacted, or in many cases ended, as a result of the Defendants' negligence, breach of fiduciary duty and *Charter* breaches.

### D. THE PARTIES

#### a) The Representative Plaintiff and the Class

7. The representative plaintiff is Joe David Nasogaluak, by his litigation guardian, Diane Nasogaluak. The plaintiff is currently 16 years old and resides in Tuktoyaktok, Northwest Territories. He is Aboriginal. He was assaulted upon arrest by RCMP Officers in the Territories in November 2017 when he was 15 years old. As a result of this assault, Mr. Nasogaluak sustained physical and psychological harm.

8. The plaintiff brings this action pursuant to the *Federal Court Rules* on his own behalf and on behalf of the Class.

**b) The Defendant**

9. The RCMP is Canada's national police force pursuant to the federal *Royal Canadian Mounted Police Act*. The federal Crown is liable, pursuant to section 3 of the *Crown Liability and Proceedings Act*, for the wrongful or negligent acts and omissions of the RCMP's members, employees, agents, and officers including those from other police forces operating under its jurisdiction or command. According to the *Crown Liability and Proceedings Act*, the Defendant Attorney General of Canada is also the person in whose name proceedings are taken against the federal Crown.

**E. THE TREATMENT OF ABORIGINAL INDIVIDUALS IN THE YUKON, NORTHWEST TERRITORIES AND NUNAVUT BY THE RCMP**

**a) The RCMP and its Mandate on Excessive Use of Force**

10. The RCMP is Canada's national police force and an agency of the Federal Ministry of Public Safety. Under the direction of the Minister of Public Safety Canada, the Commissioner of the RCMP has exclusive control and management of policing in the Territories and all matters connected therewith.

11. The RCMP is organized under the authority of *Royal Canadian Mounted Police Act*, and the *Royal Canadian Mounted Police Regulations, 2014*.

12. The RCMP's mandate includes preventing and investigating crime, maintaining peace and order, enforcing laws, contributing to national security, ensuring the safety of state officials, visiting dignitaries and foreign missions and providing vital operational support services to other police and law enforcement agencies within Canada and abroad.

13. The RCMP must act in accordance with its *Code of Conduct* which is a schedule to the *Royal Canadian Mounted Police Regulations, 2014*. In particular, RCMP Officers must:

- (a) Treat every person with respect and courtesy and not engage in discrimination or harassment;

- (b) Act with integrity, fairness and impartiality, and do not compromise or abuse their authority, power or position; and
- (c) Only as much force as is reasonably necessary in the circumstances.

14. The RCMP must also act in accordance with section 25 of the *Criminal Code* which requires the RCMP and its agents to use force that is intended or likely to cause death or grievous bodily harm only when the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

15. In practice, the RCMP regularly breaches its mandate to treat Aboriginal Persons in a non-discriminatory manner. RCMP Officers and other agents of the RCMP regularly discriminate against Aboriginal Persons by employing excessive and unnecessary force, by arresting or detaining Aboriginal Persons for no reason and by using hateful speech and language in the course of policing in the Territories.

#### **b) The RCMP's Exclusive Jurisdiction over Policing in the Territories**

16. The RCMP has jurisdiction within the Territories for providing police and policing services under federal statutes.

17. Since at least 1886, pursuant to the *Royal Canadian Mounted Police Act*, and the *Royal Canadian Mounted Police Regulations, 2014*, and its predecessor legislation and regulations, the RCMP held exclusive jurisdiction over police services in the Territories.

18. Since at least 1928, the Federal Crown has entered into formal "Police Services Agreements" with the Territories with respect to policing. Each Police Service Agreement provides the RCMP with exclusive jurisdiction over policing in each of the Provinces and Territories and outlines the duties and responsibilities of the RCMP in financial, operational and administrative areas.

19. Pursuant to the Police Service Agreements, Canada operates RCMP Detachments located in various cities and towns in the Territories as follows:

- (a) Northwest Territories: Aklavik, Behchoko, Deline, Fort Good Hope, Fort Liard, Fort McPherson, Fort Providence, Fort Resolution, Fort Simpson, Fort Smith, Hay River, Inuvik, Lutsel K'e, Normal Wells, Northwest Territories Headquarters (G Division), Paulatuk, Sachs Harbour, Tuktoyaktuk, Tulita, Ulukhaktok, Wha Ti and Yellowknife.
- (b) Nunavut: Arctic Bay, Arviat, Baker Lake, Cambridge Bay, Cape Dorset, Chesterfield, Clyde River, Coral Harbour, Gjoa Haven, Grise Fiord, Hall Beach, Igloolik, Iqaluit, Kimmirut, Kugaaruk, Kugluktuk, Nunavut Headquarters (V Division), Pangnirtung, Pond Inlet, Qikiqtarjuaq, Rankin Inlet, Repulse Bay, Resolute Bay, Sanikiluaq, Taloyoak, and Whale Cove.
- (c) Yukon Territory: Beaver Creek, Carcross, Carmacks, Dawson City, Faro, Haines Junction, Mayo, Old Crow, Pelly Crossing, Ross River, Teslin, Watson Lake, Whitehorse, Yukon Headquarters (M Division).

20. At all material times, Canada, and/or the RCMP and/or its Agents including RCMP Officers had exclusive jurisdiction over policing in the Territories, including, but not limited to, providing police services at the above RCMP Detachments and in the community.

**c) The RCMP's Use of Excessive Force Against Aboriginal Persons in Custody in the Territories**

- 21. Aboriginal Persons comprise a majority of the population of the Territories.
- 22. Aboriginal Persons are frequently arrested, detained or held in custody by RCMP Officers in the Territories on the basis of their race, ethnic and/or national origin.
- 23. While under arrest, detention or custody, Class Members are frequently subjected to assault or use of excessive force by RCMP Officers. Common incidents



involve RCMP Officers unnecessarily beating, hitting, pepper-spraying, and shooting Aboriginal Persons who are being detained.

24. Non-Aboriginal Persons do not face the same systemic arrest and detention on the basis of their race, ancestry or beliefs.

**d) The Crown's Knowledge of RCMP Assault and Use of Excessive Force Against Aboriginal Persons in Custody in the Territories**

25. At all relevant times, the Crown had knowledge of the RCMP's discriminatory practices against Aboriginal Persons.

26. For example, in 2005, the Defendant partnered with the RCMP to support and develop a "Law Enforcement Aboriginal and Diversity Network" which was meant to improve RCMP Officers' capacity to serve Aboriginal communities.

27. Notwithstanding its policies aimed towards reduction of racism and bias, in 2015, RCMP Commissioner Bob Paulson spoke to a group of First Nations leaders acknowledging that the RCMP employs racist officers in its ranks.

28. In 2016, Justice Minister Keith Peterson commissioned a parliamentary study on police misconduct in Nunavut in response to a "general concern" that police should not investigate police without civil oversight. This report was never made public.

29. In 2018, the RCMP announced it was spearheading a commission to examine, review and report findings and recommendations with respect to biased policing by RCMP Officers.

30. It is well known in the Territories that Aboriginal Persons are improperly targeted by the RCMP on the basis of their race, ancestry and beliefs.

31. None of these initiatives or reports have impacted RCMP practices in the Territories.

## F. THE PLAINTIFF'S EXPERIENCE

32. The plaintiff, Mr. Nasogaluak, lives in Tuktoyaktok, Northwest Territories. He is Aboriginal. He is a high school student who is highly active in the Aboriginal community.
33. In November 2017, Nasogaluak was detained and assaulted by RCMP Officers in the Territories when he was 15 years old.
34. On the night of the assault, Nasogaluak was operating his ski-doo with a group of five other Aboriginal Persons when the group was stopped by two RCMP Officers. This took place a few kilometres outside of Tuktoyaktok, Northwest Territories.
35. The RCMP Officers asked Mr. Nasogaluak, and the other individuals he was travelling with, a number of questions. Nasogaluak and the other individuals responded to the RCMP Officers' questions.
36. With no provocation, the RCMP Officers pushed Mr. Nasogaluak to the ground. He was beaten, choked, punched and tasered by the RCMP Officers. The RCMP Officers made statements to Mr. Nasogaluak about his Aboriginal background calling him a "stupid fucking Native" and a "Native punk kid".
37. After the assault, the RCMP Officers handcuffed and dragged Mr. Nasogaluak him to their vehicle. The RCMP Officers told Mr. Nasogaluak he was going to jail. On the way to the police station, the RCMP Officers stopped their vehicle at the side of the road and proceeded to question Mr. Nasogaluak without his parents or a representative being present.
38. Mr. Nasogaluak arrived at the police station where his mother was waiting for his arrival. Mr. Nasogaluak was released shortly thereafter.
39. As a result of the assault, Mr. Nasogaluak sustained visible and extensive bruising on his face and wrists. Mr. Nasogaluak and his mother sought medical attention at a local nursing station following his release.

40. Following this incident, RCMP Officers consistently drove by Mr. Nasogaluak's home until his mother called the local RCMP detachment to complain.

41. As a result of the above-mentioned incident, Mr. Nasogaluak has suffered lasting physical and emotional damages including suicidal ideation, and isolation. Mr. Nasogaluak withdrew from school and many of his extra-curricular activities.

42. Incidents like the above take place ordinarily in the Territories. The Defendant has taken no steps to cease the systemic discrimination and violence that is regularly perpetrated by the RCMP and RCMP Officers.

## **G. THE RCMP'S DUTIES TO CLASS MEMBERS**

### **a) Negligence**

43. The Defendant owes a duty of care to Class Members through the establishment, funding, oversight, operation, supervision, control, maintenance, and support of RCMP Detachments in the Territories.

44. The Defendant and its Agents are obligated under the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281 to:

- (a) treat every person with respect and courtesy and not engage in discrimination or harassment;
- (b) respect the law and rights of all individuals;
- (c) act with integrity, fairness and impartiality, and not compromise or abuse its authority, power or position;
- (d) use as much force as is reasonably necessary in each circumstance; and
- (e) behave in a manner that is not likely to discredit the Force.

45. In addition, the "Police Services Agreements" create an express or implied duty of care to Aboriginal Persons in the Territories.

46. The Defendant and its Agents are obligated under the *Criminal Code*, R.S.C. 1985, c. C-46 to use force that is intended or likely to cause death or grievous bodily harm only when the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

47. Through itself or its Agents, the Defendant was in a relationship of proximity with Class Members as a result of its operation of RCMP Detachments in the Territories during the Class Period. By virtue of the Defendants' conduct in patrolling and policing in the Territories and detaining Class Members in RCMP Detachments, and its statutory authority to do so, the Class had a proximate relationship with the Defendant and its agents.

48. During the Class Period, Class Members were in the care and control of the Defendant's Agents during their time in custody and expected that they would not be treated by the Defendant in a manner that would cause them physical or emotional harm.

49. The Defendant knew or ought to have known that in its establishment, funding, oversight, operation, supervision, control, maintenance, and support of RCMP Detachments in the Territories could and would result in compensable physical and emotional harm to Class Members. The Defendant had particular knowledge of the actual harms perpetrated on Class Members by virtue of internal reports, community knowledge, complaints by Class Members and other public scrutiny of the negligence and breaches alleged herein.

50. The Defendant knew or ought to have known that its failure to take reasonable care in ensuring that RCMP Detachments in the Territories were established, funded, and operated with standards provided to non-Aboriginal Persons elsewhere in Canada would result in harm to Class Members.

51. Class Members had the reasonable expectation that Canada would operate its RCMP Detachments in the Territories in a manner that was substantially similar to the

care, control and supervision provided to non-Aboriginal Persons in custody of the RCMP during the Class Period.

52. Canada was obliged to establish, fund and operate RCMP Detachments in the Territories with a reasonable standard of care, which includes, but is not limited to:

- (a) establishing, implementing and enforcing appropriate policies and procedures to ensure that Class Members would be free from physical, emotional and psychological abuse;
- (b) establishing, implementing and enforcing appropriate policies and procedures to ensure that Class Members would not be unnecessarily or inappropriately harmed during their time in custody;
- (c) ensuring that RCMP Officers, who were Agents of the Defendant, were adequately educated, licensed and trained in order to fulfill their employment obligations in a manner that would not cause physical, emotional or psychological harm to Class Members;
- (d) investigating, adjudicating and, if necessary, reporting to the appropriate law enforcement authorities complaints by Class Members of physical or emotional abuse;
- (e) overseeing the acts and behaviours of RCMP Officers and Agents in a manner that would protect Class Members from physical abuse and other acts of brutality;
- (f) acting in a timely and concerted fashion by, among other things, establishing and implementing policies and procedures to ensure that incidents of physical abuse would not re-occur; and,
- (g) such other and further obligations of the Defendant as the plaintiff may advise and this Honourable Court may consider.

**b) Fiduciary Duty**

53. The Defendant, Canada, has a fiduciary-beneficiary relationship with Aboriginal Persons.

54. The Defendant has exclusive jurisdiction in respect of Aboriginal persons pursuant to, *inter alia*, section 92(24) of the *Constitution Act, 1867*, the common law and court rulings of high and binding authority.

55. By virtue of its constitutional obligations, the Defendant has an ongoing obligation of consultation on matters relevant to Aboriginal interests. There is an expressed and implied undertaking by Canada to protect the best interests of Aboriginal Persons at all times.

56. The Defendant's fiduciary duty is compounded by virtue of the Defendant's exclusive jurisdiction over policing in the Territories, jurisdictions where Aboriginal Persons make up a majority of the population.

57. Canada's constitutional obligations, in conjunction with the *Indian Act* and related legislation and policies, the common law and the honour of the Crown, bestow a discretionary control requiring Canada to take steps to monitor, influence, safeguard, secure and otherwise protect the vital interests of vulnerable Aboriginal Persons.

58. The Defendant's fiduciary duty in respect of Aboriginal persons in Canada is non-delegable in nature in light of the *sui generis* relationship between Canada and its Aboriginal peoples. It continued notwithstanding any bilateral agreements between Canada and the Territories.

**CANADA BREACHED ITS DUTIES TO THE CLASS MEMBERS**

**a) Negligence and Fiduciary Duty**

59. During The Class Period, the Defendant breached its fiduciary duty and common law duty of care by the following acts or omissions, including but not limited to:

- (a) failure to adequately, properly and effectively care for Class Members;
- (b) failure to implement appropriate policies and procedures to ensure the Class Members were detained free from physical, emotional, psychological and verbal abuse, racially-motivated or otherwise;
- (c) failure to periodically reassess its regulations, procedures and guidelines when it knew or ought to have known of serious systemic failures by RCMP Officers during the Class Period;
- (d) failure to establish or implement standards of conduct for RCMP Officers to ensure that no employee would endanger the health or well-being of any Class Members;
- (e) failure to provide any or an adequate program or system through which abuse and discrimination could be recognized, reported, investigated or addressed;
- (f) failure to oversee the acts of RCMP Officers in a way that would protect Class Members from discrimination, physical violence, assault and brutality;
- (g) failure to ensure that RCMP Officers working at RCMP Detachments in the Territories were properly trained and had the appropriate certification to provide policing services to Class Members;
- (h) failure to recognize and acknowledge harm once it occurred, to prevent additional harm from occurring and to, whenever and to the extent possible, provide appropriate treatment to those who were harmed;
- (i) failure to properly maintain administrative records; and
- (j) such other and further grounds as the plaintiff may advise and this Honourable Court may consider.

60. At all relevant times, Canada had sole jurisdiction, discretion, authority and an obligation to intervene. It did not. Instead, Canada and the RCMP continued to turn a blind eye to systemic discrimination and use of force by RCMP Officers in the Territories. Canada knew, or reasonably should have known, that the Class Members would suffer the significant harms described herein.

**b) Breach of Section 7 of the *Charter***

61. Section 7 of the *Charter* guarantees that every individual 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.

62. As a government actor, the Defendant owed, and continues to owe, duties under the *Charter* to the Class Members.

63. The frequency, duration, and severity of the conduct that the Class Members are subjected to at the hands of the Defendant and its agents, outlined above, engages the *Charter* rights of life, liberty and security of the person. Such wrongful conduct constitutes a breach of the Class Members' *Charter* rights to life, liberty and security of the person.

64. The widespread use of excessive force by RCMP Officers on Class Members is arbitrary, and grossly disproportionate with the purpose of use of force upon detention. It is not carried out in keeping with any principle of fundamental justice.

65. There is no justification in a free and democratic society for the excessive use of force by RCMP Officers under section 1 of the *Charter*.

**c) Breach of Section 15 of the *Charter***

66. Section 15(1) of the *Charter* guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, or other related recognizable grounds.



67. As a government actor, the Defendant owed, and continues to owe, duties under the *Charter* to the Class Members.

68. The Defendant's conduct, including its discriminatory treatment of Aboriginal Persons held in custody by the RCMP in the Territories has negatively treated the Class Members based on enumerated grounds, differently than other individuals in Canada.

69. Class Members have been discriminated against based on, *inter alia*, their race, national, spiritual, religious and ethnic origin. Canada's conduct is discriminatory on its face, in its effect, and in its application. In particular, such actions included but are not limited to:

- (a) The Defendant allowed its Agents, including, but not limited to RCMP Officers in the Territories, to target Aboriginal Persons during their time in custody;
- (b) The Defendant allowed its Agents, including, but not limited to, RCMP Officers in the Territories, to use excessive force while Aboriginal Persons were in custody;
- (c) Canada was careless, reckless, wilfully blind, or deliberately accepting of, or was actively promoting, a policy of discrimination against Aboriginal Persons in custody in the Territories.

70. There is no justification in a free and democratic society for said discrimination under section 1 of the *Charter*.

#### **H. DAMAGES SUFFERED BY THE CLASS MEMBERS**

71. The Defendant knew or ought to have known that as a consequence of its negligence, breach of fiduciary duty and breaches of sections 7 and 15 of the *Charter*, the plaintiff and Class Members would suffer injury and damages including, but not limited to:

- (a) assault and battery;
- (b) forced confinement;
- (c) emotional abuse;
- (d) psychological abuse;
- (e) psychological illness;
- (f) an impairment of mental and emotional health amounting to a severe and permanent disability;
- (g) emotional and psychological pain and suffering;
- (h) a propensity to addiction;
- (i) an impaired ability to participate in normal family life;
- (j) isolation from family and community;
- (k) alienation from family, spouses and children;
- (l) an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- (m) the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders;
- (n) depression, anxiety and emotional dysfunction;
- (o) suicidal ideation;
- (p) pain and suffering;
- (q) loss of self-esteem and feelings of degradation;
- (r) loss of ability to live in community;

- (s) loss of income;
- (t) loss of enjoyment of life;
- (u) death; and
- (v) such other and further damages as the plaintiff may advise and this Honourable Court may consider.

72. At all material times, the Defendant has known, or ought to have known, and continues to know, that ongoing delay in failing to rectify the institutional failures pleaded above would continue to create, continue to aggregate and contribute to the Class Members' injuries and damages.

73. As a result of the Defendant's conduct, Class Members have required and will continue to require further medical treatment, rehabilitation, counselling and other care.

74. Canada and its Agents knew or ought to have known that as a consequence of its negligence, breach of fiduciary duty and breaches of sections 7, and 15 of the *Charter*, all Class Members would suffer the damages for which the Defendant is directly or vicariously liable for as described above.

75. In the circumstances, the plaintiff and the Class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the Class Members' constitutional rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and,
- (c) deter systemic violations of a similar nature.

76. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

## I. PUNITIVE AND EXEMPLARY DAMAGES

77. Canada and its Agents had specific and complete knowledge of the widespread physical, psychological, emotional, and cultural abuses incurred by the Class Members in the Territories during the Class Period. Despite this knowledge, Canada continued to allow RCMP officers to employ excessive force when detaining Aboriginal Persons permitting the perpetration of grievous harm to the Class Members throughout the Class Period.

78. In establishing and operating RCMP Detachments in the Territories during the Class Period, Canada acted in a high-handed and callous manner towards Class Members warranting a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. Canada conducted its affairs with wanton disregard for Class Members' interests, safety and well-being.

79. The plaintiff pleads and relies upon the following:

- (a) *Federal Courts Rules*, SOR/98-106;
- (b) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;
- (c) *Federal Courts Act*, R.S.C. 1985, c. F-7;
- (d) *Constitution Act, 1982*, s. 35, being Schedule B to the *Canada Act, 1982 (U.K.)*, 1982, c. 11;
- (e) *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10;
- (f) *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
- (g) *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281;
- (h) *Criminal Code*, R.S.C. 1985, c. C-46;
- (i) *Trustee Act*, R.S.N.W.T. 1988, c T-8, as amended;

(j) *Trustee Act*, R.S.Y. 2002, c. 223, as amended;

(k) *Trustee Act*, R.S.N.W.T. (Nu) 1988, c T-8, as amended.

The plaintiff proposes that this action be tried in Toronto, Ontario. 1

December 19, 2018



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Lawyers for the Plaintiff

Court File No.

**FEDERAL COURT**

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**PROPOSED CLASS PROCEEDING**

BETWEEN:

**DIANE NASOGALUAK AS LITIGATION GUARDIAN  
OF  
JOE DAVID NASOGALUAK**

Plaintiff

- and -

**ATTORNEY GENERAL OF CANADA**

Defendant

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**STATEMENT OF CLAIM**

(Filed this 19<sup>th</sup> day of December, 2018)

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