

Form 10
[Rule 3.25]



COURT FILE NUMBER 2114-00282
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE ST. PAUL
PLAINTIFFS LAURELLE DOWNEY and RAMONA JEBEAUX

DEFENDANTS ATTORNEY GENERAL OF CANADA, KEHEWIN COMMUNITY EDUCATION CENTRE, KEHEWIN CREE NATION

AMENDED this 7 day of
September, 2021 Pursuant to
Rule 3.42
dated the day of

Proceeding under the Class Proceedings Act, S.A. 2003 c.C-16.5

DOCUMENT **AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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NOTICE TO DEFENDANTS

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

TO: ATTORNEY GENERAL OF CANADA
Prairie Regional Office - Edmonton
Department of Justice Canada
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Edmonton, Alberta T5H 0E7

TO: KEHEWIN COMMUNITY EDUCATION CENTRE
Box 30
Kehewin, Alberta T0A 1C0

TO: KEHEWIN CREE NATION
 Box 220
 Kehewin, Alberta T0A 1C0

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

DEFINITIONS:

1. 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*, 1983, s.35, being Schedule B to the *Canada Act*, 1982(U.K.), 1982. C. 11, specifically, Indian, Inuit and Metis peoples of Canada;
 - (b) "Agents" mean the servants, contractors, officers and employees of the Defendants and the operators, managers, administrators, doctors, nurses, clinicians and all other staff members of Kehewin Community Education Centre in Kehewin, Alberta;
 - (c) "Class" or "Class Members" means the Survivor Class and Family Law Class;
 - (d) "Class period" means the period from approximately 1973-1993 during which time Kehewin Community Education Centre Schools in Kehewin, Alberta operated utilizing the staff that were employed in the former Federally run Kehewin Indian Day School;
 - (e) "Family Law Class" means:
 - a. All Persons who are a spouse or former spouse, child, grandchild, parent, grandparents, brother, or sister of a Survivor Class member and the spouse of a child, grandchild, parent, grandparent, brother or sister of a Survivor Class member;
 - (f) "Survivor Class" means:
 - a. all Aboriginal persons, wherever they may now reside or be domiciled, who attended Kehewin Community Education Centre, operated by the Defendants during the Class Period.
 - (g) "Spouse" is defined as in section 46 of the *Family Law Act*.

A. OVERVIEW OF ACTION

2. This action concerns the Defendants' conduct in its operation of Kehewin Community Education Centre in Kehewin, Alberta over an approximate 20 year period between 1973 and 1993.
3. The Defendants established, funded, oversaw, operated, supervised, controlled, maintained and supported Kehewin Community Education Centre through common national and provincial policies and procedures.
4. Survivor Class members were subjected to frequent physical, psychological, and/or sexual abuse.
5. The Defendants were negligent and breached their fiduciary duty owed to the Survivor Class Members.
6. The Defendants' negligence and breach of fiduciary duty resulted in enormous harm to the Class.

B. THE PARTIES

a) The Representative Plaintiffs and the Class:

7. The Representative Plaintiff, Laurelle Downey of Kehewin Cree Nation attended Kehewin Community Education Centre for kindergarten through to grade 12. (1981-1994).
8. The Representative Plaintiff, Ramona Jebeaux of Edmonton, Alberta attended Kehewin Community Education Centre from 1976-1985 along with her siblings.
9. The Plaintiffs bring this action pursuant to the *Class Proceedings Act, S.A. 2003 c.C-16.5* on her own behalf and on behalf of the following Class:
 - a. All Aboriginal Persons who attended Kehewin Community Education Centre in Kehewin, Alberta, operated by the Defendants during the Class Period ("Kehewin Community Education Centre School Class Members"); and
 - b. Spouses, children, grandchildren, parents, grandparents, brothers and sisters of Kehewin Community Education Centre Class Members ("Family Law Class");

b) The Defendants:

10. The Defendant, Canada, is represented in the proceeding by the Attorney General of Canada pursuant to section 23 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50 ("*Crown Liability and Proceedings Act*").
 - a. At all material times, Canada was responsible for the maintenance, funding, operation, oversight and/or management of Canadian Schools.
 - b. Canada employed and/or authorized its Agents to operate, manage, and oversee schools. It also provided instruction to such Agents as to the manner in which those schools were to operate.
 - c. Canada's maintenance, funding, operation, oversight and/or management of schools, through its Agents, breached its duty of care owed to Survivor Class Members. Canada was also in breach of its fiduciary duty owed to Survivor Class Members.
 - d. By virtue of its responsibility to ensure the safety, care and protection of Class Members and its authority and control over its Agents, and in accordance with section 3 of the *Crown Liability and Proceedings Act*, Canada is vicariously liable for the acts and omissions of its Agents in respect of the maintenance, funding, operation, oversight and/or management of Kehewin Community Education Centre.
 - e. Education in Canada is for the most part provided publicly, funded and overseen by federal, provincial, and local governments. Education is within provincial jurisdiction and the curriculum is overseen by the province.
 - f. The federal government's responsibilities in education are limited to the Royal Military College of Canada, and funding the education of indigenous peoples.
11. The Defendant, Kehewin Cree Nation is a First Nations band government in northern Alberta. A signatory to Treaty 6, it controls one Indian reserve, Kehewin 123, and shares ownership of another, Blue Quills.
12. The Defendant, Kehewin Community Education Centre, a Kehewin band run school, was constructed and opened in the fall of 1975. There had been no school on Kehewin Cree Nation since a staged school strike of the Federally operated Kehewin

Indian Day School in late 1971. The educational programming was a combination of the standard Alberta Curriculum and compulsory Cree language and culture. Many of the staff from the Kehewin Indian Day School remained employed when Kehewin Cree Nation took over operation of the school.

C. THE SCHOOL SYSTEM

a) Background

13. The Indian Day School system was active from approximately 1884 to 1996. The Roman Catholic Church, the Anglican Church and United and Presbyterian Churches operated the schools on the government's behalf.

14. In 1972 the Government of Canada ceased operation of its Indian Day School on Kehewin Cree Nation. There were no replacement schools, teachers, or other educational facilities in Kehewin at that time. Most children were transported from Kehewin Cree Nation to and from the nearby Town of Bonnyville to attend school. This practice continued until 1975, after which the Kehewin Community Education Centre was built and opened.

b) The *Indian Act*

Day Schools and by extension schools in which indigenous children were students, were funded under the *Indian Act*. Education falls within Provincial Government jurisdiction, but Aboriginal Persons and their treaties fall under Federal Government Jurisdiction.

c) Conditions and Practices

15. Kehewin Community Education Centre in Kehewin, Alberta practiced the same policies of physical abuse as means of disciplining as residential schools and day schools. Further, there was sexual and psychological abuse that occurred as well.

i. Physical, psychological, and sexual abuse

16. During the course of the Class Period, the Defendants' systemic failures resulted in Survivor Class Members being subjected to physical, psychological, and sexual abuse.
17. Common incidents of physical abuse incurred by Survivor Class Members include, but are not limited to:
 - a. Beating with rods, rulers, or straps;
 - b. Isolation for misbehavior for prolonged periods of time;
 - c. Public whippings;
 - d. Puling earlobes;
 - e. Pulling hair;
 - f. Students forced to eat their own vomit; and
 - g. Pencils inserted into ear canals resulting in damaged ear drums.
18. In addition to physical abuse suffered by Survivor Class Members, there was sexual abuse carried out by staff members who were Agents of the Defendants. The Defendants failed to implement appropriate policies and procedures to prevent such harm and, to the contrary, knowingly permitted its occurrence.
19. The Defendants also failed to establish and implement mechanisms through which Survivor Class Members could complain and seek assistance or relief against school staff members, whom were acting as Agents of the Defendants.
20. The Defendants failed to establish and implement adequate policies and procedures to oversee actions of school staff members towards Survivor Class Members that could have prevented widespread abuse.
21. The Defendants' failure to establish and implement adequate policies and procedures resulted in Survivor Class Members being physically harmed and emotionally traumatized.

D. THE PLAINTIFFS' EXPERIENCE

22. The Plaintiffs recall several incidences of abuse inflicted by Sister Marie and other staff including but not limited to:

- a. Ruler strikes to the back causing chronic back pain and headaches;
- b. Yardstick strikes to the knuckles;
- c. Ear pulling;
- d. Denied use of the bathroom, causing her to soil her clothing;
- e. Excessive praying on lima beans; and
- f. Verbal abuse.

23. There was generalized racism, degradation, and name calling directed at the student population.

E. BREACHES OF DUTIES TO THE CLASS MEMBERS**A. Negligence**

24. The Defendants owed a duty of care to Kehewin Community Education Centre Class Members through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Kehewin Community Education Centre in Kehewin, Alberta.

25. During the Class Period, through its Agents, the Defendants exercised care and control over Survivor Class Members.

26. The Survivor Class Members were in the care and control of the Defendant's Agents during their time as students at Kehewin Community Education Centre in Kehewin, Alberta. The Survivor Class Members expected that they would not be treated by the Defendant in a manner that would cause them physical and/or emotional harm.

27. The Defendants knew or ought to have known through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Kehewin Community Education Centre, that its negligence would result in compensable harm to the Survivor Class Members.
28. The Defendants were obligated to establish, fund and operate schools with a reasonable standard of care.
29. Survivor Class Members were systematically subjected to sub-standard and inappropriate institutional conditions as described above. Resultantly, Survivor Class Members suffered physical, emotional, and psychological harm for which compensation is owed.

F. BREACH OF FIDUCIARY DUTY

30. The Defendant was in a fiduciary relationship with Survivor Class Members because of the relationship of trust, reliance and dependence the Defendant exerted over Survivor Class Members. The Defendants established, funded, oversaw, operated, supervised and controlled the school throughout the Class Period.
31. At all material times, Survivor Class Members were within the knowledge, contemplation, power or control of the Defendants, and were subject to the unilateral exercise of its Agents' power or discretion.
32. Through its establishment, funding, oversight, operation, supervision, control, maintenance and support of Kehewin Community Education Centre, the Defendants undertook the express and implied responsibility to act in the best interests of the Survivor Class members at all times.
33. Survivor Class members, all of whom were vulnerable children, had the reasonable expectation that they would receive reasonable educational instruction in school without being subjected to physical, verbal, emotional or sexual harm, or otherwise,

- the sub-standard conditions described above. Survivor Class Members relied upon the Defendants, to their detriment, to fulfill its fiduciary obligations.
34. Pursuant to Canada's exclusive jurisdiction established in section 91(24) *Constitution Act, 1867*, the common law, and court rulings of high and binding authority, Canada had a fiduciary duty to act in the best interests of Aboriginal students.
 35. By virtue of both constitutional and quasi-constitutional obligations under the *Indian Act*, the Defendant had discretionary control over Aboriginal students and were obligated to act in their best interests at all material times. In particular, the Defendants were required to protect the physical, emotional, social, spiritual and cultural well-being of Survivor Class Members because of their rightful status as Aboriginal Persons under the *Constitution Act, 1867*.
 36. Due to the *sui generis* relationship with Aboriginal Persons, Canada's fiduciary duty is non-delegable.
 37. In failing to ensure that Kehewin Community Education Centre was free from physical and sexual abuse, and substandard conditions, Canada put its own interests ahead of the interests of the Representative Plaintiffs and the Survivor Class Members.
 38. In breach of its fiduciary duty, Canada failed and continues to fail to adequately remedy the damage caused by its failures and omissions set out herein. In particular, Canada has failed to compensate Survivor Class Members for the physical, emotional, psychological and sexual abuse they suffered at Kehewin Community Education Centre during the Class Period.

G. DAMAGES

39. The Defendants knew or ought to have known that as a consequence of its negligence and breach of fiduciary duty, the plaintiffs and Kehewin Community Education Centre Class Members would suffer injury and damages including but not limited to:

- (a) Assault and battery;
- (b) Sexual abuse;
- (c) Emotional abuse;
- (d) Psychological abuse;
- (e) Psychological illness;
- (f) Impairment of mental and emotional health amounting to 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) An impairment of the capacity to function in the work place and a permanent impairment in capacity to earn income;
- (k) The need for ongoing psychological, psychiatric, and medical treatment for illnesses and other disorders resulting from the school experience;
- (l) Depression, anxiety and emotional dysfunction;
- (m) Suicidal ideation;
- (n) Pain and suffering;
- (o) Loss of self-esteem and feelings of degradation;
- (p) Fear, humiliation and embarrassment as a child and adult, and sexual confusion and disorientation as a child and young adult;
- (q) Loss of ability to fulfill cultural duties;
- (r) Prohibition of the use of Aboriginal language and the practice of Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion, and culture;
- (s) Loss of ability to live in Aboriginal communities;
- (t) Loss of income

- (u) Loss of enjoyment of life;
- (v) Such other and further damages as the plaintiffs may advise and this Honourable Court may consider.

40. As a result of the conduct alleged herein, the Family Law Class members have suffered and will continue to suffer damages, including but not limited to, the following:

- (a) Actual expenses reasonably incurred for the benefit of the Survivor Class Members;
- (b) Loss of support, guidance, care and companionship that they might have reasonably have expected to receive from Survivor Class Members.

41. Canada and its Agents knew or ought to have known that as a consequence of its negligence and breach of its fiduciary duty Class Members would suffer the damages above.

H. PUNITIVE AND EXEMPLARY DAMAGES

42. The Defendants and its Agents had specific and complete knowledge of physical, psychological, emotional, cultural and sexual abuses suffered by the Survivor Class Members that occurred within Kehewin Community Education Centre during the Class Period. Despite this, Canada continued to operate the school and permit grievous harm to the Survivor Class Members.

43. In establishing and operating Kehewin Community Education Centre during the Class Period, the Defendants acted in a callous manner towards Survivor Class Members that warrants a finding of punitive and/or exemplary damages that are reasonable in the herein circumstances. Canada conducted itself with complete and utter disregard for the well-being of the Survivor Class Members.

44. The plaintiffs plead and rely 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 & 3` 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) *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12;
- (h) *Alberta Rules of Court*; and
- (i) *Family Law Act*, R.S.O., 1985, c. F-7 and equivalent legislation in other provinces and territories in Canada.

45. The plaintiffs propose the following be tried in St. Paul, Alberta.

Remedy sought:

1. The Plaintiffs' Claim:
 - a. An order certifying this proceeding as a Class Proceeding pursuant to the Class Proceedings Act and appointing the Plaintiffs as Representative Plaintiffs for the Class;
 - b. A declaration that the Defendants breached their fiduciary duties to the Plaintiffs and the Class by reason of the events described herein;
 - c. A declaration that the Defendants breached its common law duties of care owed to the Plaintiffs and the Class by reason of the events described herein;
 - d. A declaration that the Defendants violated the Plaintiffs' and the Class' rights as enshrined in and guaranteed by the *Canadian Chart of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982* (UK), 1982, c 11(the "Charter")
 - e. Pecuniary damages in the amount of \$50 million or any such amount that this Honourable Court deems appropriate.
 - f. Punitive damages in the amount of \$50 million or any such amount that this Honourable Court deems appropriate;
 - g. Pre-Judgment interest and post-judgment interest pursuant to the *Judgment Interest Act* R.S.A. 2000, 1.J-1;

- h. Costs of this action on a substantial indemnity basis or in an amount that provides full indemnity to the Plaintiffs;
- i. Costs of notice and of administering the plan of distribution of the recovery of this action, plus applicable taxes, pursuant to section 33 of the *Class Proceedings Act*,; and
- j. Such further and other relief as this Honourable Court deems just.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at St. Paul, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.