

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

HENVEY INLET FIRST NATION  
as represented by its duly elected Chief and Council

Plaintiff

- and -

STACY MCQUABBIE and JACKIE PEARCE

Defendants

A N D B E T W E E N:

STACY MCQUABBIE (AMIKWABI), AUDREY MCQUABBIE (AMIKWABI),  
JACKIE PEARCE, VERNA FRIDAY,  
and WOODY BECKER

Plaintiffs by  
Counterclaim

-and-

HENVEY INLET FIRST NATION, HER MAJESTY THE QUEEN  
ELIZABETH II, HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA,  
HER MAJESTY THE QUEEN IN THE RIGHT OF ONTARIO,  
POPE BENEDICT XVI and THE VATICAN STATE

Defendants to  
the Counterclaim

**FRESH AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM**

*Proceedings under the Class Proceedings Act 1992, S.O. 1992, C6*

**TO THE DEFENDANTS TO THE COUNTERCLAIM:**

A **LEGAL PROCEEDING** has been commenced against you by way of a counterclaim in an action in this court. The claim against you is set out in the following pages:

**IF YOU WISH TO DEFEND THIS COUNTERCLAIM**, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the *Rules of Civil Procedure*,

serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served upon you.

If you are not party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

**IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LEGAL AID OFFICE.**

Date: August 8, 2007

Issued by \_\_\_\_\_ "C. Rachcir" \_\_\_\_\_  
Local Registrar

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## DEFENCE

1. The Defendants admit that the Plaintiff is an Indian Band pursuant to the Indian Act, however, the Defendants deny that the description of where they are located is accurate. The Defendants state that the Plaintiffs are trespassing on aboriginal land and should be more properly described as land traced to the Amikwa Nation of French River, a Nation associated with the Algonquin Nation. This territory has never been properly ceded to any authority properly constituted. The Defendants state that the Chief and Band Council are agents of the Crown, variously defined as Her Majesty the Queen Elizabeth II and Her Majesty the Queen in the Right of Canada, through the Ministry of Indian and Native Affairs.

2. As to paragraph 3, the Defendants deny the assertion of membership in the fictitious Henvey Inlet First Nation and assert they are lawfully occupying aboriginal land of the Amikwa Nation of the French River.

3. The Defendants admit paragraph 4 of the statement of claim.

4. The Defendants deny the authority of the Plaintiff to enter into agreements outlined in paragraph 5, 6, and 7 of the statement of claim. Furthermore, the Defendants state that the *Indian Act* of Canada is an act of genocide as defined in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, December. 9, 1948 in that it is imposing conditions of life designed to cause mental or physical harm.

5. The Defendants deny the allegation contained in paragraph 8 of the statement of claim and put the Plaintiff to strict proof thereof. The Defendant McQuabbie (Amikwabi) asserts an aboriginal right to lawful possession of the land mentioned pursuant to Section 35(1) of the *Constitution Act*, 1982 and pleads and relies on this section as defining his past and existing right.

6. The Defendants deny paragraph 9 (a) through and including (e) and specifically assert aboriginal right to the land in question and assert that the Plaintiff is engaged in trespass on aboriginal land.

7. The Defendants deny paragraph 10 and state that the Plaintiff has no proper authority to enter into this agreement.

8. The Defendants deny the allegation in paragraph 11 of the statement of claim and state that the Plaintiff does not properly understand the history of the Amikwa Nation and only can act as an agent of the Crown. A proper historical context will reveal that aboriginal title will prevail over the assumption of Crown sovereignty.

9. The Defendants deny the allegations in paragraph 12 of the statement of claim and state that the imposition of the *Indian Act* on the Amikwa Nation of the French River is an act of genocide, compensable in damages and much more toxic to the mental and physical health of the people than any contamination of the water supply.

10. The Amikwa people inhabited the French River area at first contact in the seventeenth century. The Amikwa Nation, its placement at French River and its uninterrupted continuance of occupation by its descendants have resulted in the Amikwa Nation never having ceded its territory.

11. As a member of the Amikwa Nation, the Defendant McQuabbie (Amikwabi) has an existing right to Aboriginal title in the lands in issue.

12. Any transference of rights, land or assets that might have occurred prior to this time was illegal and without authority or consultation. The Defendants put in dispute the legitimacy of the Robinson Huron Treaty of 1850 and allege fraud and misrepresentation in those negotiations.

13. Based on historical record, the Defendant McQuabbie (Amikwabi) maintains a legitimate claim to co-ownership, if not independent ownership, of Reserve #13 and the lands attached. The Defendants put the Plaintiff to the strict proof of the title to the land that they claim.

14. It is on that basis that the Defendants are justified in protecting McQuabbie (Amikwabi)'s ancestral title to the land through quiet protest in hope of reconciliation.

15. The Defendants asks that action be dismissed with costs.

### **COUNTERCLAIM**

16. The Plaintiffs claim on behalf of themselves and all Class Members:

(a) an Order certifying this proceeding as a Class Proceeding and appointing STACY MCQUABBIE (AMIKWABI) and WOODY BECKER as representative Plaintiffs for the claim of genocide and trespass;

(b) an Order certifying this proceeding as a Class Proceeding and appointing AUDREY MCQUABBIE (AMIKWABI) and VERNA FRIDAY as representative Plaintiffs for the Survivor Class and any appropriate subgroup thereof for the claim relating to residential schools;

(c) an order declaring that the land in question is aboriginal land and not reserve land;

(d) a declaration of the right to sovereignty, nationhood and self-determination of the Plaintiffs and Class Members pursuant to Section 35(1) of the *Constitution Act, 1982*;

(e) a declaration that the grant from the King to Prince Rupert outlined in the grant of the Hudson Bay Charter is trespass on aboriginal land;

(f) a declaration that indigenous sacred sites in the territory known as the Province of Ontario be returned to the stewardship of the indigenous elders;

(g) a declaration that an Algonquin/Nipissing Nation land claim includes both sides of the Ottawa River basin comprising the territories known as Ontario and Quebec;

(h) a declaration that Section 91(24) is *ultra vires* the British Parliament and in contradiction of the *Proclamation of 1763*;

(i) a declaration that the first and emended versions of the *Indian Act* is *ultra vires* the Canadian Parliament, an act of genocide which can be compensated for in damages;

(j) a declaration that the Queen breached her obligations in the *Proclamation of 1763* by not disallowing the first *Indian Act* subject to her responsibilities expressed in Section 56 of the *British North America Act 1867*;

(k) a declaration that the Queen Elizabeth II and Pope Benedict XVI and the Attorney General of Canada, owed and was in breach of non-delegable, fiduciary, statutory and/or common law duties to the Plaintiffs and Survivor Class Members of the Residential School system in relation to the establishment, funding, operation, supervision, control, maintenance, confinement in, transport of Survivor Class Members to, obligatory attendance of Survivor Class Members at and/or support of the Aboriginal Residential School and the individual schools therein throughout Canada and is contrary to the *Convention on the Prevention and Punishment of the Crime of Genocide* and thus the tort of genocide which can be compensated for in damages;

(l) damages for trespass on aboriginal land in the amount of 13 billion dollars;

(m) damages for the tort of genocide in the amount of 13 billion dollars;

(n) damages for Residential Schools in the amount of 13 billion dollars;

- (o) punitive damages for Residential Schools in the amount of 13 billion dollars;
- (p) class wide punitive, aggravated and exemplary damages in the amount of 13 billion dollars;
- (q) pre-judgement interest pursuant to the provisions of the *Court of Justice Act*, R.S.O. 1980 C43 and amendments thereto;
- (r) an interim order providing for funding of the class action;
- (s) costs on a substantial indemnity basis; and
- (t) such further and other relief as this Honourable Court shall deem just.

### **The Parties**

17. The Plaintiffs and Class Members are indigenous sovereign people who reside in the territory known as Ontario and who claim entitlement to aboriginal land, resources, sovereignty and self-determination as members of indigenous nations.

18. The Plaintiff STACEY MCQUABBIE (AMIKWABI) is a sovereign Anishinaabe person, who has resided his whole life on aboriginal land known as the French River territory who has suffered damages as a result of the imposition of the *Indian Act* on his people and himself and who is also representative of the family class member of the residential school experience.

19. The Plaintiff JACKIE PEARCE is an adopted Anishinaabe person who resides with the Plaintiff Stacy McQuabbie (Amikwabi) and who has suffered the effects of the imposition of the *Indian Act* on her way of life.

20. The Plaintiff AUDREY MCQUABBIE (AMIKWABI), is a sovereign Anishinaabe person, who has resided her whole life on aboriginal land known as the French River territory who has suffered

damages as a result of the imposition of the *Indian Act* on her people and herself and who is a residential school survivor.

21. The Plaintiff VERNA FRIDAY, is a sovereign Anishinaabe person, who has resided in the territory known as Bear Island who has suffered the effects of the imposition of the *Indian Act* and who is also a residential school survivor.

22. The Plaintiff WOODY BECKER, is a sovereign Anishinaabe person, who has suffered the effects of the imposition of the *Indian Act*.

23. The Defendant, Queen Elizabeth II (Queen Elizabeth) is identified as a royal person, and by virtue of Section 9 of the *Constitution Act, 1982*, has "... the authority over the executive and Parliament of Canada is hereby continued and vested in the Queen" and is represented by the Governor General of Canada. The Defendant, Her Majesty in the Right of Canada, is in essence the federal government and purports to derive its authority over "Indians and lands reserved for Indians" by virtue of Section 91(24) of the *Constitution Act, 1982* and is located in the territory known as Ottawa. The Defendant, Her Majesty in the Right of Ontario, is in essence the provincial government and similarly purports to derive authority over lands and resources from the *Constitution Act, 1982* and is located in the territory of Toronto. The Defendant, Henvey Inlet First Nation, as represented by the Chief and Band Council are agents of the federal government and are created by the provisions of the *Indian Act*. The Defendant Pope Benedict XVI is the titular head of the Holy Roman Catholic Church and the head of the state of the Vatican located within Rome, Italy and having many representatives in the territory known as Ontario and Canada.

24. The Class Members are all indigenous people in the territory known as the Province of Ontario who have either been fraudulently deprived of their aboriginal land or have had their sovereignty and

self-determination illegally displaced or have sustained elevated damages by the tort of genocide, as defined in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide December 9, 1948. The fraudulent deprivation of aboriginal land now amounts to trespass by the Defendants.

25. The following abbreviations are used in this Claim:

(a) “Indigenous” or “Aboriginal” means a person whose rights are recognized and affirmed by the *Constitution Act, 1982*, s. 35;

(b) “Aboriginal right(s)” or “Indigenous right(s)” means rights recognized and affirmed by the *Constitution Act, 1982*, s. 35;

(c) “Class Period” as it relates to the Residential Schools claim and means the period from January 1, 1920 to December 31, 1996;

(d) “Residential School(s)” means a residential, boarding or industrial school(s) however designated, established by Canada from time to time under the purported authority of the *Indian Act*, regulation and orders-in-council pursuant thereto and/or other legislation relating to indigenous persons;

(e) “Survivor Class”, or “Survivor Class Member(s)” means all Aboriginal persons who attended Residential Schools in Canada during the Class Period and who have not applied for settlement funds pursuant to the *Baxter* case;

(f) “Family Class”, or “Family Class Member(s)” means:

i) the spouse, child, grandchild, parent, grandparent or sibling of a Survivor Class Member;

- ii) the spouse of a child, grandchild, parent, grandparent or sibling of a Survivor Class Member;
- iii) a former spouse of the Survivor Class Member;
- iv) a child or other lineal descendent of a grandchild of a Survivor Class Member;
- v) a person of the same or opposite sex to the Survivor Class Member who cohabitated for a period of at least one year with the Survivor Class Member immediately before his or her death;
- vi) a person of the same or opposite sex to the Survivor Class Member who was cohabitating with the Survivor Class Member at the date of his or her death and to whom that Survivor Class Member was providing support or was under a legal obligation to provide support on the date of his or her death;
- vii) any other person to whom a Survivor Class Member was providing support for a period of at least three years immediately prior to his or her death; and
- viii) any person who falls within the above categories and have not applied for settlement funds pursuant to the *Baxter* case.

“Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such

- i) Killing members of the group;
- ii) Causing serious bodily or mental harm to members of the group;
- iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- iv) Imposing measures intended to prevent births within the group;
- v) Forcibly transferring children of the group to another group.

## **The Facts**

26. The Plaintiffs and the Class Members can prove through expert testimony the pre-existence of sovereign indigenous nations throughout the territory known as Canada and demonstrate the existence of organized communities which possessed sovereign customs, traditions, laws and spirituality equal to or superior to the Judeo-Christian values of the royalty of Europe exemplified in the Treaty of Paris, 1763 which purports to divide up North/South America into the sovereign hands of European kings and queens with no consultation held with sovereign nations of the continent. The chief negotiator of that treaty was the Knight of the Royal Order of the Garter, an association now headed by the Defendant Queen Elizabeth II, its motto being “honi soit qui mal y pense” - “evil to him who thinks evil of me” and its symbol and motto are present in all superior courts in the territory known as Canada.

27. Since the Treaty of Paris of 1763, all transactions, treaties, legislative undertakings affecting sovereign indigenous people in the territory known as Ontario and Canada are done in the name of the Defendant Queen Elizabeth II but never with her signature. The Plaintiffs and the Class Members state that this failure alone invalidates the purported treaties entered into in the territory known as the Province of Ontario.

28. Furthermore, the Plaintiffs and the Class Members state that representatives of the Defendant Queen Elizabeth II owed a duty of good faith in its dealings with them and can prove that this duty of good faith was breached in treaty negotiations and furthermore that the treatment of the Plaintiffs and Class Members and their ancestors was informed by a consciousness of genocide as defined in the principles outlined in the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide*. The death of Louis Riel, the massacre at Frog Lake, Saskatchewan, the death of Dudley George at Ipperwash, Ontario, the imposition of the *Indian Act* of Canada, the history of the residential school system, the systemic sterilization of native women, the abolition of traditional native government,

the oppression of native spirituality and language are some the examples of the consciousness of genocide.

29. The Plaintiffs and the Class Members state that the Defendant Pope Benedict XVI and the State of the Vatican have actively participated in the past in assisting various representatives of European royalty to implement acts of genocide through the pronouncement of Papal Bulls and subsequently directing missionaries, such as the Jesuits, to conduct projects designed to destroy native spirituality or customs and language and assimilate indigenous people to Christian values leading to the eventual extinction of all native values and customs causing untold harm and degradation to the Plaintiffs and Class Members.

30. The Plaintiffs and the Class Members claim that history has not been properly recorded as regards to the relationship between the Crown (variously defined at certain times in history, 1492 to 2007) and indigenous people in the territory known as Ontario and the territory known as Canada and if properly understood in terms of actual events and claims of sovereignty, then the allegations of trespass and interference with economic activity raised in the statement of claim herein can only be answered by a true understanding of the relationship between the Plaintiffs and the various Defendants leading to eligibility for compensation for trespass, genocide and exemplary and punitive damages which will be revealed through expert testimony regarding this relationship.

31. The Plaintiffs and the Class Members state that usurpation of natural resources by all the Defendants herein to the detriment of the sovereign indigenous nations is an egregious interference in economic activity leading to impoverishment of the indigenous nations and a dependency on the federal government for survival directly caused by trespass and acts of genocide.

32. The Plaintiffs and the Class Members state that in all treaty negotiations in the territory known as the Province of Ontario an unfair advantage existed between the parties and was taken advantage of by the representatives of the Defendant Queen Elizabeth II to the detriment of the sovereign indigenous nations who did not fully understand the consequences of talking to these negotiators.

33. The Plaintiffs and the Class Members state that there are many indigenous sacred sites in the territory known as Ontario which should be returned to the stewardship of the indigenous Elders. Such sites include, but are not limited to, the Petroglyphs at Peterborough, Ontario and the Chaudiere Falls and Victoria Island in Ottawa, Ontario.

34. The Plaintiffs and the Class Members assert that the Algonquin/Nipissing land claim should involve all Nations which include all of the indigenous communities on both sides of the Ottawa River in the territory known as Ontario and Quebec.

35. The Plaintiffs and the Class Members state that the imposition of the *Indian Act* of Canada since 1857 is the same as imposing conditions of life on a group designed to cause mental or physical harm, thus an act of genocide, and the consciousness of the Defendants is revealed in the statement in the House of Commons by Sir John A. MacDonald, when he said, “The great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the inhabitants of the dominion as speedily as they are fit for change.”

36. The Plaintiffs and the Class Members plead and rely on Section 35(1) of the *Constitution Act, 1982* and claim entitlement to a declaration of sovereignty and self-government for their nations of which each is a member thereof.

37. The Plaintiffs and the Class Members plead and rely on the *Canadian Bill of Rights* and Sections 2(a), 7, 15 and 25 of the *Canadian Charter of Rights and Freedoms*.

38. The Plaintiffs and Class Members plead and rely on the Robinson Huron Treaty of 1850.

39. The Defendants breached fiduciary and contractual duties and obligations and its duties of care to the Plaintiffs and Class Members by implementing agreements, legislative undertakings, papal bulls and policies all designed to assimilate and then eventually eliminate the existence of sovereign indigenous nations on this soil.

40. Due to the intentional and wrongful conduct of the Defendants, the Plaintiffs and the Class Members are entitled to recover punitive, aggravated and exemplary damages.

41. The Plaintiffs plead that the Amikwa Nation is entitled to a declaration of Aboriginal title to the French River Territory and that the claim is superior to the *Indian Act* claimed by the Defendants.

42. The Plaintiffs plead and rely upon the *Class Proceedings Act* 1992, S.O. 1992, C6.

### **1. Tort of Genocide - Indian Act**

43. The Plaintiffs and Class Members claim entitlement to the existing aboriginal right of Nationhood pursuant to tribal custom and tradition through the prism of s. 35(1) of the *Constitution* allowing for redress on the deprivation of land through trespass and damages for acts of genocide which resulted in death of the person, the culture, the spirituality and the eradication of self-government of the people.

44. The numerous outstanding disputes over indigenous lands and territories reflect the extensive systemic barriers found by indigenous peoples in the assertion of these rights, including the adversarial role the federal and provincial governments play in the negotiation of treaties and the resolution of land and treaty disputes and the continued failure of federal and provincial authorities to adequately integrate critical international standards for the protection of indigenous rights into domestic law and policy. The Plaintiffs and Class Members state that there is an obligation on authority to compensate and redress the wrongdoing experienced by them since the newcomers arrival until the present time and the wrongdoings that continue to be expressed in the trespass on aboriginal land and the continuation of wrongdoing defined as genocide in the imposition of the *Indian Act*, the stealing of resources through the Ministry of Natural Resources of Ontario, and the disconnection of the indigenous peoples from the use of the land thereby imposing acts of cultural genocide on the Plaintiffs and the Class Members.

45. The Plaintiffs and the Class Members state that they have been deprived of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and disposition of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. There is an urgent need to respect and promote the inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies. The Amikwa, Algonquin and Nipissing Nations in the territory known as Ontario are but three examples of nations entitled to the aboriginal right of nationhood, and to be compensated for the deprivation of that nationhood through trespass and acts of genocide.

46. The Plaintiffs and the Class Members state that through trespass and acts of genocide they have been systematically deprived of the right of nationhood that would have included the right to self-

government and had it not been for the wrongdoings against them, would have entitled them to a relationship with their land thus preserving their culture, but also would have promoted the resolution of disputes on a nation to nation basis and not left them at the mercy of the imposed British colonial system, with its Judeo-Christian ethic, which writes laws designed to deny the indigenous peoples of any legal remedy or redress. The Plaintiffs and the Class Members claim entitlement to the aboriginal right of nationhood and self-government which would allow for compensation and redress of these on-going wrongdoings.

47. The Plaintiffs and the Class Members state that the present political system in Canada and Ontario has been designed since inception to deprive them of any representation in government and this continues today. Accordingly, with a government imposed on them, in a system that allows them no representation, the Plaintiffs and Class Members are governed but not represented. Furthermore, when the Plaintiffs and Class Members turn to the courts for redress they are turned away by legal devices embedded in legislation written to deny them redress for past wrongdoings and on-going harmful practices. The cycle is never broken as all the places of redress are rife with discrimination, racial prejudice and religious intolerance.

48. The indigenous peoples of Turtle Island throughout the territory of North and South America are the victims of a consciousness of genocide which began in 1493 with swords and spears, graduated to guns and bullets through the 1700's to 1867 and then developed into the most deadly weapon of mass destruction, the pen and the paper used to write laws from 1857 to the present which deny the Plaintiffs and Class Members the proper elements of nationhood placing them in the unenviable position of wards of the Crown having no forum to address the wrongdoings perpetrated upon them.

49. The Plaintiffs and the Class Members state that in 1493 the Pope of Rome issued the Papal Bull, *Inter cetera*, declaring "that the savages have no souls you may kill them" which birthed the

consciousness of genocide on Turtle Island. This Papal Bull is still in existence and can be said to be responsible for the mass execution of millions of indigenous people on Turtle Island. Although outright mass killing of indigenous people slowed down over the centuries, the disdain in the consciousness of the newcomers towards the indigenous peoples did not lessen, leading to the intolerable situation the Plaintiffs and the Class Members now find themselves in, in the territory known as Canada and Ontario. The imposition of the first *Indian Act* in 1857 and subsequent impositions of federal legislation after the *British North America Act* of 1867 resulted in the imposition of conditions designed to cause mental or physical harm to members of a group. This is defined as an act of genocide in the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide* and in the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, C 24. as well as the *Criminal Code of Canada*.

50. The Plaintiffs and the Class Members state that it was stated government intention to assimilate indigenous people into the newcomers society and to eradicate the traditional indigenous ways through education, religion, new economic and political systems, and a new concept of property. All of this was designed to eventually eradicate the indigenous people and culture and the instrument chosen was the *Indian Act*. Indigenous people had imposed on them a completely new existence, which amounts to the imposition of mental harm which is an act of genocide. A thorough review of legislation undertaking in this regard will reveal the intention to deprive the indigenous people of their own culture, spirituality, self-government and ultimately their human dignity.

51. The Plaintiffs and the Class Members state that the *Indian Act* of Canada was the model for the creation of the apartheid system in South Africa. Accordingly, since 1857 the indigenous peoples have been condemned to a place called “reserves” and initially not allowed to leave without permission. Although this form of imprisonment was relaxed over time, the placement on specific tracts of land has

never stopped and the supervision by agents of the government continues, initially by the Indian agent and today by chief and band council who are agents of the Crown under the *Indian Act*.

52. The Plaintiffs and Class Members intend to prove that there are 633 examples of the apartheid system throughout the territory known as Canada, all supervised by either direct agents of the Crown or bureaucrats employed by the Crown. This system began in 1857 and although restrictive and repressive rules were relaxed over time, the system remains in place today. The Plaintiffs and the Class Members state that this is the imposition of circumstances designed to cause mental harm and therefore an act of genocide for which they are entitled to compensation. This act of genocide is on-going, as chief and band council have been and are used as federal agents to destroy traditional indigenous governments.

53. The Plaintiffs and Class Members further state that the mental harm is on-going as the lack of recognition of traditional self-government, the writing of laws which suppress redress and remedy for indigenous people and the plethora of judicial decisions against indigenous peoples' interests are all contributing to the degradation of the indigenous people. Political isolation, poverty, highest rates of alcoholism and imprisonment on a per capita basis and destruction of ceremony, ritual and spirituality provides the evidentiary basis for the mental harm suffered by the people, as to past events and which continues unabated today.

54. The Plaintiffs and the Class Members state that apartheid is defined in the dictionary as an official policy of racial segregation formerly practiced in the Republic of South Africa involving political, legal and economic discrimination against non-whites or - a policy or practice of separating and segregating groups. The Plaintiffs and the Class Members plead that the indigenous peoples in the territory known as Canada and Ontario had this system imposed on them before the Republic of South Africa and plead that they have in the past suffered from political, legal and economic discrimination

and continue to suffer from this discrimination not only on the reserves but throughout the territory known as Canada and Ontario.

55. The Plaintiffs and the Class Members state that the eradication of traditional governments of the indigenous peoples had been a government policy embarked upon in direct contravention of the *Royal Proclamation of 1763*, and amounts to a direct abdication of responsibility by Her Majesty the Queen, the Chief Executive Officer of the territory known as Canada. The policy implemented pursuant to the *Indian Act* contravenes Article 2(b) of the *Convention on the Prevention and Punishment of the Crime of Genocide* - “causing serious bodily or mental harm to members of the group” and is contrary to the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, C 24.

56. The Plaintiffs and the Class Members claim an entitlement to the aboriginal right of nationhood and compensation for the on-going tort of genocide as defined in the above international and domestic instruments. The Plaintiffs and the Class Members plead and rely upon the United Nations *Declaration on the Rights of Indigenous Peoples*, the Royal Commission on Aboriginal People [1996], the International Covenant on Civil and Political Rights and the principle of “jus cogens” defined as “a peremptory norm of general international law [which] is a norm accepted and recognized by the international community of states as a whole as a norm for which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” The principle and its application will be outlined later in this claim.

57. The Plaintiffs and the Class Members state that the imposition of the *Indian Act* without their consent has deprived them of their human rights and fundamental freedoms, resulting, *inter alia*, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests. The Plaintiffs and the Class Members state that there is an urgent need to respect and promote the

inherent rights and characteristics of indigenous peoples, especially their rights to their lands, territories and resources, which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies.

## **2. Tort of Genocide - Residential Schools**

58. Residential Schools were established by the Crown as early as 1874. The Crown removed indigenous persons, usually young children, from their homes and communities and transported them to Residential Schools which were often long distances away. The Crown controlled all aspects of the admission of indigenous persons to the schools including arrangements for the care of such persons over holiday periods and the methods of transporting children to and from Residential Schools. Indigenous persons were often taken from their families without the consent of their parents or guardians. The stated purpose of the Residential Schools from their inception was the education of indigenous children. In fact, the true purpose was the complete integration and assimilation of indigenous children into main stream Canadian society and the obliteration of their traditional language, culture and religion.

59. It is estimated that there were in excess of one hundred (100) Residential Schools in operation in Canada in every Province and Territory except New Brunswick and Prince Edward Island during the Claim Period, with a peak of 74 schools in operation in 1920. The Crown has estimated that, as of 2001, there were approximately one hundred and five thousand (105,000) survivors of Residential Schools in Canada, representing the potential size of the Survivor Class.

60. During the Class Period, the period between January 1, 1920 and December 31, 1996, children were subjected to systemic child abuse, neglect and maltreatment. They were forcibly confined in Residential Schools and were systematically deprived of the essential components of a healthy childhood. They were subjected to physical, emotional, psychological, cultural, spiritual and sexual

abuse by those who were responsible for their well being. Their accommodation was crowded, cold, and sub-standard. They were underfed and ill nourished. They were forbidden to speak their native language and to practice the customs and traditions of their culture. They were deprived of love and affection from their families and of the support that a child would normally expect to have from those in positions of trust and authority. They were subjected to corporal punishment, assaults, including physical and sexual, and systematic child abuse.

61. The systemic child abuse, neglect and treatment sustained by the children at Residential Schools during the Class Period, the effect and impact which is still being felt by Survivor Class Members and Family Class Members, was in violation of the rights of children, specifically, but not limited to, the following rights set out in the United Nations *Convention on the Rights of the Child*, adopted by the United Nations in 1989, and ratified by Canada in December of 1991:

- (a) Freedom from discrimination - The Crown ought to have protected children from any form of discrimination or punishment based on Family's status, activities or beliefs;
- (b) Best interest of the child - The Crown ought to have ensured the establishment of institutional standards for the care and protection of children and ought to have considered the best interest of the child in all legal and administrative decisions;
- (c) Respect for parental responsibility - The Crown ought to have protected the rights of parents or guardians to provide direction to their children in the exercise of their rights;
- (d) Survival and development - The Crown ought to have ensured the survival and maximum development of the child;

- (e) Name and nationality - The Crown ought to have recognized the right to a name and to acquire a nationality and the right to know and be cared for by parents;
- (f) Perseveration of identity - The Crown ought to have recognized the right to preserve or re-establish the child's identity (name, nationality and family ties);
- (g) Parental care and non-separation - The Crown ought to have recognized the right to live with parents and maintain contact with both parents unless these are deemed incompatible with the child's best interest and the Crown ought to have provided information since the separation resulted from Crown action;
- (h) Free expression of opinion - The Crown ought to have recognized the child's right to express an opinion in matters affecting the child and to have that opinion heard;
- (i) Freedom of thought, conscious and religion - The Crown ought to have recognized the right to determine and practice any belief and ought to have respected the rights of parents or guardians to provide direction and the exercise of this right;
- (j) Freedom of association - The Crown ought to have recognised the right to freedom of association and freedom of peaceful assembly;
- (k) Protection of privacy - The Crown ought to have recognized the right to protection from arbitrary or unlawful interference with privacy, family, home, or corresponding attacks on honour and reputation;

- (l) Parental responsibilities - The Crown ought to have recognized the principal that both parents are responsible for the upbringing of their children and that parents or guardian have primary responsibility;
- (m) Abuse and neglect - The Crown ought to have protected the children from all forms of abuse, neglect and exploitation by parents or others and ought to have undertaken preventative and treatment programs in their regard;
- (n) Health care - The Crown ought to have recognized the right to the highest attainable standards of health and access to medical services and ought to have attempted to diminish infant and child mortality, combat disease and malnutrition, ensure health care for expectant mothers, provide access to health education, develop preventative health care and abolish harmful traditional practices;
- (o) Periodic review - The Crown ought to have recognized the right of children placed by the Crown for reasons of care, protection or treatment to have all aspects of that placement reviewed regularly;
- (p) Education - The Crown ought to have recognized the right to education by providing free and compulsory primary education, ensuring equal access to secondary and higher education and ensuring that school discipline does not threaten the child's human dignity;
- (q) Aims of education - The Crown ought to have directed education at developing the child's personality and talents preparing the child for a responsible life in a free society and developing respect for the child's parents, basic human rights, the natural environment and the child's own cultural and national values and those of others;

- (r) Children of minorities - The Crown ought to have recognized the right of children of minority communities and indigenous populations to enjoy their own culture, practice their own religion and use their own language;
- (s) Leisure and recreation - The Crown ought to have recognized the right to leisure, play and participation in cultural and artistic activities;
- (t) Child labour - The Crown ought to have protected children from economic exploitation and from engaging in work that constitutes a threat to health education and development;
- (u) Sexual exploitation - The Crown ought to have protected children from sexual exploitation and abuse;
- (v) Other exploitation - The Crown ought to have protected children from all other forms of exploitation; and,
- (w) Torture, capital punishment and deprivation of liberty - The Crown ought to have protected children from torture or other cruel, inhumane or degrading treatment.

62. Attempts to provide educational opportunities to children confined to Residential Schools were ill conceived and poorly executed by inadequately trained teaching staff. The result was to effectively deprive the children of any useful or appropriate education. Very few survivors of Residential Schools went on to any form of higher education.

63. The conditions and abuses in the Residential Schools during the Class Period were well known to the Crown. Information about the misconduct of the persons operating the Residential Schools was suppressed and covered up.

64. The Crown began to close schools and by 1979 only twelve (12) schools remained with a total resident population of one thousand, eight hundred and ninety nine (1,899) students.

65. In January of 1998, the Crown issued a Statement of Reconciliation acknowledging and apologizing for the failures of the Residential School system. Moreover, the Crown admitted that the Residential School system was wrongly and inappropriately designed to assimilate indigenous persons. The Plaintiffs and Class Members plead that the Statement of Reconciliation by the Crown is an admission of the Crown of the facts and duties set out in the above paragraphs and is relevant to the Plaintiffs' and Class Member's claim for damages, particularly punitive damages. The Statement of Reconciliation stated in part, as follows:

“Sadly, our history with respect to the treatment of Aboriginal people is not something to which we can take pride. Attitudes of racial and cultural superiority led to a suppression of Aboriginal culture and values. As a country we are burdened by past actions that resulted in weakening the identity of Aboriginal peoples, suppressing their languages and cultures, and outlawing spiritual practices. We must recognize the impact of these actions on the once self-sustaining nations that were desegregated, disrupted, limited or even destroyed by the dispossession of traditional territory, by the relocation of Aboriginal people, and by some provisions of the Indian Act. We must acknowledge that the results of these actions was the erosion of the political, economic and social systems of Aboriginal people and nations.

Against the backdrop of these historical legacies, it is a remarkable tribute to the strength and endurance of Aboriginal people that they have

maintained their historic diversity and identity. The Government of Canada today formally expresses to all Aboriginal people in Canada our profound regret for past actions of the Federal Government which have contributed to these difficult pages in the history of our relationship together.

One aspect of our relationship with Aboriginal people over this period that requires particular attention is the Residential School System. This system separated many children from their families and communities and prevented them from speaking their own languages and from learning about their heritage and cultures. In the worst cases, it left legacies of personal pain and distress that continued to reverberate in Aboriginal communities to this date. Tragically, some children were the victims of physical and sexual abuse.

The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at Residential Schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced is not your fault and should never have happened. To those of you who suffered this tragedy at Residential Schools, we are deeply sorry. In dealing with the legacies of the Residential School program, the Government of Canada proposes to work with First Nations, Inuit, Metis people, the Churches and other interested parties to resolve the

longstanding issues that must be addressed. We need to work together on a healing strategy to assist individuals and communities in dealing with the consequences of the sad era of our history...

Reconciliation is an ongoing process. In renewing our partnership, we must ensure that the mistakes which marked our past relationship are not repeated. The Government of Canada recognized that policies that sought to assimilate Aboriginal people, women and men, were not the way to build a strong community..."

### **3. Trespass - Land**

66. The Plaintiffs and the Class Members state that they are persons whose rights and freedoms have been violated and are entitled to an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity. The numerous outstanding disputes over indigenous lands and territories reflect the extensive systemic barriers faced by indigenous peoples in the assertion of their rights including the adversarial role the federal government plays in the negotiation of treaties and the resolution of land and treaty disputes and the continued failure of federal and provincial authorities to adequately integrate critical international standards for the protection of indigenous rights into domestic law and policy.

67. Names of political entities do not consistently correspond with the Native American pictographic signatures on treaty documents. Twenty of these images, those of catfish, crane, beaver, bear, plover, thunderbird or eagle, marten, sturgeon, and other fauna, display a remarkable similarity to pictographs on late-eighteenth-nineteenth century treaties with the French allied Algonquin-speaking Anishinaabe peoples, who may be more familiarly known to scholars of these periods as Ojibwa (or Chippewa),

Ottawa (or Odawa), Potawatomi, and Algonquin. In these later periods, the images clearly represent the “nindoodemag”, or kinship networks, of those Anishinaabe signatories. In this cultural tradition, people inherited their “nindoodemag” identities from their fathers; they conceived of themselves as related to and having kin obligations toward those who shared the same other-than-human progenitor being. Evidence from a wide range of sources, including oral traditions, iconography, linguistics and material culture, all speak to the importance of these networks in Anishinaabe social and political life. “Nindoodemag” shaped marriage and alliance patterns and facilitated long-distance travel; access to community resources was also negotiated through these networks. Sources dating from the seventeenth century suggest that in this earlier period and likely before contact, “nindoodemag” operated as an important component of Anishinaabe collective identities, fulfilling similar social and political functions.

68. The Amikwa (or Beaver people) “draw their being, the soul of their Nation and the name of their Nation” from the Body-Soul of the Great or First Beaver. In the Great Lakes region, it is souls, not shared blood, that creates the ties that bind. The “aadizookaanag” (sacred stories) teach that Anishinaabe political geography cannot be separated from the spiritual landscape of the region. Those stories ground firmly in the physical realm what Westerners would perceive as belonging to the spiritual and imagined realms. The earliest 17<sup>th</sup> century texts of the encounter between Champlain and the Anishinaabe include references to the sacredness of particular sites and the practice of making offerings of tobacco to local “manitouk” (ensouled, other-than-human being). Later Perrot was told [oral history] that the tomb of the Great Beaver was on the French River. It is noted that when the Amikwa “pass by that place, they invoke him and blow [tobacco] smoke into the air in order to honor his memory, and to entreat him to be favourable to them in the journey that they have to make.”

69. The Amikwa, or Beaver people, supplies a concrete example of the manner in which Anishinaabe peoples relied on their own cultural traditions and institutes. The Beaver people knew of their ancestors' role in the creation of the land; the beaver was the first to attempt the dive for a piece of the earth. When, in the second phase of the creation story, the first beings moved to the places most suitable for obtaining their pasture or prey, the Great Beaver chose the lands east of Georgian Bay to Lake Nipissing. This region is home to many small lakes and rivers connected by low-lying marsh lands. Even today the area is full of beaver dams and beaver lodges. On pre-1650 maps and documents the Beaver people are shown as residing in this area, either on the northeast or north coast of Georgian Bay. In this spiritually charged landscape, Beaver people could point to a mountain in the shape of a beaver and know that it was his tomb. Beaver people could be distinguished at a glance by their custom of piercing their noses; some of the early records also refer to them as the "nez percez."

70. The Plaintiffs and the Class Members state that "nindoodemag" or kinship networks are critical to understanding the placement and cultural identity of indigenous peoples when asserting ownership or stewardship over a place on Mother Earth. Kinship networks are critical to where you come from, who your friends are, who your enemies are and how native law and culture should be interpreted for a particular place. The importance of the "nindoodemag" identity goes beyond its function as a kinship network. The identity itself reflects a dynamic cultural tradition that draws and continues to draw its strength from the spiritually charged waterscapes of the Great Lakes themselves.

71. The Plaintiffs and the Class Members state that all of this relates to the adverse impact the Robinson Huron Treaty of 1850 has had on their lives and the adverse consequences of the eradication of their identity through being identified as people who participated in the Robinson Huron Treaty of 1850. Although this treaty is identified as a treaty with "Principal Men of the Ojibway Indians inhabiting and claiming the eastern and northern shores of Lake Huron from Penetanguishene to Sault

St. Marie and thence to Batchewanaug Bay on the northern shore of Lake Superior and inland to the height of land which separates the territory covered by the Charter of Honorable Hudson's Bay Company from Canada..." the Plaintiffs and Class Members are not Ojibiway Indians and in fact are of the Algonquin Nation, residing on unceded, unsurrendered aboriginal land.

72. The Plaintiffs and certain class members have been erroneously and fraudulently identified as being part of the Robinson Huron Treaty 1850. The Amikwa Nation of French River territory are one example of this error along with the Whitebear family of the Algonquin Nation at Bear Island as another example of this adverse mistake. The consequence of this uncorrected egregious error has resulted in vast wrongdoing being perpetrated on the Plaintiffs and certain class members. Presently, the lawsuit commenced herein is a direct result of this gross error going uncorrected since 1850 and requiring the Plaintiffs and certain class members to finally seek proper resolution.

73. The Plaintiffs and Class Members state that the Amikwa Nation at French River and the Whitebear family at Bear Island are only two examples of mistaken identity as it relates to the Robinson Huron treaty 1850 and its interpretation, with many more examples in the territory known as Ontario and throughout the territory known as Canada as it relates to treaty for indigenous peoples. The French River people and the Bear Island people are of the Algonquin Nation and not the Ojibiway Nation and therefore occupy territory which is unceded, unsurrendered and still is identified as aboriginal title.

74. The wrongdoing associated with the Plaintiffs and certain class members being associated or identified as signatories or beneficiaries of the Robinson Huron Treaty of 1850 are extensive and numerous. The most egregious is the loss of identity and having authority continually allow the error to dictate the Plaintiffs and certain class members' lives. Some of the examples of the wrongdoings are as follows:

- (a) Imposition of the Indian Act;

- (b) Permanent trespass on aboriginal land under the guise of treaty;
- (c) Deprivation of minerals and resources;
- (d) Alteration of way of life, culture, self-government;
- (e) Improper judicial decisions informed by parties unauthorized to represent.

75. In particular, the assertion of chief and band counsel of Henvey Inlet to authority over the land occupied by Plaintiff Stacey McQuabbie is wrong in that this land is aboriginal land, unsurveyed, unceded, not surrendered and not covered by the provisions of the Robinson Huron Treaty 1850. Stacey McQuabbie is of the Amikwa Nation, associated with the Algonquin Nation, which has never entered into treaty with the newcomers and asserts aboriginal title in these proceedings. No ancestors of the Amikwa Nation entered into treaty and as regards the land at French River now occupied by Stacey McQuabbie and others, does not form part of the Robinson Huron Treat 1850. The Defendants Henvey Inlet First Nation and Her Majesty the Queen in the Right of Canada are therefore trespassing on aboriginal land.

76. Despite any assertions by Henvey Inlet chief and band council and the federal government, they cannot prove acquisition of the French River territory occupied by Stacey McQuabbie and others through treaty or under the provisions of the *Proclamation of 1763* and they are therefore trespassing on aboriginal land. The Plaintiffs and certain class members are therefore entitled to damages for trespass.

77. A similar situation applied to the plaintiffs Becker and Friday and certain class members on Bear Island in the territory known as Ontario. They are not part of the Ojibiway Nation, they are part of the Algonquin Nation and they presently occupy land neither ceded nor surrendered to any newcomers. This is aboriginal land, the federal government by imposing the *Indian Act* is trespassing and the Plaintiffs Becker and Friday and certain class members are entitled to damages for trespass.

78. In the alternative, in the event the Court would find that the Robinson Huron Treaty 1850 is applicable, then the Plaintiffs and certain class members claim that they are entitled to damages for breach of the provisions of the treaty. The Plaintiffs and Class Members would provide details of the breaches at the trial of this matter.

79. The Plaintiffs and the Class Members claim that they are entitled to a declaration of trust pursuant to Section 109 of the *British North America Act 1867* as against the Defendant the Queen in the Right of Ontario. The Plaintiffs and Class Members state that they are entitled to an accounting for all “the lands, Mines, Minerals, and Royalties” which are subject “to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.” The Plaintiffs and Class Members state they are entitled to have this trust declared and a compensation provided to them from 1867 to the present. The Plaintiffs and the Class Members state that funds should be provided from this trust to enable the litigants to carry on this litigation.

80. The Plaintiffs and Class Members state that William Benjamin Robinson did not have proper delegated authority from Her Majesty the Queen to conclude a treaty on September 9<sup>th</sup> 1850 and that the treaty is therefore void *ab initio*. At the time, the *Proclamation of 1763* prevailed, as it continues today, and the responsibility for concluding a treaty resided with Her Majesty the Queen and absent direct instructions, William Benjamin Robinson was only acting on behalf of the Province of Canada. The Queen abdicated her responsibilities under the *Proclamation of 1763* in not providing specific and direct instructions to conclude this treaty. The treaty is therefore void *ab initio*.

81. The Plaintiffs and Class Members state that the Defendant Her Majesty the Queen continues to have responsibilities under the *Proclamation of 1763* and has deliberately abdicated her responsibilities to the detriment of the indigenous peoples in the territory known as Canada. In the event Her Majesty the Queen would take up her responsibilities, it is stated that many land and resource problems of

indigenous peoples could be resolved with more alacrity. The Plaintiffs and Class Members state that Her Majesty the Queen has an on-going duty in land issues as it relates to indigenous people and has breached her duty by not taking an active part in resolution of these on-going problems.

82. The Plaintiffs and Class Members state that the title of the Queen of England initially claimed by the issuance of the Royal Charter to the Hudson Bay Company in 1670 and the grant to Prince Rupert which subsequently became Rupert's land is without legal foundation in domestic or international law and therefore affects all chain of title asserted by the Crown since 1670. Furthermore, any transaction from the Hudson's Bay Company Charter to the Dominion of Canada suffered the same legal deficiency and commences the act of trespass as against indigenous territory in the territory known as Ontario and the territory known as Canada. The Plaintiffs and Class Members state that it was their home and the land was stolen from them for which they are entitled to compensation for trespass.

83. The Plaintiffs and Class Members state that they are members of the Algonquin/Nipissing Nation and have been improperly identified as members of the Ojibway Nation and illegally included in the Robinson Huron Treaty 1850 to deprive them of a proper aboriginal title claim. Furthermore, they have had imposed on them chief and band council under the *Indian Act* who have never properly represented them or their claims and have constantly put forward positions on their behalf in relation to land and aboriginal rights which has continually harmed them.

84. The Plaintiffs and Class Members state that indigenous rights were based on British common law which stood for the proposition that the Aboriginal Peoples of Canada should retain, under English law, those property rights they possessed prior to colonization that have not been paid for by the newcomers. This position was directly applied in North America through the *Royal Proclamation of 1763*. At Confederation, the federal government purported to take responsibility for "Indians and lands reserved for Indians" through Section 91(24) of the *B.N.A. Act*, while provincial governments were given

responsibility for resources. The Plaintiffs and Class Members state that this was given to the Provinces subject to the specific trust expressed in s. 109 of the *B.N.A. Act* and never respected by the Provinces.

85. The Plaintiffs and Class Members state that Confederation is a major defining moment in a dramatic shift which resulted in considerable and damaging changes to the policies settler governments maintained in relation to indigenous peoples and their descendants. These quickly became characterized by policies of isolation and assimilation, associated with heavy paternalism that remained the focus of the federal government. In fact, under the policies of Duncan Campbell Scott, deputy superintendent general of Indian Affairs [1906-1932], there was a great emphasis on eliminating the “Indian problem” through intermarriage and education. These policies birthed the apartheid system which continues today.

86. The Plaintiffs and Class Members state that the intention was to so dramatically alter the lives of indigenous peoples through these policies so as to eradicate the indigenous culture and shift the people into an “advanced society”. Thus attitudes had shifted away from thinking of indigenous peoples with rights as original occupants, to thinking of them as marginal, uncivilized and in need of protection. The goal was to eliminate Crown responsibility for the proper treatment of indigenous peoples, particularly as it related to lands and resources.

87. The Plaintiffs and Class Members claim entitlement to a proper redress in relation to the federal and provincial governments to the territory known as Canada and Ontario. The Plaintiffs and Class Members state that the Queen of England has abdicated her responsibilities stated in the *Proclamation of 1763* and should now participate in the redress required in this territory.

88. The Plaintiffs and Class Members state that the recent refusal by the federal government to support and sign the United Nations *Declaration on the Rights of Indigenous Peoples* is another example of the racist, discriminatory attitude of the government towards native people in this territory. It gives

credence to the idea that in politics the law is unimportant because although 143 countries in the world find it important to express and support principles favourable to indigenous peoples, Canada does not, because liability attaches to the words expressed. The politics of denial will not absolve the wrongdoers from the wrongdoings.

89. The Plaintiffs and Class Members state that in addition to the wrongdoings in relation to land and resources perpetuated by Canada and the Province, there is also usurpation of land by the Catholic and Protestant churches which needs to be redressed. The Plaintiffs and Class Members state that the Pope, as the head of the Catholic Church, must participate in the repatriation of land acquired by the Catholic Church throughout the territory known as Canada and Ontario. Similarly, the Protestant Churches, with Queen Elizabeth II, as the Spiritual Leader of the Protestant faith, must participate in the repatriation of land acquired by the Protestant Churches.

90. The Plaintiffs and certain class members state that they are entitled to a declaration that the Algonquin/Nipissing Nation is a vast territory emanating from the headwaters of the Ottawa River, going the length of the Ottawa River to lake of two mountains at Oka and includes all the rivers and tributaries leading into the Ottawa River and includes territory which is on both sides of the Ottawa River. The Plaintiffs and certain class members state that the present land claim involving one Algonquin reserve in Ontario and several other “selected” communities in Ontario is deeply flawed and not reflective of the full Algonquin/Nipissing Nation.

91. The Plaintiffs and certain class members state that the western boundary line of the Robinson Huron Treaty 1850 has been arbitrarily moved to the shores of the Ottawa River on official government maps and is not properly reflective of the actual area outlined in the treaty which serves as another example of the many breaches of the Robinson Huron Treaty 1850 which should render it void.

## The Wrongdoers and the Tort of Genocide

92. The British North America Act 1867 and provisions contained in the Constitution Act 1982, state that provisions referring to Her Majesty the Queen extend also to the Heirs and successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland (Section 2). The Act further states that the Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen (Section 9). The Commander-in-Chief of all military forces in Canada is hereby declared to continue and be vested in the Queen (Section 15). The Parliament for Canada consists of the Queen, an Upper House and the House of Commons (Section 17). Section 91 states “that it shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the Peace, Order and Good Government etc... Section 56 gives the Queen the power to disallow any Bill passed by the House of Parliament. The Queen is also described in the preamble to the BNA Act as “the Defender of the Faith”. The Queen is the ultimate authority in Canada and is the chief executive officer of the corporation known as Canada. By virtue of these provisions she bears ultimate responsibility to indigenous peoples in the territory known as Canada for the wrongdoings described herein. She is also the head of the Anglican Church in England and the Presbyterian Church in Scotland.

93. King John, King of England was excommunicated by the Pope in November 1209. A formal charter to end the excommunication was signed on May 15, 1213 and was ratified at St. Paul’s Cathedral on October 3<sup>rd</sup> whereby the King surrendered the sovereignty of England and Ireland to the papacy. An extract from the charter outlines this as follows “... do offer and freely concede to God and his holy apostles Peter and Paul and to our mother the holy Roman Church, and to our lord pope Innocent and to his Catholic successors, the whole kingdom of England and the whole kingdom Ireland, with all their rights and appurtenances, for the remission of our own sins and of those of our whole race as well as for

the living and the dead; and now receiving and holding them, as it were a vassal, from God and the Roman Church... we perform and swear fealty for them to him our aforesaid lord pope Innocent....; binding our successors and our heirs by our wife forever, in similar manner to perform fealty and show homage to him who shall be chief pontiff at that time, and to the Roman Church without demur.” The Queen continues to report to the Pope, through the Holy Roman Empire, the head office being located in London England.

94. The Pope and his successors since 1493 have involved themselves in issues of bodily injury to indigenous peoples beginning with the Papal Bull, *inter cetera*, continuing through to the involvement of the Jesuit priests in 1608, 1700’s and through to this day. In the territory known as Canada and Ontario this involvement of bodily injury continued in the establishment and managing of Residential Schools by Catholic priests and nuns for which the Pope and the Vatican state are vicariously liable.

95. The Pope and his successors, all during the period of the decimation of indigenous culture in the territory now known as Canada and Ontario, acquired land for their use to the detriment of indigenous peoples and for which the Plaintiffs and Class Members are presently entitled to an accounting and return of these lands. In any town, city, or village throughout the Province of Ontario we will find the establishment of many Catholic Church properties, usually in the enter of the municipal location, usually at strategic places and sometimes founded on sites which indigenous people treated as sacred sites in their culture. The Plaintiffs and Class Members assert that this establishment of sites is trespass for which they are entitled to compensation and redress. This amounted to the loss of land by the Plaintiffs and Class Members and continues to this day.

96. Similarly, the Queen of England, as the leader of the Anglican and Presbyterian religions is vicariously liable to the Plaintiffs and Class Members for the establishment and managing of Residential Schools and the loss of land by virtue of the establishment of church properties throughout the territories

to the detriment of the indigenous people. In addition to the churches, priests and nuns, the Queen and the Pope are vicariously liable for the establishment of Freemason clubs and the Knights of Columbus clubs which conspire throughout the territory known as Canada and the Province of Ontario to harm the interests of indigenous people when it comes to legal redress and proper compensation for lands and resources.

### **Federal government's breach of duty**

97. The defendant Crown was, through its servants, officers, employees and agents, negligent and in breach of its non-delegable fiduciary, moral, statutory, and common law duties of care to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty of the Crown include the following:

- (a) it systematically, negligently, unlawfully and wrongfully delegated its fiduciary and other responsibility and duties regarding the education of and care for Aboriginal children to others, including the Catholic and Protestant churches and other Religious organizations;
- (b) it systematically, negligently, unlawfully and wrongfully admitted and confined Aboriginal children to Residential Schools;
- (c) it acted without lawful authority and not in accordance with any statutory authority pursuant to or as contemplated by the provisions of the *Indian Act* or any other statutes relating to Aboriginal Persons as:
  - i. said provisions are and were *ultra vires* the Parliament of Canada and of no force and effect in law;
  - ii. the conduct of the Crown in placing the Aboriginal children in Residential Schools, confining them therein, and treating or permitting them to be treated

there are set forth herein was in breach of the Crown's fiduciary obligations to the Survivor Class and Family Class Members, which was not authorized or permitted by any applicable legislation and was, to the extent such legislation purported to authorize such fiduciary breach, of no force and effect and/or *ultra vires* the Parliament of Canada; and,

- iii. the Crown routinely and systematically failed to act in accordance with its own laws, regulations, policies and procedures with respect to the confinement of Aboriginal children in Residential Schools, which confinement was wrongful.
- (d) it delegated to and contracted with the Catholic and Protestant Churches and other Religious organizations to implement its program of forced integration, confinement and abuse;
- (e) it failed to adequately screen and select the organizations and individuals to which it delegated the implementation of its Residential School program;
- (f) it failed to adequately supervise and control Residential Schools and its agents operating same under its jurisdiction in Canada;
- (g) it deliberately and chronically deprived the Survivor Class Members of the education they were entitled to or were led to expect from the Residential Schools or of any adequate education;
- (h) it designed, constructed, maintained and operated Residential School buildings which were sub-standard, inadequate to the purpose for which they were intended and detrimental to the emotional, psychological and physical health of the Survivor Class;
- (i) it failed to provide funding for the operation of Residential Schools that was sufficient or adequate to supply the necessities of life to Aboriginal children confined to them;

- (j) it failed to respond appropriately or at all to disclosure of abuses in the Residential Schools during the Class Period;
- (k) it conspired with the operators of the schools to suppress information about abuses taking place in the Residential Schools during the Class Period;
- (l) it assaulted and battered the Survivor Class Members and/or permitted them to be assaulted and battered during the Class Period;
- (m) it forcibly confined the Survivor Class Members and/or permitted them to be forcible confined during the Class Period;
- (n) it was in breach of its fiduciary duty to its Wards, the Survivor Class Members by reason of the misfeasance, malfeasances and omissions set out above;
- (o) it failed to inspect or audit the Residential Schools adequately or at all;
- (p) it failed to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period;
- (q) it failed to periodically reassess its regulations, procedures and guidelines for Residential Schools when it knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period;
- (r) it failed to close the Residential Schools in Canada and/or otherwise protect and care for those persons confined therein when it knew or ought to have known that it appropriate and essential to do so in order to preserve the health, welfare and well being of the Survivor Class Members;
- (s) from May 21, 1952 it was in breach of the United Nations *Convention of the Prevention and Punishment of the Crime of Genocide* and in particular Article 2(b), (c) and (e) of the *Convention*;

- (t) it delegated, attempted to delegate, continued to delegate and/or improperly delegated its non-delegable duties and responsibility for the Survivor Class when it was incapable to do so and when it knew or ought to have known that these duties and responsibilities were not being met;
- (u) it failed 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;
- (v) it conspired with various Religious organizations to eradicate Aboriginal culture in Canada through the implementation of a Residential Schools program;
- (w) it undertook a systemic program of forced integration, an assimilation of the Aboriginal Persons through the institution of Residential Schools when it knew or ought to have known that doing so would cause profound and permanent cultural, psychological, emotional and physical injury to the members of the Survivor Class during and following the Class Period;
- (x) the effects from the forced integration and assimilation of the Aboriginal Persons has caused a profound and permanent cultural, psychological, emotional and physical injury and is in breach of the United Nations *Convention of the Prevention and Punishment of the Crime of Genocide*, in particular Article 2(b), (c) and (e) of the Convention, ratified by Canada in September, 1952. The effects from the Residential School policy also violates the *International Covenant on Civil and Political Rights*, in particular Articles 1 and 27 of the Convention, ratified by Canada in May, 1976, because it has interfered with the Survivor Class Members' and the Family Class Members' rights, including, but not limited to:
  - i. the right to retain and practice their culture, spirituality, language and traditions;

- ii. the right to fully learn their culture, spirituality, language and traditions from their families, extended families and communities; and,
- iii. the right to teach their culture, spirituality, language and traditions to their own children, grandchildren, extended families and communities.

(y) It was in breach of its obligations to the Survivor Class Members and Family Class Members as set out in the *Indian Act* and its Treaties with various First Nations providing a right to education at a school to be established and maintained by the Crown and which implicitly included the right to education in a safe environment free from abuse and the right to an education which would recognize Aboriginal beliefs, traditions, culture, language and way of life in a way that would not denigrate or eliminate these beliefs, traditions, culture, language and way of life. The Treaties relied on by the Plaintiffs include, but are not limited to, the following Treaties referred to below and the excerpts from these Treaties also provided below, but not limited to the excerpted portions provided:

- i. Treaty No. 1 - “And further, Her Majesty agrees to maintain a school on each reserve hereby made, whenever the Indians of the reserve should desire it.”;
- ii. Treaty No. 2 - “And further, Her Majesty agrees to maintain a school on each reserve hereby made, whenever the Indians of the reserves shall desire it.”;
- iii. Treaty No. 3 - “And further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as Her Government of Her Dominion of Canada may seem advisable when ever the Indians of the reserves shall desire it.”;
- iv. Treaty No. 4 - “Further Her Majesty agrees to maintain a school in the reserves allotted to each band as soon as they settle on said reserve and are prepared for a teacher.”;

- v. Treaty No. 5 - “And further Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”;
- vi. Treaty No. 6 - “And Further, Her Majesty agrees to maintain the schools for instruction in such reserves hereby made as to Her Government of the Dominion of Canada may seem advisable, whenever the Indians of the reserve shall desire it.”;
- vii. Treaty No. 7 - “Further, Her Majesty agrees to pay the salary of such teachers to instruct the children of said Indians as to Her Government of Canada may seem advisable, when said Indians are settled on their Reserves and shall desire teachers.”;
- viii. Treaty No. 8 - “FURTHER, Her Majesty agrees to pay the salaries of such teachers to instruct the children of said Indians as to Her Majesty’s Government of Canada may seem advisable.”;
- ix. Treaty No. 9 (The James Bay Treaty) - “Further, His Majesty agrees to pay such salaries of teachers to instruct the children of said Indians, and also to provide such school buildings and educational equipment as may seem advisable to his Majesty’s Government of Canada.”;
- x. Treaty No. 10 - “Further His Majesty agrees to make such provision as made from time to time be deemed advisable for the education for the Indian children.”; and,

- xi. Treaty No. 11 - "Further, His Majesty agrees to pay the salaries of teachers to instruct the children of said Indians in such manner as His Majesty's Government may deem advisable."

98. The defendant Crown, through its servants, officers, contractors, agents and employees, for those conduct and breaches it is in law responsible, was negligent and in breach of its non-delegable, fiduciary, statutory, moral and/or common law duties to the Survivor Class and the Family Class during the Class Period. Particulars of the negligence and breach of duty (including breach of non-delegable duties) of the Crown are as follows:

- a. the selection and employment of incompetent and immoral persons as teaching and non-teaching staff in Residential Schools during the Class Period;
- b. the failure to adequately train or supervise teaching and non-teaching staff employed at Residential Schools;
- c. the failure to report to the proper authorities the physical, psychological, emotional, cultural and sexual abuses to which children in their care were being subjected at Residential Schools during the Class Period;
- d. the failure to provide the necessities of life to Survivor Class Members in their care in Residential Schools during the Class Period;
- e. the knowing cover up of the existence of systematic and widespread abuse of Aboriginal Persons at Residential Schools during the Class Period;
- f. the deprivation of Survivor Class Members in their care of their languages, as well as their religious and cultural beliefs and practices;
- g. the failure to provide Survivor Class Members with an adequate or useful education;

- h. the deprivation of Survivor Class members of contact with their families and of the essential elements of a healthy childhood;
- i. the conspiracy to eradicate aboriginal culture through the Residential School System;
- j. the failure to adequately or properly administer, manage and operate the Residential Schools;
- k. the assault and battery of Survivor Class Members during the Class Period;
- l. the breach of its fiduciary duties to the Survivor Class members and Family Class members by reason of the misfeasance, malfeasances and omissions set out above;
- m. the failure to inspect or audit the Residential Schools adequately or at all;
- n. the failure to implement an adequate system of evaluation, monitoring and control of teachers, administrators and non-teaching staff of the Residential Schools during the Class Period; and,
- o. the failure to periodically reassess their procedures and guidelines for Residential Schools when they knew or ought to have known of serious systemic failures in the Residential Schools during the Class Period.

### **Undertaking regarding Damages**

99. The Plaintiffs and Class Members agree not to seek to recover from the defendant Her Majesty the Queen in the Right of Canada or Her Majesty the Queen in the Right of Ontario any portion of the losses claimed which this court attributes to the Queen for torts of genocide and trespass or to the Pope for torts of genocide and trespass. The Plaintiffs and Class Members state that there are effectively four (4) treasuries - the Vatican State, the Queen, the Queen in the Right of Canada and the Queen in the

Right of Ontario, who could be called upon to resolve the on-going issues with the Plaintiffs and Class Members.

100. The Plaintiffs and Class Members state that historically the Queen trespassed on indigenous territory before the *Proclamation of 1763* and allowed trespass to continue after the *Proclamation*:

- a. The Plaintiffs and Class Members state that the Hudson Bay Charter of 1670 granted by the King was not his to give and he was required to treat the indigenous people on a Nation to Nation basis. The King could not give to Prince Rupert what was not his and his successor Queen Elizabeth II is now responsible for this act of trespass. This transaction ultimately leads to all the land claim problems of indigenous people and needs to be corrected by the involvement of the Queen, working with her two parliaments to establish redress. Funds should be made available immediately to allow the Plaintiffs and Class Members to organize themselves to negotiate with the wrongdoers;
- b. The defendant Queen in the Right of Ontario has breached its constitutional duties in not honouring “subject to any Trusts existing thereof, and to any Interest other than that of the Province in the same” as outlined in Section 109 of the *British North America Act 1867*. The Plaintiffs and Class Members are entitled to an accounting relative to all lands, mines, mineral and Royalties allegedly belonging to the Province. Funds should be immediately provided to the Plaintiffs and Class Members in order that they can negotiate with the wrongdoers;
- c. The Pope and the Vatican State need to direct all the Catholic parishes in the Province of Ontario to account to the Plaintiffs and Class Members for the lands acquired to the detriment of the Plaintiffs and Class Members amounting to trespass on native lands;

- d. The Queen needs to direct all Anglican and Presbyterian parishes in the Province of Ontario to account to the Plaintiffs and Class Members for the lands acquired to the detriment of the Plaintiffs and Class Members amounting to trespass on native lands; and
- e. The Queen in the Right of Canada must outline all of the lands acquired in the Province of Ontario for reserves and other purposes, to the detriment of the Plaintiffs and Class Members, which amounts to trespass on native lands.

## **Damages**

### **A) Tort of Genocide**

#### **1. Breach of Duty**

101. As a consequence of the negligence and/or breach of duty and/or fiduciary duty and/or intentional infliction of harm by Her Majesty the Queen and Her Majesty in the Right of Canada and/or its agents for whom it is in law responsible, the Plaintiffs and Class Members suffered injury and damages including:

- a. loss of nationhood and denial of the existence of sovereignty;
- b. loss of traditional territory and connection to the land;
- c. destruction of ceremony and ritual and loss of spirituality;
- d. imposition of a system of apartheid, initially resembling arbitrary confinement to a place restricting freedom of movement developing into an economic prison for all inhabitants;
- e. loss of traditional self-government and the imposition of an elected system promoting nepotism and division of class and clans and family members;
- f. imposing chief and band councils who act as agents for the federal government in return for the administration of significant budgets;

- g. imposing chief and band councils who cannot fairly represent the needs of the people as they are agents of the Queen and the federal government;
- h. depriving the people of proper representation in the court system in Canada and Ontario as chief and band counsels control the agenda and instruct the lawyers, thereby harming the people;
- i. infliction of mental harm due to the hopelessness engendered by the apartheid system;
- j. infliction of mental harm due to the denial that any problems exist because of the imposition of the *Indian Act*;
- k. an inability to function in a traditional way of life and doomed to operate in an environment dictated by the agents of the Queen and the federal government through a chief and band council;
- l. a theft of identity by making an indigenous person no more than a ward of the Crown and inflicting economic penalty as a result;
- m. depriving the Plaintiffs and Class Members of an ability to develop a meaningful relationship with authority through imposed legislation reflecting the consciousness of genocide from early encounter and taking hold in those tasked to administer the imposed legislation resulting in deep psychological harm and the development of racist policies;
- n. depriving the Plaintiffs and Class Members of the ability to settle disputes on land and social relationships by imposing legislation designed to address these issues contrary to the indigenous way of life;
- o. dividing and conquering the Plaintiffs and Class Members through written laws and policies forcing family members to separate and break-up to seek opportunity outside of their traditional territory due to the impact of the *Indian Act*;

- p. setting family members against other family members due to the effects of the imposition of legislation which changed the governance system in the indigenous communities and destroyed the matriarchal influence on governance;
- q. the loss of dignity and self-respect of the Plaintiffs and Class Members forced to accept the newcomers idea of the proper way of life for human beings;
- r. the imposition of a materialistic way of life to the detriment of the development of the spiritually informed indigenous culture;
- s. the loss of stewardship over sacred sites by confining the Plaintiffs and Class Members to “reserves” apart from traditional sacred sites.

## **2. Residential Schools**

102. As a consequence of the negligence and/or breach of duty and/or breach of a non-delegable or fiduciary duty and/or intentional infliction of harm by the Crown and/or its agents for whom it is in law responsible, the Survivor Class Members, including the representative plaintiff, Audrey McQuabbie (Amikwabi), suffered injury and damages including:

- a. isolation from family and community;
- b. prohibition of the use of Aboriginal language and Aboriginal religion and culture and the consequential loss of facility and familiarity with Aboriginal language, religion and culture;
- c. forced confinement;
- d. assault and battery;
- e. sexual abuse;
- f. emotional abuse;

- g. psychological abuse;
- h. deprivation of the fundamental elements of an education;
- i. an impairment of mental and emotional health amounting to a severe and permanent disability;
- j. an impaired ability to trust other people or to form or sustain intimate relationships;
- k. a propensity to addiction;
- l. an impaired ability to participate in normal family life;
- m. an impaired ability to control anger and rage;
- n. alienation from family, spouses and children;
- o. an impaired ability to participate in recreational, social, athletic and employment activities;
- p. an impairment of the capacity to function in the work place and a permanent impairment in the capacity to earn income;
- q. the need for ongoing psychological, psychiatric and medical treatment for illnesses and other disorders resulting from the Residential School experience;
- r. sexual dysfunction;
- s. depression, anxiety and emotional dysfunction; and,
- t. pain and suffering.

103. As a consequence of the negligence and/or breach of duty and/or breach of a non-delegable or fiduciary duty and/or intentional infliction of harm by the Crown and/or its agents for whom it is in law

responsible, the Family Class Members, including the representative plaintiff, Stacey McQuabbie (Amikwabi), suffered injury and damages including:

- a. they were separated and alienated from Survivor Class Members for the duration of their confinement in Residential Schools;
- b. their relationships with Survivor Class Members were impaired, damaged for distorted as a result of the experiences of Survivor Class Members in Residential Schools;
- c. they suffered abuse from Survivor Class Members as a direct consequence of the Residential School experience;
- d. they were unable to resume normal family life and experience with Survivor Class Members after their return from Residential Schools;
- e. they were deprived of pecuniary support from Survivor Class Members as the direct and indirect consequence of impairments caused by the Residential School experience;
- f. they incurred special and out of pocket expenses in their care of Survivor Class Members and were required to provide support and medical care to Survivor Class Members as a direct or indirect consequence of the Residential School experience; and,
- g. their culture and language was undermined and in some cases eradicated by, amongst other things, as pleaded herein, the forced assimilation of Survivor Class Members into non-aboriginal culture through the Residential Schools.

## **B) Trespass to Land**

104. The Plaintiffs and Class Members have all been disposed of their traditional hunting and fishing territories and suffer from the breach of the *Proclamation of 1763*. All Defendants have abdicated their responsibilities to the original inhabitants and the harm is incalculable. The Algonquin/Nipissing Nation itself is harmfully divided and a system for land negotiation is put in place designed to fraudulently deprive the Plaintiffs and Class Members of a rightful claim and the Court needs to intervene in order to assist the Plaintiffs and Class Members to extricate themselves from the on-going harm this brings about.

105. The Queen of England has abdicated her responsibilities in relation to the *Proclamation of 1763* and needs to establish a mechanism through which the breaches of treaties with indigenous people can be resolved within a time frame that will see the on-going harm resolved within the lifetime of the Plaintiffs and Class Members.

106. The breach of Section 109 of the *British North America Act 1867* is an on-going harm as it deprives the Plaintiffs and Class Members of access to resources which would greatly assist the Plaintiffs and Class Members to fund organizations which would assist in resolving the damaged relationship between the Plaintiffs and Class Members and all the Defendants.

### **Liability for Breach of Treaties**

107. The Plaintiffs and Class Members plead that the Crown Defendants are in breach of their various treaty obligations in the territory known as Ontario and are liable for such breaches.

### **Punitive, Aggravated and Exemplary Damages**

108. The Plaintiffs and Class Members plead that the Defendants had specific and complete knowledge of the widespread physical, psychological, emotional, cultural and sexual abuses resulting

from the imposition of the *Indian Act*, the Residential Schools and the trespass to land which occurred in the territory known as Canada and Ontario. Despite this knowledge, the Defendants implemented legislation, policies, treaties all designed to harm indigenous people. In addition, the Defendants all contributed to the loss of identity and deliberately planned the eradication of the language, spirituality and culture, together with self-governance, nationhood and sovereignty. In these circumstances, punitive, exemplary and aggravated damages are appropriate.

### **Constitutionality of Section 91(24) of B.N.A. Act**

109. The Plaintiffs and Class Members plead that Section 91(24) is *ultra vires* the British House of Commons. Accordingly, there is no authority to pass the *Indian Act* of Canada and it should also be declared *ultra vires* the federal government. Queen Elizabeth II should have exercised her constitutional duty in Section 56 of the *British North America Act 1867* and disallowed the first *Indian Act* passed pursuant to Section 91(24) and acknowledged her responsibilities under the *Proclamation of 1763*.

### **Vicarious Liability**

110. The Plaintiffs and Class Members state that Queen Elizabeth II, the Pope and the State of the Vatican, the Queen in the Right of Canada, and the Queen in the Right of Ontario, are vicariously liable for the negligence, malfeasances, misfeasance, tort of genocide and trespass of their servants, contractors, agents, officers and employees.

### **Jus Cogens**

111. The Plaintiffs and Class Members plead that any inquiry into the principles of fundamental justice is informed not only by Canadian experience and jurisprudence, but also by international law, including “jus cogens.” This takes into account Canada’s international obligations and values as

expressed in the various sources of international human rights law - declarations, covenants, conventions, judicial and quasi-judicial decisions of international tribunals and customary norms. The Plaintiffs and Class Members state that “jus cogens” is defined as a norm accepted and recognized by the international community of states as a whole as a norm for which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. There is compelling evidence to indicate that genocide is a peremptory norm, such as:

- a. Nuremberg trials - for Holocaust in Germany;
- b. Convention on Genocide - United Nations;
- c. U.N. declaration on Indigenous Peoples;
- d. Crimes Against Humanity and War Crimes Act, S.C. 2000 c.24; and,
- e. Criminal Code of Canada, Section 317.

### **Funding**

112. The Plaintiffs and Class Members claim entitlement to have funding provided for the purpose of pursuing legal redress in this matter.

### **Reconciliation**

113. The Plaintiffs and Class Members plead that they are desirous of developing a mechanism through which healing and reconciliation could be developed between the parties and would explore any discussions and negotiations which would promote healing and reconciliation on a long term basis and provide for fair and reasonable compensation for wrongdoings by all the wrongdoers.

### **Residential School Settlement - Baxter case**

114. The Plaintiffs and Class Members are aware of the settlement in the *Baxter* class action on Residential Schools and have not participated in that settlement. The Plaintiffs and Class Members plead that the individual sums proposed by that settlement were extremely low and did not see the participation of three treasuries of government (Pope, Queen, federal government) as this class action proposes. The Plaintiffs and Class Members seek acknowledgement of past wrongdoings, particularly from the Pope and the Queen as their silence on these issues is deafening and harmful to the Plaintiffs and Class Members.

### **Statutes**

115. The Plaintiffs and Class Members plead and rely upon the following:

**British North America Act**

**Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50, ss.**

**Canadian Charter of Rights and Freedoms, ss**

**Constitution Act, 1982, s. 35(1)**

**Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, ss. 4, 5 and 30;**

**Robinson Huron Treaty of 1850**

**Royal Proclamation of 1763**

**State Immunity Act**

**The Canadian Bill of Rights, R.S.C. 1985, App. III, Preamble, ss.**

**The Class Proceedings Act, S.O. 1992, c. 6;**

**The Indian Act, R.S.C. 1985, ss.**

### **International Treaties**

116. The Plaintiffs and Class Members plead and rely upon the following:

**Convention on the Prevention and Punishment of the Crime of Genocide**, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 *entry into force* 12 January 1951, in accordance with Article XIII;

**Convention on the Rights of the Child**, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 *entry into force* 2 September 1990, in accordance with Article 49;

**International Covenant on Civil and Political Rights**, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49; and,

**United Nations Declaration on the Rights of Indigenous Peoples**, Approved on 13 September 2007, after 143 Member States voted in favour, 11 abstained and four – Australia, Canada, New Zealand and the United States – voted against the text.

117.

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