

FEDERAL COURT
CLASS PROCEEDING

B E T W E E N :

JOE DAVID NASOGALUAK

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Class Proceeding commenced under Part 5.1 of the
Federal Court Rules, SOR/98-106

REPLY

1. The Plaintiff repeats and relies on the allegations contained in the Amended Statement of Claim dated February 2, 2021.
2. Except as specifically admitted herein, the Plaintiff denies each and every allegation contained in the Statement of Defence.
3. The Plaintiff admits the allegations contained in the first sentence of paragraph 15, the second sentence of paragraph 16, the first sentence of paragraph 20, and in paragraphs 51, 69, and 72 of the Statement of Defence.
4. In reply to paragraphs 1 and 10(e) of the Statement of Defence, the Plaintiff specifically refutes the Defendant's framing of the Plaintiff's claim, which should be disregarded. The Defendant cannot reframe the Plaintiff's claim to be something that it is not. The Defendant does not plead in response to the Plaintiff's claim. The Plaintiff cannot reply to a straw-man recalibration of the Plaintiff's claim.

5. In reply to paragraph 2 of the Statement of Defence, the Defendant's self-avowed litigation strategy has no place in a pleading and this paragraph should be disregarded. The Plaintiff has no knowledge of the Defendant's self-avowed litigation strategy.

6. The Plaintiff objects to the pleading of evidence in the second sentence of paragraph 9 of the Statement of Defence, which pleading is improper and taken out of its proper context. The contents of paragraph 9 relate to the Defendant's unsuccessful defences to the certification motion. Paragraph 9 is denied.

7. In reply to paragraphs 9, 10(a), 10(d), and 39 of the Statement of Defence, the Plaintiff denies that there is any confusion or ambiguity as to the meaning of "assault" in this claim. The Defendant did not request particulars in this regard. The Defendant's attempt to re-define "assault" and to re-open the class definition is a collateral attack on the orders of the Federal Court and the Federal Court of Appeal on the certification motion. It is vexatious and improper. Paragraphs 9, 10(a) and 10(d) should be disregarded and, in any event, are not capable of reply.

8. In reply to paragraph 10(b) of the Statement of Defence, the Defendant has misstated the Class Definition as ordered by the Federal Court. The Class includes all Aboriginal Persons who allege they were assaulted at any time while being held in custody or detained by RCMP Officers in the Territories, and were alive as of December 18, 2016. The Plaintiff specifically denies the inclusion, in paragraph 10(b), of "December 18, 2018."

9. In reply to paragraph 10(c) of the Statement of Defence, the Defendant has attempted to unlawfully truncate the certified class period in paragraph 10(c). This conflicts with the certification order and reasoning of the Federal Court and the Federal Court of Appeal. It is vexatious, re-argues legal issues before the certification motion judge, and is an abuse of the Court's process. The truncated class period in paragraph 10(c) is denied.

10. In reply to paragraphs 13 and 14 of the Statement of Defence, the Plaintiff specifically denies that Canada's liability is limited in the manner described.

11. In reply to paragraph 38 of the Statement of Defence, the Defendant is required to specifically plead why the claim is barred by policy immunity and to plead the policies upon which it relies. The Defendant has failed to particularize this defence. The Plaintiff denies that any of the class's certified claims are barred by any policy immunity.

12. In reply to paragraph 62 of the Statement of Defence, the Defendant, in paragraph 62, repeats the arguments that it made before, and that were rejected by, the Federal Court and the Federal Court of Appeal on the certification motion. Paragraph 62 is vexatious, constitutes improper pleading and should be disregarded.

13. In reply to paragraph 65 of the Statement of Defence, the Plaintiff denies that the two-year limitation periods set out in the statutes relied on by the Defendant apply in this case. The Plaintiff denies that Territorial limitations statutes apply to this action and instead pleads and relies upon s. 32 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-30, as well as the Honour of the Crown and common law doctrines including but not limited to discoverability.

14. In response to paragraph 68 of the Statement of Defence, the Plaintiff admits that the Defendant and its servants and agents were not bound by the *Canadian Charter of Rights and Freedoms* (except s. 15) prior to April 17, 1982, and were not bound by s. 15 of the *Charter* prior to April 17, 1985.

15. In response to paragraph 73 of the Statement of Defence, the Plaintiff accepts Canada's proposal that the trial of this matter be held in Edmonton, Alberta.

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