Translated from the original French

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| J.J. c. Procureur général du Québec | | | | | | 2023 QCCS 4653 | |
| SUPERIOR COURT | | | | | | |
| (Class Action) | | | | | | |
| CANADA | | | | | | |
| PROVINCE OF QUEBEC | | | | | | |
| DISTRICT OF | | | MONTREAL | | | |
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| No.: | | 500-06-000999-199 | | | | |
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| DATE: | December 8, 2023 | | | | | |
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| PRESIDING: | | | | THE HONOURABLE | SYLVAIN LUSSIER, J.S.C. | |
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| |  | | --- | | **J.J.**  And  **A.JE.** | | Plaintiffs | | v.  **ATTORNEY GENERAL OF QUEBEC**  And  **ATTORNEY GENERAL OF CANADA**  And  **CENTRE DE SERVICES SCOLAIRE DE L’OR-ET-DES-BOIS**  And  **CENTRE DE SERVICES SCOLAIRE DU LITTORAL**  And  **CENTRE DE SERVICES SCOLAIRE HARRICANA**  And  **CENTRE DE SERVICES SCOLAIRE DU FER**  And  **CENTRE DE SERVICES SCOLAIRE DU LAC-TEMISCAMINGUE**  And  **CENTRE DE SERVICES SCOLAIRE RENÉ-LÉVESQUE**  And  **CENTRE DE SERVICES SCOLAIRE DE LA BAIE-JAMES**    Defendants | | | | | | | |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  **JUDGMENT**  **on authorization to institute a class action**  **(CORRECTED ON 11-12-2023)**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | | | | | |

**BACKGROUND**

1. From 1951 to 2014, thousands of children subject to the *Indian Act*[[1]](#footnote-1)and Inuit children were forced to attend the provincial Indigenous day school system, established in collaboration by the Government of Canada, the Government of Quebec, and Quebec school boards.[[2]](#footnote-2)
2. Provincial Indigenous Day Schools were part of the Indian day school system set up by the federal government (“Federal Indian Day Schools”). The term “day schools” is used to distinguish them from residential schools, where the majority of students also stayed overnight and on weekends. Provincial Indigenous Day Schools are excluded from the settlement approved by the Federal Court to compensate survivors who attended day schools run entirely by the federal government.[[3]](#footnote-3) In that settlement, “day schools” are referred to in French as “*externats*”.
3. The plaintiffs claim that the day school system had an explicit goal of cultural assimilation and that the children who attended these schools were victims of acculturation. They claim that many children also suffered psychological, physical, and sexual abuse by teachers, administrators, other employees, and other children at these schools. They say that the system also caused serious harm to the children’s loved ones.
4. In 2014, Parliament repealed the provisions of the *Indian Act*[[4]](#footnote-4) that allowed the Minister of Indian Affairs to designate the school that an Indian child would be required to attend and to appoint truant officers to enforce the attendance of Indian children at the designated schools.
5. The plaintiffs allege that the establishment, supervision, and administration of the Provincial Indigenous Day School system constituted a fault that gives rise to the defendants’ civil liability for the resulting injuries. This wrongful practice also constituted an unlawful and intentional violation of the members’ rights to inviolability, dignity, protection, security, and attention as well as the right to maintain and develop their cultural interests with the members of their community, as guaranteed by the *Charter of human rights and freedoms*.[[5]](#footnote-5)
6. With respect to the plaintiff J.J., the application for authorization alleges:

[51] The Plaintiff J.J. was born on [...], 1968, in Rupert House (now Waskaganish), where he also grew up. He works as a school re-adaptation officer in Waskaganish.

[52] From around 1972 at the age of four and until the school ceased to exist in 1978, J.J. attended Notre Dame Roman Catholic Indian Day School in Rupert House, also known as École Notre Dame de Fort-Rupert or Father Provencher’s School. It was distinct from the Rupert House Indian Day School, which was English Protestant, but operated during the same period, exclusively in and for the Cree community of Rupert House.

[53] Both schools were administered by the Defendants Canada, Quebec and the predecessor of the school service center of James Bay until 1978, when the Cree School Board took over all schools in Cree communities under the James Bay and Northern Québec Agreement (JBNQA).

[54] The English school was clearly operated by Canada, while the French school, attended by the Plaintiff, was operated in collaboration with the province of Québec but on lands where Canada could and did exercise its powers over J.J.’s education pursuant to the Indian Act.

[55] While attending Notre Dame, J.J. suffered … abuse inflicted by employees of the school. He also witnessed abuse inflicted on others.

1. With respect to the plaintiff A.Je., the following is alleged:

[translation]

[68] The Plaintiff A.Je. was born on [...], 1968 in the Anishnabe community of Lac Simon, where she also grew up. She was Chief of the Lac Simon Band Council from 2016 to 2023. She is currently the director of the band council’s natural resources department and negotiator for the Algonquin Moose Committee.

[69] A.Je. attended the Lac Simon school from the age of four, that is, from 1972 until around 1982.

[70] Under an agreement with Canada, the Val d'Or School Board operated this school on reserve land where Canada exercised its powers with respect to A.Je.’s education under the *Indian Act*..

[71] While attending the Lac Simon school, A.Je. suffered physical, psychological, and sexual abuse at the hands of school employees. She also witnessed such abuse inflicted on other students.

[72] The school environment was [translation] “hell” in her words; it was [translation] “like residential school in the community.” The principal was always unpleasant, terrorizing the students with constant physical and verbal violence. They were constantly [translation] “punished” without really knowing why.

…

[80] The employees at the Lac Simon school did not commit the same violence and abuse against the non-Indigenous students who also attended the school. Indigenous students were severely punished if they fought with non-Indigenous children, but not vice versa.

1. In both cases, the facts alleged describe specific incidents of physical and other abuse, of which they and some of their loved ones were victims.
2. Accordingly, the plaintiffs seek authorization to institute a class action on behalf of the following classes:

[translation]

**Survivor Class – Reserves or Indian Settlements:** “Any person subject to the *Indian Act* who*,* between 1951 and 2014, in Quebec, attended a public or religious provincial day school located in an Indigenous community (reserve or Indian settlement) and whose attendance the Minister of Indian Affairs could or claimed to be able to require.”

For greater clarity, schools operated exclusively by a band council, as defined in the *Indian Act*, are excluded from the definition of “Survivor Class – Reserves or Indian Settlements.

**Family Class – Reserves or Indian Settlements:** “Any spouse or civil union spouse, any sibling, and any direct descendant in the first or second degree of a member of the “Survivor Class – Reserves and Indian Settlements”, as well as any spouse or civil union spouse of any sibling or direct descendant in the first or second degree of such a person.”

**Survivor Class – Inuit Villages:** “Any person, enrolled or entitled to be enrolled as an Inuit beneficiary under the *James Bay and Northern Quebec Agreement* or with an Inuit land claim organization who, between 1963 and 1978, in Quebec, attended a public or religious provincial day school located in an Inuit village and whose attendance the Quebec government could or claimed to be able to require.”

**Family Class – Inuit Villages:** “Any spouse or civil union spouse, any sibling, and any direct descendant in the first or second degree of a member of the “Survivor Class - Inuit Villages”, as well as any spouse or civil union spouse of any sibling or direct descendant in the first or second degree of such a person.”

Claims, or those parts of claims, made by any person concerning sexual assault by any priest, member, or employee of the religious Congregation known as the Missionary Oblates of Mary Immaculate, outside the activities of a public or religious provincial day school, are excluded from all these classes.

1. For the purposes of the class definitions, the term [translation] “Indian settlement” means land that is not a “reserve” within the meaning of subsection 2(1) of the *Act* but that is owned by the Crown in right of Canada or a province. Pursuant to subsection 4(3)4 of the *Act*, the provisions concerning the education of children (ss. 114 to 122) apply to Indians who “ordinarily reside” on such lands.
2. In Quebec, Indian settlements include: Pakuashipi (St-Augustin), Kitcisakik (Grand Lac Victoria), Kanesatake (Oka), and Long Point (Winneway). Prior to the *James Bay and Northern Quebec Agreement*,[[6]](#footnote-6) Chisasibi (Fort George), Nemaska (Nemiscau), Waskaganish (Rupert House), Wemindji (Paint Hills), and Whapmagoostui (Poste-de-la- Baleine or Great Whale River) were Indian settlements.
3. The proposed class action names as defendants the school service centres, formerly school boards, where these establishments were located.
4. The Attorney General of Canada, who did not exercise powers conferred by the *Act* in respect of the Inuit, is sued only in respect of establishments attended by persons subject to the *Indian Act.*
5. Although its jurisdiction over the Inuit had been recognized under section 91(24) of the *Constitution Act, 1867*,[[7]](#footnote-7) Parliament did not exercise it.

**ISSUES**

1. Should the class action be authorized as worded?
2. What are the issues in dispute?
3. The Attorney General of Canada consents to the authorization. The school service centres also consent, with the exception of the Centre de services scolaire de la Baie James. The Attorney General of Quebec has reservations about certain definitions and conclusions.

**ANALYSIS**

1. **General principles**
2. Authorization to institute a class action is granted if each of the four conditions of article 575 CCP is met. This article provides:

575. The court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that

(1) the claims of the members of the class raise identical, similar or related issues of law or fact;

(2) the facts alleged appear to justify the conclusions sought;

(3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and

(4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

1. The Supreme Court and the Court of Appeal have written extensively about the conditions for authorization, and the teachings of these judgments are summarized in *Infineon*,[[8]](#footnote-8) *Vivendi*,[[9]](#footnote-9) and *Oratoire Saint-Joseph*,[[10]](#footnote-10) among other cases.
2. In *Desjardins Financial Services Firm Inc. v. Asselin*,[[11]](#footnote-11) Kasirer J., writing for the majority, reviewed these teachings:

[27]  I therefore propose to confine myself to the law as it stands following *Infineon*, *Vivendi*and *Oratoire*. As we know, the threshold for authorizing a class action in Quebec is a low one. Once the four conditions set out in art. 1003 of the former *C.C.P.*(now art. 575 of the new *C.C.P.*) are met, the authorization judge *must*authorize the class action; the judge has no residual discretion to deny authorization on the pretext that, despite the fact that the four conditions are met, a class action is not “the most appropriate” vehicle (see *Vivendi*, at para. 67). Questions of law may be resolved by an authorization judge if the outcome of the proposed action depends on the judge’s doing so, but this choice is generally a discretionary one (see *Oratoire*, at para. 55). This reflects the purpose of the authorization stage of the class action: the judge’s role is to filter out frivolous claims, and nothing more (see *Oratoire*, at para. 56, citing, among other things, *Infineon*, at paras. 61, 125 and 150). Finally, there is no requirement in Quebec that the common questions predominate over the individual ones (see *Vivendi*, at paras. 56‑57). On the contrary, a single common question is enough if it advances the litigation in a not insignificant manner. It is not necessary that the common question be determinative of the outcome of the case (see *Vivendi*, at para. 58; *Oratoire*, at para. 15).

1. It is well established that the class action aims both to compensate victims and to deter reprehensible behaviour. Its main advantages remain “judicial economy, access to justice, and behaviour modification”.[[12]](#footnote-12) In this case, it is common ground that the conduct complained of ceased in 2014. In *Oratoire St Joseph*, Brown J. noted:

[8] … There are those who consider that [translation] “the class action is highly appropriate in sexual abuse cases, given the great vulnerability of the victims”: L. Langevin and N. Des Rosiers, with the collaboration of M.‑P. Nadeau, *L’indemnisation des victimes de violence sexuelle et conjugale* (2nd ed. 2012), at p. 370; see also, on this point, *Rumley v. British Columbia*, 2001 SCC 69.

1. For these purposes, a flexible, liberal, and generous approach should be adopted in order to facilitate the institution of class actions.
2. It is up to the plaintiff to show that the conditions of article 575 CCP are met. The plaintiff’s burden is one of demonstration and not of proof.[[13]](#footnote-13)
3. It is sufficient for the plaintiff to present a case with a serious colour of right, that is, a case with a chance of success, without having to establish a reasonable possibility of success.[[14]](#footnote-14) The filtering mechanism should prevent only “frivolous claims”.[[15]](#footnote-15)
4. The facts alleged in the application for authorization are taken to be true unless uncontradicted evidence demonstrates that they are false. The facts alleged by the defence are not considered proved if they can potentially be contradicted by the plaintiff.[[16]](#footnote-16)
5. The alleged facts cannot, however, be vague and imprecise.[[17]](#footnote-17)
6. In addition, the Court cannot take into consideration what is alleged in a plan of argument in the absence of a factual basis in the application.[[18]](#footnote-18) Opinions, assumptions, and arguments do not constitute alleged facts and do not bind the Court in any way.
7. Last, the authorization judge must refrain from ruling on the merits of the case by assessing the facts. If it is a pure question of law, the Court has the discretion, not the obligation, to decide it:

Questions of law may be resolved by an authorization judge if the outcome of the proposed action depends on the judge’s doing so, but this choice is generally a discretionary one.[[19]](#footnote-19)

1. The Court of Appeal, per Frédéric Bachand J.A., recently observed:[[20]](#footnote-20)

[16]      As the Supreme Court made clear in *L’Oratoire Saint‑Joseph du Mont‑Royal* and *Asselin*, the role of a motion judge on an application for authorization to institute a class action is very limited. His or her task is not to “make […] determination[s] as to the merits in law of the conclusions in light of the facts being alleged”, but rather to “filter out frivolous claims, and nothing more”. This explains why, in order to clear the hurdle set by article 575(2) *C.C.P.*, “[t]he applicant need establish only a mere ‘possibility’ of succeeding on the merits, as *not* even a ‘realistic’ or ‘reasonable’ possibility is required”.

[References omitted.]

1. He echoed the observations of Brown J. in *Oratoire St Joseph*: [[21]](#footnote-21)

[58]   The applicant’s burden at the authorization stage is simply to establish an “arguable case” in light of the facts and the applicable law … This is a “low threshold” … The applicant need establish only a mere “possibility” of succeeding on the merits, as *not even* a “realistic” or “reasonable” possibility is required …

1. Finally, *Vivendi* establishes that the existence of a question whose common resolution serves to advance the cause of the class members is sufficient to satisfy the first condition of article 575 CCP.
2. In this case, the Court is satisfied that the criteria of article 575 CCP have been met with respect to the defendants who consent to the authorization of the collective action.
3. The facts alleged appear to justify the conclusions sought.
4. Moreover, the two parties who are contesting are satisfied that criteria (1), (3), and (4)[[22]](#footnote-22) have been met. The Court agrees.
5. That leaves the arguments raised by the Centre de services scolaire de la Baie James[[23]](#footnote-23) and the Attorney General of Quebec.
6. **The Centre de services scolaire de la Baie James.**
7. The CSS de la Baie-James disputes the legal relationship alleged. It denies that it is the successor to the schools that provided education to Indigenous students in the territory of the JBNQA.[[24]](#footnote-24) Instead, it maintains that the Cree School Board and the Kativik School Board assumed the rights and obligations of the school boards that provided education to the Territory's Indigenous children.
8. The allegations concerning the CSS de la Baie-James are set out in paragraphs 28 to 38 of the application for authorization:

[translation]

a. In “New Québec”

1. On April 8, 1963, Quebec created the Direction générale du Nouveau-Québec (“DGNQ”), under the responsibility of the Ministère des Richesses naturelles (MRN).
2. The objective of the DGNQ was to coordinate Quebec’s administration of Nunavik and part of Eeyou Istchee (the Cree territory of Quebec).
3. …
4. This network of schools was run directly by the DGNQ, on reserve land or in Indian settlements, in collaboration with or with the authorization of Canada, in accordance with s. 113(b) of the *Indian Act*, R.S.C. 1952.
5. Beginning in September 1963, the Quebec government established and administered schools in Inuit villages as part of its efforts to assert sovereignty over the territory and inhabitants of Nunavik, as appears from: “En compétition pour construire des écoles: L’éducation des Inuits du Nunavik de 1939 à 1976”, exhibit P-51. These schools competed with the federal day schools by using space not occupied by them or by forcing parents to choose between one or the other.
6. Although Quebec claimed that its intention was to promote the Inuit language and culture, there was no real consultation or participation of the Inuit, who were left with an administrative structure designed for the south but ill-suited to the realities of Nunavik.
7. The DGNQ also established Cree schools in Fort-George (Chisasibi), Paint Hills (Wemindji), and Rupert House (Waskaganish) in 1965-1966.
8. In 1967, the Government of Canada transferred facilities it owned to the Ministère de l’Éducation du Québec (MEQ) for the operation of the Catholic school in Waskaganish, as appears from the proposal from the Department of Indian Affairs and Northern Development to the Treasury Boarddated September 29, 1967, exhibit P-38.
9. In July 1968, the Quebec Legislative Assembly created the School Board of New Québec (“SBNQ”), whose administrator was appointed by the Conseil exécutif du Québec, which had to ratify or disallow all its bylaws. The SBNQ was never run by commissioners elected by the Cree or the Inuit; for the Cree and the Inuit, the SBNQ was merely the *alter ego* of the province.
10. The administrator of the SBNQ was appointed in April 1970; in December 1971, the SBNQ obtained the transfer of schools from the DGNQ pursuant to an agreement between the MRN and the MEQ
11. In 1978, the SBNQ schools ... were combined with the federal infrastructure to create the Kativik School Board for the Inuit and the Cree School Board, under Indigenous control, as provided for in the 1975 *James Bay and Northern Quebec Agreement* (JBNQA).
12. The SBNQ continued to exist after the creation of the Cree and Kativik School Boards. In 1986, it was amalgamated with the School Board of Joutel-Matagami, which succeeded to its rights and obligations[[25]](#footnote-25) and eventually became the CSS de la Baie- James.
13. The CSS de la Baie-James is instead of the view that:[[26]](#footnote-26)
14. No predecessor of the CSS de la Baie-James was responsible for the school that J.J. attended. Therefore, the CSS de la Baie-James did not inherit rights and obligations regarding this school. The rights and obligations related to this school were instead transferred to the Cree School Board in 1978;
15. No CSS administered the schools established north of the 55th parallel. Accordingly, none of the CSSs could have inherited the rights and obligations regarding schools located in Inuit villages. The rights and obligations related to these schools were instead transferred to the Kativik School Board in 1978.
16. The second of these assertions was not the subject of any evidence, which could have been submitted with the Court’s permission.[[27]](#footnote-27) Therefore, the Court cannot take it into account.
17. The assessment of the CSS’s arguments is based on both factual analysis and certain legal principles.
18. The resolution of factual issues is the prerogative of the trial judge. It will be up to that judge to determine the status of the school attended by the plaintiff J.J. and of other schools attended by Cree and Inuit children in the Territory.
19. The analysis of the various orders in council transferring responsibility for public educational institutions to the Quebec government, then to the DGNQ, then to the CSQ, while a matter of law, should not take place at the authorization stage. As noted above, such an exercise is discouraged. The contradiction in the allegations does not have the starkness that convinced Christian Immer J. to reject the assertion that a CISSS had inherited the obligations of a youth center in *E.L. c*. *Procureur général du Québec*.[[28]](#footnote-28)
20. The JBNQA specifically mentions that the School Board of New Québec exercised responsibilities in both Eeyou Istchee and Nunavik:[[29]](#footnote-29)

16.0.14 School buildings, facilities, residences and equipment of Québec and Canada shall be transferred or leased, at nominal cost, to the Cree School Board for their use by it. The means and procedures for such transfer or lease shall be arranged by agreement between the Cree School Board and the said governments and will include the right to modify the said buildings, facilities, residences and equipment as may be necessary to fulfill the educational purposes of the Board.

16.0.31 During the second year, (1977-1978, transition period), in accordance with the provisions of this Section, the following will be done:

…

b) subject to all of its resolutions being approved by the said tri-partite committee, the Cree School Board shall administer the schools in Categories I and II lands falling under its jurisdiction.

Commencing with the year 1978-1979 all teachers and principals of the School Board of New Québec and of the Department of Indian Affairs and Northern Development assigned to schools in the school municipality shall become employees of the Cree School Board. The School Board of New Québec and the Department of Indian Affairs and Northern Development shall withdraw from the operation of schools in the school municipality.

17.0.76 All buildings used for educational purposes, including residences for teachers, belonging to the Department of Indian Affairs and Northern Development or to the School Board of New Québec and all material and other assets located in such buildings as part of the regular equipment shall be taken over by the Kativik School Board in accordance with a procedure to be determined and at nominal cost.

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During the first year, the parents’ committees shall be constituted, the commissioners elected and the director-general appointed by the commissioners. The School Board of New Québec and the Department of Indian Affairs and Northern Development shall continue to operate the schools they now administer. The Kativik School Board will plan the operations for the second year and, with the assistance of the School Board of New Québec and the Department of Indian Affairs and Northern Development, will draw up the operating and capital assets budget for the second year.

During the second year, the Kativik School Board will administer all schools in the territory. All its decisions shall be subject to the approval of a tripartite committee composed of the director-general, the administrator of the School Board of New Québec and an appointee of the Federal Government.

As of the third year, all teachers and principals of the School Board of New Québec and of the Department of Indian Affairs and Northern Development assigned to schools in the territory shall become employees of the Kativik School Board. The School Board of New Québec and the Department of Indian Affairs and Northern Development shall withdraw from the operation of schools in the territory.

[Emphasis added.]

1. These provisions of the “first modern treaty” contain sufficient elements for the plaintiffs to argue that the CSS de la Baie James, the successor to the School Board of Joutel-Matagami, in turn the successor to the School Board of New Québec, should be held liable.
2. Thérèse Rousseau-Houle J.A. wrote the following in *Québec c*. *Commission Scolaire Crie*:[[30]](#footnote-30)

[translation]

[85]           Until the signing of the Agreement, Cree schools were under the jurisdiction of Québec's ministère des Affaires indiennes et du Nord, while Inuit schools were primarily the responsibility of Québec's ministère de l'Éducation. During the first year of the two-year transition period (1976-1978) provided for in paragraphs 16.0.30 and 16.0.31 of the Agreement, the Nouveau-Québec school board continued to operate the Cree schools that, prior to the Agreement, it had overseen jointly with the federal Department of Indian Affairs and Northern Development. During the second year, a tri-partite committee composed of the administrator of the School Board of New Québec, a member of the Department of Indian Affairs and Northern Development and a member of the Cree School Board took over the financial management of the schools under the jurisdiction of the newly created Cree School Board. Beginning in 1978-1979, the School Board of New Québec and the Department of Indian Affairs and Northern Development ceased to run these schools, which were taken over by the Cree School Board and the Kativik School Board.

1. The CSS also relies on exhibit P-51 to assert that the Waskaganish school is not mentioned in the transfer of responsibilities between the DGNQ and the School Board of New Québec:

[translation]

It was only in December 1971 that the MRN and the MEQ agreed that the DGNQ would transfer its schools to the SBNQ, which acquired the Kuujjuaq, Chisasibi, Kangirsuk, and Salluit schools on December 14 for the symbolic amount of $1.

1. This exhibit is an article published in Recherches Amérindiennes au Québec by three university professors of anthropology, ethnohistory, and political science: “En compétition pour construire des écoles : L’éducation des Inuits du Nunavik de 1939 à 1976”.[[31]](#footnote-31) The article provides an excellent overview of the development of education by non-Indigenous people in Nunavik, as well as the rivalry between the federal and provincial governments for the establishment of schools in Nunavik. However, the Court cannot give this article full evidentiary weight. The record will have to be completed, at trial, by the filing of agreements or administrative texts. As Yves-Marie Morissette J.A. wrote in *Homsy* *c*. *Google*:[[32]](#footnote-32)

[translation]

[19]     The Supreme Court also stated the following in *Infineon*, in which the respondent had been granted authorization to institute a class action by the Court of Appeal: “The respondent does not need to present absolute proof of the allegation, nor do they even need to prove it on a balance of probabilities. At this stage, all it needs to do is demonstrate an arguable case by means of allegations and supporting evidence” [emphasis added].

[20]     It can be argued that “absolute proof” is conclusive proof that resolves a factual issue in dispute between the parties as soon as it is found admissible. Evidence “on a balance of probabilities” is evidence found to be conclusive at the end of a trial or, possibly, in certain cases, plausible evidence filed in the record during the trial or otherwise, which can already be considered conclusive because there is no intention to contradict it and it meets the civil law standard of the balance of probabilities.

[21]     However, as we are at the class action authorization stage, these usual notions no longer apply as such to the appellant’s situation.

1. As for the school attended by Mr. J., the proposal from the Department of Indian Affairs and Northern Development to the Treasury Board dated September 29, 1967, exhibit P-38, states:

Acceptance of transfer of administration and control of buildings

Proposal: to transfer to the Province of Quebec the administration and control of two crown-owned school buildings located at Rupert’s House P.Q. for one year effective September 1, 1967, and thereafter on an annual basis at the pleasure of the minister.

Remarks: The province of Quebec is taking over a private school operated by the Roman Catholic Missionary at Rupert's House. Indian children, through the preference of their parents, have been attending this private school to obtain instruction in French, and, because of this, two one-classroom schools are not required by the Indian Affairs Branch.

The Missionary has been operating this school in unsatisfactory quarters, and with the department of Education of the Province of Quebec taking over the administration of the school as a provincial one, it is proposed that the two unused classrooms be transferred to the province of Quebec. ... Operation of the school by the province will give assurance that an adequate standard of education will be maintained.

1. The CSS’s reasons are stated as follows:

[translation]

[45] For the Direction générale du Nouveau-Québec to have transferred the Catholic school in Rupert House to the School Board of New Québec, that school would necessarily have had to have been under the jurisdiction of the Direction générale du Nouveau-Québec at some point after April 1963;

[46] The plaintiffs did not submit any factual allegation or exhibit to establish this;

[47] As stated above, exhibit P-38 instead shows that the school was under the jurisdiction of the Crown, not the Direction générale du Nouveau-Québec, until its transfer on September 29, 1967;

[48] That exhibit, P-38, also shows that as of September 29, 1967, it was the Province of Quebec, not the Direction générale du Nouveau-Québec or even the School Board of New Québec, that inherited the administration and control of that school;

[49] In addition, nothing in the application for authorization shows that the school was transferred from the Province of Quebec to the Direction générale du Nouveau-Québec or the School Board of New Québec after the signature of the agreement on September 29, 1967;

1. The Court is of the view that despite the gaps in the evidence identified in the CSS’s arguments, the allegations in the application for authorization are sufficient to allow the plaintiffs to submit more complete evidence of their claims, which are based, among other things, on the wording of the JBNQA.
2. The CSS also notes [translation] “that exhibit P-38 specifies that this school is “private”. By definition, a private school is never administered or controlled by a CSS, which is a legal person established in the public interest”.[[33]](#footnote-33)
3. By definition, if the school falls under the jurisdiction of the province, whether through the Ministère des Ressources naturelles, the Ministère de l’Éducation, or the DGNQ, the school becomes public. This argument cannot be accepted.
4. The CSS also argues that the Cree and Kativik School Boards assumed the rights and obligations of the School Board of New Québec, thereby releasing the SBNQ from its obligations towards its former students. This is a serious argument based on sections 570 and 602 of *The* *Education Act for Cree, Inuit and Naskapi Native Persons*:[[34]](#footnote-34)

570. From the erection of the school municipality referred to in section 569, a school board is established for such municipality under the name of the “Cree School Board”. Subject to section 584, such school board replaces the previously existing school board in such territory and succeeds to their rights and obligations.

602. From the erection of the school municipality referred to in the first paragraph of section 601, a school board is established for such school municipality under the name of the “Kativik School Board”.

Subject to section 676, such school board replaces the previously existing school boards in such territory and succeeds to their rights and obligations.

1. For the plaintiffs, it is inconceivable that Indigenous school boards could assume the obligations arising from the abuse suffered by Indian and Inuit students. In their view:

[translation]

[55] Contrary to what the defendant CSSs propose, sections 570 and 602 of *The* *Education Act for Cree, Inuit and Naskapi Native Persons* cannot be interpreted as making the Cree and Kativik School Boards responsible for the abuse and system of acculturation that prevailed under the management of the SBNQ, the very reasons for which they were created, while the SBNQ continued to exist and became the CSS Baie James

[56] Such an interpretation would be contrary to the purpose of the JBNQA and to the special regime established by sections 16 and 17, which do not provide for such a transfer of responsibility. The JBNQA takes precedence over any inconsistent provision,45 including in the *Education* *Act*.46

…

1. Sections 16 and 17 provide for a gradual transition of the rights and obligations of the SBNQ, to the extent required for the Cree and Inuit authorities to gradually assume, for the future, the responsibilities related to the operation of education on their territories.51 This transition mainly concerned the administration of the territory’s schools, particularly with regard to capital assets, building construction and repair, teachers, principals, and other employees, as well as financial management.

[59] This transition does not include the SBNQ’s obligations regarding extracontractual liability prior to the assumption of responsibility by the Cree and Inuit authorities. Those obligations remained with the SBNQ after the creation of the Cree and Kativik School Boards and were inherited by the CSS de la Baie James. At the authorization stage, these allegations are sufficient to establish a colour of right with respect to this defendant.

1. The JBNQA provides that its terms prevail over any inconsistence legislation:

16.0.2 The Education Act, (1964 R.S.Q., c. 235 as amended) and all other applicable laws of general application in the province shall apply in the areas covered by this Section save where these laws are inconsistent with this Section in which event the provisions of this Section shall prevail.

17.0.2 The Kativik School Board shall be governed by the provisions of the Education Act (1964 R.S.Q., c. 235, as amended) and all other applicable laws of general application in the Province, save where these laws are inconsistent with this Section, in which event the provisions of this Section shall prevail.

[Emphasis added.]

1. Sections 16.0.14, 16.0.31, 17.0.76, and Annex 1 of section 17, which address the transfer of buildings, facilities, residences, equipment, and employees, are reproduced above.
2. None of these provisions provide for the new school boards to assume the past obligations of the SBNQ or of the provincial or federal governments. They provide only for a transfer of material property and a change of employer for school personnel.
3. Again, in the words of Rousseau-Houle J.A. in *Québec* *c*. *Commission Scolaire Crie*:

[translation]

[98]          These considerations lead me to conclude that paragraphs 16.0.22 and 16.0.23 of the Agreement must be interpreted broadly, liberally and in compliance with the governments' fiduciary obligation toward the Crees. This fiduciary relation must, however, reflect a reasonable analysis of the signatories' intention and interest, and take into account the historical and juridical context that produced the Agreement. Given that the Crees were counselled by attorneys and that the Agreement can be characterized as "modern", ambiguity cannot systematically be interpreted in the Crees' favour.

[99]           In analysing the conformance of the May 1 agreement with the provisions of Section 16 -- specifically, paragraphs 16.0.22 and 16.0.23 -- of the Agreement, it must also be borne in mind that these paragraphs must take precedence over any other statute or accord, pursuant to both paragraph 16.0.38 of the Agreement and sections 3 and 4 of the Cree-Naskapi (of Quebec) Act [(S.C. 1984, c. 18)](https://advance.lexis.com/api/document?collection=legislation-ca&id=urn:contentItem:5VYK-WB81-F81W-2397-00000-00&context=1505209). This Act gives effect to Section 9 of the Agreement and confers on the Crees and Naskapi of Québec a special legislative system. While incorporating the main points of the Indian Act (R.S.C. 1970, c. I-6), it transfers to Indian bands a number of powers held by the minister under the Indian Act. Sections 3 and 4 set forth the order of precedence of the statutes applicable to the Crees and the Naskapi. The James Bay and Northern Quebec Native Claims Settlement Act(S.C. 1976-77, c. 32), which gave effect to the Agreement, takes precedence over any federal statute incompatible with it. The Cree-Naskapi (of Quebec) Act does not supersede the James Bay and Northern Quebec Native Claims Settlement Act, but does take precedence over any other federal statute incompatible with it. Québec statutes with a general application do not apply in cases of incompatibility between them and the Cree-Naskapi (of Quebec) Act and attendant regulations.

1. There is therefore a serious argument to be made here as to the interpretation of sections 570 and 602 of the *Education Act for Cree, Inuit and Naskapi Native Persons*, and even a possible argument as to their inconsistency with the wording of the JBNQA.
2. It would be adventurous and premature to attempt to resolve this issue definitively at this stage of the proceedings.[[35]](#footnote-35)
3. The Court finds that the requirements of paragraphs 575(2) and (4) CCP are met with respect to the Centre de services scolaire de la Baie James.
4. **The Attorney General of Quebec**
5. The AGQ is of the opinion that the application for authorization lacks precision in certain respects. The AGQ’s submissions at this stage of the proceedings concern the following aspects:[[36]](#footnote-36)
6. There are gaps in the definitions of the classes, which prevent the adequate identification of members;
7. The proposed family classes do not adequately respond to the issues raised by the main action;
8. The facts alleged do not support the conclusions sought against the Quebec government concerning abuse and the quality of education;
9. Let us examine these criticisms one by one.
10. **Class definitions**
11. The AGQ argues that the term “day school” is not sufficiently precise to be used to define the class. Indeed, it is not defined by legislation, and more specifically not by the *Education Act* in force at the relevant time.
12. If we replace this definition with that used in *McLean*,“Indian day school,” which does not seem to have been an obstacle to the approval of the settlement, the concept is readily understood:
13. Indian Day Schools

[14]  Beginning in 1920, Canada established, funded, controlled and maintained a system of day schools for the compulsory education of Indigenous children across the country - the Indian Day Schools. These schools were called “Federal Indian Day Schools” in the southern part of the country, while in the North (the Territories and Northern Quebec) they were generally referred to as “Federal Day Schools”.

[15]  Attendance at these schools was, as expected, compulsory. However, truancy resulted in punishment for not only the student but also for the family including the cancellation of the “allowance” to which parents were entitled.

[16]  Approximately 190,000 children attended these schools and approximately 127,000 of those children were living as of October 2017. The sad fact is that with the passage of time approximately 1,800 such survivors die each year; this number will steadily increase annually with time.

[17]  Canada funded the schools, paying for such matters as teachers’ salaries and bonuses, compensation for administration personnel, and the construction and maintenance of schools. Although many schools were associated with churches of various denominations, almost all schools were ultimately supervised and administered by Indian Agents who were required to conduct monthly inspections and prepare associated reports for the federal department responsible.

[18]  Beginning in the 1960s and continuing for the following two decades, Canada transferred the funding and control of these schools to the provinces, territories, and Indigenous governments..

[19]  These schools had profoundly negative effects on many of their students. The representative plaintiffs were exposed to a program of denigration, psychological abuse and physical violence often for such simple things as speaking their own language to others of their community at the schools. This experience had a deep and lasting impact on the representative plaintiffs, impairing their sense of self-worth and impeding their relationships with others and leading to personal issues with substance abuse among the many ills that resulted from that abuse.

1. The class definitions as authorized in that case were as follows:[[37]](#footnote-37)
2. ***Survivor Class*** means all persons, wherever they may now reside or be domiciled, who attended an Indian Day School during the Class Period.
3. **Family Class** means all persons who are a spouse or former spouse, child, grandchild or sibling of a member of the Survivor Class and the spouse of a child, grandchild or sibling of a Survivor Class member.
4. In this case, the schools concerned are those transferred by the federal government to Quebec pursuant to the provisions of section 113 of the *Indian Act*, or those established by Quebec in Nunavik
5. The AGQ is also concerned about the definition of the term [translation] “person subject to the *Indian Act*”. Does it refer to a person with “Indian” status who is “registered” within the meaning of the *Act*? Does it refer only to a person who was subject to compulsory school attendance under the *Indian Act*, i.e., with some exceptions, only to an Indian child who ordinarily resided on a reserve or on lands belonging to the Crown in right of Canada or a province?
6. The notion of a person subject to the *Indian Act* [translation] “who attended a public or religious provincial day school located in an Indigenous community (reserve or Indian settlement) and whose attendance the Minister of Indian Affairs could or claimed to be able to require,” addresses the AGQ’s concerns.
7. Thus, the Court does not share these concerns about the possibility of class members knowing they are included in the class.
8. As for the Inuit members of the class,[[38]](#footnote-38) the AGQ wonders how to determine who was entitled to be registered as an Inuit beneficiary before the JBNQA was signed and came into force in 1975?
9. The JBNQA answers this question in section 3.2.4:

3.2.4 A person shall be entitled to be enrolled as a beneficiary under the Agreement and be entitled to benefit therefrom if on November 15, 1974 he or she was:

a) a person of Inuit ancestry who was born in Québec or is ordinarily resident in Québec or, if not ordinarily resident in the Territory, is recognized as a member thereof, by one of the Inuit communities, or

b) a person of Inuit ancestry who is recognized by one of the Inuit communities as having been on such date a member thereof, or

c) the adopted child of a person described in sub-paragraphs a) or b).

1. It would be difficult to find a clearer definition.
2. As for the term [translation] “Inuit land claim organization,” it refers to land claim organizations recognized for this purpose by the Government of Canada for the negotiation of the following land claim agreements: the James Bay and Northern Quebec Agreement and Complementary Agreements, the Inuvialuit Final Agreement, the Nunavut Land Claims Agreement, and the Labrador Inuit Land Claims Agreement (Nunatsiavut).
3. **The Family Classes**
4. The AGQ notes that, under the proposed definition of family class in relation to reserves or Indian settlements, the persons concerned are not necessarily registered Indians within the meaning of the *Indian Act*, or even subject to the *Act*.
5. The AGQ makes the same argument for the Inuit family class.
6. Spouses may not be Indians within the meaning of the *Act,* or Inuit. They have nevertheless suffered from the abuse of their Indigenous spouse or parent. The definition adopted by the Federal Court, quoted above, does not make this distinction. There is no reason to make it.
7. The AGQ also argues that the facts alleged do not support the proposed definitions of the family classes.
8. The allegation, set out in para. 183 of the amended application, is indeed sparse:

[translation]

[183] Family Class members have also suffered serious harm as a result of this abuse: among other things, they have suffered from weakened emotional connections with Survivor Class members, and they have suffered as a result of mental health disorders affecting Survivor Class members.

1. Nevertheless, there is an assertion that damages were suffered. The plaintiffs have submitted [translation] “some evidence”, namely exhibit P-52**,** excerpts from Volume V of the *Final Report* *of the Truth and Reconciliation Commission of Canada,* entitled “The Legacy,” containing numerous illustrations of the harm suffered by members of the Family Classes.
2. As the AGQ indicates, It is true that this report deals with residential schools. It is nevertheless reasonable to conclude that even if the harms suffered by family members of former day school students could be less severe, they may still exist.
3. It should also be noted that in the case of the plaintiff J., it is alleged that his daughter [translation] “inherited his anger”.[[39]](#footnote-39)
4. The Court considers the allegations sufficient at the authorization stage.
5. **Abuse and the quality of education**
6. The AGQ submits that the facts alleged do not support the conclusions sought against the Quebec government concerning abuse and the quality of education. A careful study of the conclusions reveals that they contain no references to the quality of education.
7. The allegations of abuse are substantiated and numerous. They allow for a debate on the possible liability of the Quebec government, which does not dwell on the issue in its plan of argument. The same is true of the accusations of loss of language and identity.
8. The criticisms regarding the quality of education call for more detailed consideration.
9. It is first necessary to identify the allegations that would justify such a complaint. General assertions that the quality of education provided to Indigenous children was inferior to that provided to other Quebec children are merely expressions of opinion, which do not satisfy the need to allege facts that can support a cause of action.
10. For example, Mr. J.’s assertion that he and his classmates “received poor quality of education”[[40]](#footnote-40) is not supported by any facts.
11. These gaps cannot be filled by the arguments in the plan of argument presented at the authorization hearing.
12. The following statements about the quality of education are set out in paragraphs 154 and 156:

[translation]

1. Quebec was also negligent in failing to take reasonable steps to ensure that quality educational services were provided to class members. Rather, under certain agreements with Canada, Quebec allowed class members to receive technical education or education intended for students with learning difficulties.

[156] As a result of Quebec’s negligence, class members did not have access to quality education. On the contrary, the plaintiffs and class members received education of poor ­quality, compromising their ability to undertake post-secondary studies. The violence and humiliation that prevailed in the day schools kept class members away from school once the period of compulsory attendance was over, which had a major impact on their ability to earn a living and develop professionally. Further, in some schools, class members were placed in “special” classes intended for technical training or for students with learning difficulties and thus received a quality of education that was unjustifiably lower than other students attending provincial schools.

1. In addition to opinions and assertions, there are more specific factual allegations specifically addressing educational content as distinct from abuse. These allegations, however, are limited to cases where Indigenous children were placed in special classes intended for technical training, not due to their abilities, but because of their Indigenous identity.
2. In this respect, the following provisions of the *Charter of human rights and freedoms* are relevant:[[[41]](#footnote-41)](#bookmark37)

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

40. Every person has a right, to the extent and according to the standards provided for by law, to free public education.

43. Persons belonging to ethnic minorities have a right to maintain and develop their own cultural interests with the other members of their group.

1. There is therefore [translation] “some evidence”, as required, for example, in *Ward*.[[[42]](#footnote-42)](#bookmark38) As for the Quebec government’s obligation to ensure that quality education be provided, in addition to the obligations to which it was subject under the various versions of the *Education Act*, it was possibly under a contractual obligation, as set out in exhibit P‑38: “Operation of the school by the province will give assurance that an adequate standard of education will be maintained”.
2. The AGQ fears that the plaintiffs’ claims regarding the quality of education will open the door to a commission of inquiry, which is of course not the role of the Superior Court. As Donald Bisson J. wrote in *Conseil pour la protection des malades c*. *Centre intégré universitaire de santé et de services sociaux de la Montérégie-Centre*:[[43]](#footnote-43)

[translation]

[62]        It is true that the CPM action, as authorized, covers a broad range of allegations that vary in seriousness against the defendant institutions. However, this class action should not be transformed into a commission of inquiry into all the problems experienced in CHSLDs since 2015 and all those that may occur in the future, including the COVID‑19 issue. The fair administration of justice prohibits the Court from engaging in such a Herculean process.

1. The same judge authorized the class action in that case in the following terms:[[44]](#footnote-44)

[translation]

[95]        AUTHORIZES the class action seeking damages against the defendants as a result of their alleged failure to fulfil their legal obligation to provide an alternative living environment that respects the rights of the designated person Daniel Pilote and the class members under the *Act respecting health services and social services*, the *Civil Code of Québec*, and the *Charter of human rights and freedoms*, on behalf of the following class:

[translation]

All persons who currently live or have lived in a Quebec public Centre d’hébergement de soins de longue durée (“CHSLD”) since July 9, 2015.

1. A class action was authorized against 22 defendants, with broad allegations against the CHSLDs. Bisson J. did not consider it a commission of inquiry.
2. In this case, in order to take into account allegations and not assertions, the examination of the allegations relating to the quality of the education received will be limited to cases where, because of their Indigenous identity, students were relegated to programs of inferior quality to those they should have followed.

**CONCLUSION**

1. As this condition does not affect the conclusions sought, the action will be authorized in accordance with its conclusions against the AGQ and the other defendants.
2. Under article 576 CCP, the authorizing judge determines the district in which the action is to be instituted, a function that former article 1004 CCP reserved for the chief justice.
3. The action will proceed in the District of Montreal, where the AGC and AGQ can be sued, since the schools in question are scattered throughout Quebec. The Court retains the power to hold hearings in other judicial districts in this case, more specifically in the District of Abitibi, where both plaintiffs are domiciled.
4. The determination of the content, publication, and dissemination of the notices is deferred to a later date, when the terms and conditions that may be particular to this type of action can be discussed.[[45]](#footnote-45)
5. In view of the dispersal of class members throughout Quebec, the opt-out period under article 580 CCP is set at ninety days.

**FOR THESE REASONS, THE COURT:**

1. **GRANTS** in part the application to institute a class action;
2. **ORDERS** that the unredacted documents containing information about the nature of the abuse and mistreatment suffered by the plaintiff J.J. be sealed;
3. **ORDERS** the filing of a redacted version of the pleadings with the Registry of class actions;
4. **AUTHORIZES** the plaintiffs J.J. and A.Je. to institute this class action on behalf of the class members;
5. **AUTHORIZES** the following class action:

- An action for damages and punitive damages;

1. **APPOINTS** the plaintiffs J.J. and A.Je. as representatives for the purpose of instituting this class action on behalf of the members of the classes described below:
2. Survivor Class – Reserves or Indian Settlements: “Any person subject to the *Indian Act* who*,* between 1951 and 2014, in Quebec, attended a public or religious provincial day school located in an Indigenous community (reserve or Indian settlement) and whose attendance the Minister of Indian Affairs could or claimed to be able to require.”

Schools operated exclusively by a band council, as defined in the *Indian Act*, are excluded from the definition of “Survivor Class – Reserves or Indian Settlements.

1. Family Class – Reserves or Indian Settlements: “Any spouse or civil union spouse, any sibling, and any direct descendant in the first or second degree of a member of the “Survivor Class – Reserves and Indian Settlements”, as well as any spouse or civil union spouse of any sibling or direct descendant in the first or second degree of such a person.”
2. Survivor Class - Inuit Villages: “Any person, enrolled or entitled to be enrolled as an Inuit beneficiary under the James Bay and Northern Quebec Agreement or with an Inuit land claim organization who, between 1963 and 1978, in Quebec, attended a public or religious provincial day school located in an Inuit village and whose attendance the Quebec government could or claimed to be able to require.”
3. Family Class - Inuit Villages: “Any spouse or civil union spouse, any sibling, and any direct descendant in the first or second degree of a member of the “Survivor Class – Inuit Villages”, as well as any spouse or civil union spouse of any sibling or direct descendant in the first or second degree of such a person.”

Claims, or those parts of claims, made by any person concerning sexual assault by any priest, member, or employee of the religious Congregation known as the Missionary Oblates of Mary Immaculate, outside the activities of a public or religious provincial day school, are excluded from all these classes.

1. **IDENTIFIES** as follows the principal questions of fact or law to be dealt with collectively in respect of the “Survivor Class – Reserves or Indian Settlements” and the “Family Class – Reserves or Indian Settlements”:
2. Regarding the defendant Attorney General of Canada:
3. Did Canada establish, supervise, or administer the schools concerned by the “Survivor Class – Reserves or Indian Settlements”? If so, did it commit a fault in establishing, supervising, or administering these schools?
4. Did Canada have a fiduciary duty, statutory duty under the *Indian Act* (or its previous versions), or contractual obligation to protect or preserve the health, well- being, identity, or culture of the class members in question? If so, did it fulfill this obligation?
5. Did Canada cause physical or psychological harm to the class members in question?
6. Are there common factors that mitigate Canada’s liability, such as third-party liability?
7. Regarding the defendants Attorney General of Quebec and the school service centres:
8. Did employees of the predecessors of the school service centres or other persons psychologically, physically, or sexually abuse members of the Survivor Class?
9. If the answer to the preceding question is yes, did Quebec or the predecessors of the school service centres and their employees act diligently to prevent and put a stop to the psychological, physical, and sexual abuse committed by certain employees against members of the Survivor Class?
10. If the answer to the first question is yes, did the defendants, through their employees, breach their duty to report by failing to denounce the psychological, physical, and sexual abuse suffered by the class members in question while they were attending Indigenous day schools?
11. Did the defendants breach their legal obligations to the class members in question by establishing, supervising, or administering the Indigenous day schools?
12. Did the defendants have an obligation, in particular under the *Charter of human rights and freedoms*, to protect or preserve the health, well-being, identity, or culture of the class members in question? If so, did they fulfill this obligation?
13. Did the predecessors of the school service centers incur liability as employers or in any other capacity for the abuse committed by their employees or other persons whom they allowed to exercise supervision or custody of the class members in question?
14. Regarding all defendants:
15. Did the Indigenous day school system established, supervised, and administered by the defendants cause physical and psychological harm to the class members?
16. What amount of compensatory damages are the class members entitled to in compensation for the damages common to all (common experience damages)?
17. Should the defendants be held solidarily liable for compensatory damages? If so, how should liability be apportioned among the defendants?
18. Did the defendants or their employees unlawfully and intentionally violate the rights of the class members protected by the *Charter of human rights and freedoms*?
19. If so, what amount of punitive damages should the defendants be ordered to pay to each class member?
20. **IDENTIFIES** as follows the principal questions of fact or law that will be dealt with collectively in respect of the “Survivor Class - Inuit Villages” and the “ Family Class - Inuit Villages” regarding the defendants Attorney General of Quebec and the school service centres:
21. Did employees of the predecessors of the school service centres or other persons psychologically, physically, or sexually abuse members of the Survivor Class?
22. If the answer to the preceding question is yes, did Quebec or the predecessors of the school service centres and their employees act diligently to prevent and put a stop to the psychological, physical, and sexual abuse committed by certain employees against children that were entrusted to them?
23. If the answer to the first question is yes, did the defendants, through their employees, breach their duty to report by failing to denounce the psychological, physical, and sexual abuse suffered by the members of the class while they were attending Indigenous day schools?
24. Did the defendants breach their legal obligations to the class members by establishing, supervising, or administering the Indigenous day schools?
25. Did the defendants have an obligation, in particular under the *Charter of human rights and freedoms*, to protect or preserve the health, well-being, identity, or culture of the class members? If so, did they fulfill this obligation?
26. Did the predecessors of the school service centres incur liability as employers or in any other capacity for the abuse committed by their employees or other persons whom they allowed to exercise supervision or custody of the class members?
27. Did the Indigenous day school system established, supervised, and administered by the defendants cause physical and psychological harm to the class members?
28. What amount of compensatory damages are the class members entitled to in compensation for the damages common to all (common experience damages)?
29. Should the defendants be held solidarily liable for compensatory damages? If so, how should liability be apportioned among the defendants?
30. Did the defendants or their employees unlawfully and intentionally violate the rights of the class members protected by the *Charter of human rights and freedoms*?
31. If so, what amount of punitive damages should the defendants be ordered to pay to each class member?
32. **IDENTIFIES** as follows the principal issues of fact or law to be addressed individually with respect to the “Survivor Class – Reserves or Indian Settlements” and the “Family Class – Reserves or Indian Settlements” regarding all defendants:
33. In addition to the damages recovered collectively, what other damage was suffered by each class member as a result of the fault of the defendants or their employees?
34. What amount of compensatory damages is each class member entitled to on the basis of the nature of the abuse, the harm, the consequences suffered, and the parameters established by the Court?
35. Should the defendants be held solidarily liable for compensatory damages? If so, how should liability be apportioned among the defendants?
36. **IDENTIFIES** as follows the principal questions of fact or law to be dealt with individually with respect to the “Survivor Class – Inuit Villages” and the “Family Class – Inuit Villages” regarding the defendants Attorney General of Quebec and the school service centres:
37. In addition to the damages recovered collectively, what other damage was suffered by each class member as a result of the fault of Quebec and the predecessors of the school service centres or their employees?
38. What amount of compensatory damages is each class member entitled to on the basis of the nature of the abuse, the harm, the consequences suffered, and the parameters established by the Court?
39. Should the defendants be held solidarily liable for compensatory damages? If so, how should liability be apportioned among the defendants?
40. **IDENTIFIES** as follows the related conclusions:
41. **Grant** the class action of the plaintiffs on behalf of all class members;
42. **Condemn** the defendants solidarily to pay each member of the Reserves or Indian Settlements Class the amount of $20,000 in moral damages as “common experience damages”, subject to adjustment, plus interest at the legal rate and the additional indemnity set out in article 1619 of the *Civil Code of Québec*, from the date of service of this application;
43. **Condemn** the defendants Attorney General of Quebec and the school service centres solidarily to pay each member of the Inuit Village Class the amount of $20,000 in moral damages as “common experience damages,” subject to adjustment, plus interest at the legal rate and the additional indemnity set out in article 1619 of the *Civil Code of Québec*, from the date of service of this application;
44. **Order** the collective recovery of the class members’ claims as “common experience damages”;
45. **Condemn** the defendants solidarily to pay each member of the Reserves or Indian Settlements Class an additional amount of moral and pecuniary damages, the quantum of which is to be determined subsequently on the basis of the specific abuse suffered by the class members, plus interest at the legal rate and the additional indemnity set out in article 1619 of the *Civil Code of Québec*, from the date of service of this application;
46. **Condemn** the defendants Attorney General of Quebec and the school service centres solidarily to pay each member of the Inuit Village Class an additional amount of moral and pecuniary damages, the quantum of which is to be determined subsequently on the basis of the specific abuse suffered by the class members, plus interest at the legal rate and the additional indemnity set out in article 1619 of the *Civil Code of Québec*, from the date of service of this application;
47. **Order** theindividual recovery of the class members’ claims for moral and pecuniary damages for specific abuse;
48. **Condemn** each defendant to pay each member of the Reserves or Indian Settlements Class the amount of $20,000 in punitive damages, subject to adjustment;
49. **Condemn** the defendants Attorney General of Quebec and the school service centres to pay each member of the Inuit Village Class the amount of $20,000 in punitive damages, subject to adjustment;
50. **Order** thecollective recovery of the class members’ claims for punitive damages;
51. **Make** any other order that the Court considers appropriate to safeguard the rights of the parties;
52. **Condemn** the defendants solidarily to pay costs, including the costs of notices and administrative and expert fees.
53. **DECLARES** that, unless they opt out, class members will be bound by any judgment to be rendered on the class action in the manner provided for by law;
54. **FIXES** the opt-out period at ninety (90) days after the date of the notice to members, at the expiration of which the class members who have not opted out will be bound by any judgment to be rendered;
55. **ORDERS** the publication and distribution of a notice to members on terms to be determined by the Court at a subsequent case management conference, at the defendants’ expense;
56. **ORDERS** that the action proceed in the District of Montreal;
57. **THE WHOLE**, with costs against the defendants.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SYLVAIN LUSSIER, J.S.C.**

Mtre Marie-Eve Dumont

Mtre David Schulze

Mtre Léa Lemay-Langlois

Mtre Maryse Décarie Daigneault

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Date of hearing: November 1, 2023

1. RSC 1985, c. I-5, the “*Act*”. [↑](#footnote-ref-1)
2. “Provincial Indigenous Day Schools.” [↑](#footnote-ref-2)
3. *McLean v*. *Canada*, 2019 FC 1075; leave to appeal to the FCA refused, *Ottawa* *v*. *McLean*, 2019 FCA 309.  [↑](#footnote-ref-3)
4. [*Indian Act Amendment and Replacement Act*,](https://canlii.ca/t/69n7l) SC 2014, c. 38, s. 17. [↑](#footnote-ref-4)
5. CQLR c. C-12, the “*Charter*”. [↑](#footnote-ref-5)
6. The “JBNQA”. [↑](#footnote-ref-6)
7. *Reference as to whether "Indians" includes in s. 91 (24) of the B.N.A. Act includes Eskimo in habitants of the Province of Quebec*, [1939] SCR 104. [↑](#footnote-ref-7)
8. *Infineon Technologies AG* *v*. *Option consommateurs*, 2013 SCC 59. [↑](#footnote-ref-8)
9. *Vivendi* *Canada Inc*. *v*. *Dell’Aniello*, 2014 SCC 1. [↑](#footnote-ref-9)
10. *L’Oratoire Saint-Joseph du Mont-Royal* *v*. *J.J*., 2019 SCC 35. [↑](#footnote-ref-10)
11. 2020 SCC 30. [↑](#footnote-ref-11)
12. *Hollick* *v* *Toronto (City)*, 2001 SCC 68 at para. 27. [↑](#footnote-ref-12)
13. *Durand* *c*. *Subway Franchise Systems of Canada*, 2020 QCCA 1647 at para. 53. [↑](#footnote-ref-13)
14. *Daigle* *c*. *Club de golf de Rosemère*, 2019 QCCS 5801 at para. 17. [↑](#footnote-ref-14)
15. *Desjardins Cabinet de services financiers Inc.* *v*. *Asselin,* 2020 SCC 30 at paras. 25 and 27. [↑](#footnote-ref-15)
16. *Durand* *c*. *Subway Franchise Systems of Canada*, 2020 QCCA 1647 at para. 52 [↑](#footnote-ref-16)
17. *Infineon Technologies AG* *v*. *Option consommateurs*, 2013 SCC 59 at para. 67; *Harmegnies* *c*. *Toyota* *Canada inc.,* 2008 QCCA 380. [↑](#footnote-ref-17)
18. *Li c*. *Equifax inc.,* 2019 QCCS 4340 at paras. 21 and 41 [↑](#footnote-ref-18)
19. *Desjardins Cabinet de services financiers Inc.* *v*. *Asselin*, 2020 SCC 30 at para. 27; *L’Oratoire Saint-Joseph du Mont-Royal* *v*. *J.J*., 2019 SCC 35 at para. 55; *Benamor* *c*. *Air Canada*, 2020 QCCA 1597 at paras. 42 and 48. [↑](#footnote-ref-19)
20. *Davies* *c*. *Air Canada*, 2022 QCCA 1551. [↑](#footnote-ref-20)
21. At para. 58; see also *Homsy c. Google*, 2023 QCCA 1220. [↑](#footnote-ref-21)
22. The CSS de la Baie James disputes the legal relationship between it and the plaintiff J. [↑](#footnote-ref-22)
23. The “CSS”. [↑](#footnote-ref-23)
24. As defined therein at Article 1.16, “Territory”: the entire area of land contemplated by the 1912 Quebec boundaries extension acts (an *Act respecting the extension of the Province of Quebec by the annexation of Ungava*, Que. 2 Geo. V, c.7 and the *Quebec Boundaries Extension Act*, 1912, Can. 2 Geo. V, c.45) and by the 1898 acts (an *Act respecting the delimitation of the Northwestern, Northern and Northeastern boundaries of the Province of Quebec*, Que. 61, Vict. c.6 and an *Act respecting the Northwestern, Northern and Northeastern boundaries of the Province of Québec*, Can. 61, Vict. c.3). [↑](#footnote-ref-24)
25. *An Act to repeal the Act respecting the School Board of New Québec*, 1986 c. 29, s. 3. [↑](#footnote-ref-25)
26. Plan of argument of the CSS at 9. [↑](#footnote-ref-26)
27. Article 574, para. 3, CCP*.* [↑](#footnote-ref-27)
28. 2022 QCCS 3044 at para.119. [↑](#footnote-ref-28)
29. At, *inter alia*,sections 16.0.31 b), 17.0.76, and Annex 1 of Section 17. [↑](#footnote-ref-29)
30. 2001 CanLII 20652 (QC CA). English version: *Cree School Board v. Canada (Attorney General)*, [2002] 1 CNLR 112 (QCCA). [↑](#footnote-ref-30)
31. Francis Lévesque, Mylène Jubinville & Thierry Rodon, “En compétition pour construire des écoles : L’éducation des Inuits du Nunavik de 1939 à 1976” (2016) 46:2-3 Recherches amérindiennes au Québec. [↑](#footnote-ref-31)
32. 2023 QCCA 1220. [↑](#footnote-ref-32)
33. At para. 38 of its plan of argument. [↑](#footnote-ref-33)
34. CQLR c I-14. [↑](#footnote-ref-34)
35. *Québec (Procureure générale) c. Lord,* 2000 CanLII 30028 (QC CA), leave to appeal to SCC refused, 28060 and 28074 (15 March 2001). [↑](#footnote-ref-35)
36. At para. 18 of its plan of argument. [↑](#footnote-ref-36)
37. *Mclean* *v*. *Canada (Attorney General)*, 2018 FC 642. [↑](#footnote-ref-37)
38. [translation] “Any person, enrolled or entitled to be enrolled as an Inuit beneficiary under the *James Bay and Northern Quebec Agreement* or with an Inuit land claim organization who, between 1963 and 1978, in Quebec, attended a public or religious provincial day school located in an Inuit village and whose attendance the Minister of Education of Quebec could or claimed to be able to require.” [↑](#footnote-ref-38)
39. At para. 66 of the amended application for authorization. [↑](#footnote-ref-39)
40. At para. 67. [↑](#footnote-ref-40)
41. CQLR c. C-12. [↑](#footnote-ref-41)
42. *Ward c. Procureur général du Canada*, 2023 QCCS 793 at paras. 78–81, to be nuanced in light of *Homsy c. Google*, 2023 QCCA 1220. [↑](#footnote-ref-42)
43. 2020 QCCS 2869; see also e.g., *Gagnon c.* *Intervet Canada Corp.*, 2020 QCCS 1591 at para. 33; *Jacques* *c*. *Pétroles Therrien inc.*, 2009 QCCS 1862: [translation] “[59] In class actions, it is not the role of a Superior Court judge to inquire into issues other than those submitted”. [↑](#footnote-ref-43)
44. *Conseil pour la protection des malades* *c*. *Centre intégré de santé et de services sociaux de la Montérégie-Centre*, 2019 QCCS 3934.  [↑](#footnote-ref-44)
45. *R.P. c*. *Procureur général du Canada*, 2022 QCCS 4485. [↑](#footnote-ref-45)