Federal Court  Cour fédérale

Date: 20230606

Docket: T-778-20

Citation: 2023 FC 771

Ottawa, Ontario, June 6, 2023

PRESENT: The Honourable Madam Justice McVeigh

CLASS PROCEEDING

BETWEEN:

SHIRLEY MEGUINIS-MARTIN
AND EDIE JOSEPH

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

JUDGMENT AND REASONS

I. Overview

[1] This is a motion brought on consent pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*], seeking to certify this action as a Class Proceeding. The proposed class carves out class members in a parallel – and nearly identical – class action that has already

been certified by this Court: *Nasogaluak v Canada (Attorney General)*, 2021 FC 656 [*Nasogaluak* FC], rv'd in part *Canada (Attorney General) v Nasogaluak*, 2023 FCA 61 [*Nasogaluak* FCA].

[2] I am satisfied that all of the criteria for certification has been met, which is further strengthened by the Attorney General of Canada's (the AGC) consent. This matter will be held in abeyance subject to the terms set out in the order.

II. Facts

A. *Background*

[3] This proposed class action is to include those Indigenous peoples who were not included in the scope of the *Nasogaluak* class action. The class in *Nasogaluak* is limited geographically to Indigenous persons who allege they were assaulted while being held in custody or detained by Royal Canadian Mounted Police (RCMP) Officers in the Northwest Territories, Nunavut, or the Yukon. This action seeks redress for the harms suffered by Indigenous peoples throughout the rest of Canada.

B. *Procedural History*

[4] The Plaintiffs filed this action on July 20, 2020 and filed an amended claim on August 9, 2021. On March 20, 2023, the Plaintiffs filed a further amended claim (the Claim).

[5] The class certification hearing was initially scheduled to proceed on September 19, 2022. However, given the substantial overlap between this matter and this Court's decision in *Nasogaluak* FC, the parties requested an adjournment pending an appeal to the Federal Court of Appeal of *Nasogaluak* FC. The Court granted an adjournment.

[6] Following the adjournment, the Court scheduled the class certification proceeding to occur on April 3, 2023 for a duration of five days. However, on March 8, 2023 the parties requested another adjournment as the Federal Court of Appeal had yet to release its decision regarding *Nasogaluak* FC and a trial management call was set down for March 17, 2023.

[7] On March 17, 2023, the Federal Court of Appeal released its decision in *Nasogaluak* FCA. Given its proximity to the scheduled hearing date, the parties maintained their request for an adjournment.

[8] On March 17, 2023, during the trial management call, the AGC indicated that it may have instructions to consent to the certification of this matter in light of *Nasogaluak* FCA. However, the AGC maintained the need for an adjournment because of a possible appeal of *Nasogaluak* FCA.

[9] On March 20, 2023, I directed that I would not grant the adjournment given the matter had been adjourned before with a long delay and if *Nasogaluak* was appealed to the SCC then the delay would continue. I ruled that the motion would proceed on April 12, 2023 which accorded the parties time to seek instructions and prepare.

(1) Defendant's Consent and the Parties' Request for Abeyance

[10] By way of joint letter dated March 30, 2023, the AGC consented to the certification of the class without prejudice to its right in the future to seek an order pursuant to Rule 334.19 of the *Rules* that the class proceeding be either amended or decertified.

[11] In the same joint letter, both parties requested abeyance of subsequent steps until the final expiration of any and all periods of time for the Supreme Court of Canada to address any matters arising on leave or on appeal from the order of the Federal Court of Appeal in *Nasogaluak*.

[12] The parties set out the following factors as relevant to their determination to consent to the certification and request for abeyance following the certification of the proceeding:

a. *Nasogaluak* and this case are substantially similar proceedings; the primary distinction is geographical. *Nasogaluak* concerns the "North" of Canada while *Meguinis-Martin* concerns the rest, or "South" of Canada. The cases arise out of the same factual background and the evidentiary records in the proceedings are similar. Part of the counsel team in *Meguinis-Martin*, Cooper Regel LLP, is also part of the counsel team in *Nasogaluak*;

b. the substantive legal findings in *Nasogaluak* will be directly applicable to *Meguinis-Martin*. The common issues are virtually identical, as is the class definition – excepting the class period;

c. in fairness and to avoid confusion to the classes in *Nasogaluak* and *Meguinis-Martin*, it is anticipated that Notice in both actions will be issued concurrently or in a single Notice, and that class members in each action will have the same opt-out period;

d. this matter was adjourned once before, pending the decision of the Federal Court of Appeal in *Nasogaluak*; and

e. the Plaintiffs' amended certification motion and memorandum of fact and law in support of certification was served on March 29, 2023.

[13] The hearing proceeded on April 12, 2023 largely on consent.

[14] On May 16, 2023 the Attorney General of Canada filed an application for leave to appeal the decision in *Canada (Attorney General) v. Nasogaluak*, 2023 FCA 61.

III. Issue

[15] The sole issue is whether this action should be certified as a class proceeding pursuant to Rule 334.16 of the *Rules*.

IV. Analysis

[16] The AGC's consent is significant to the Court. (*Varley v Canada (Attorney General)*, 2021 FC 589 at paragraph 4 [*Varley*].) Although consent does not relieve the Court of its duty to ensure the requirements of the *Rules*, it does reduce the necessity for a rigorous approach (*Varley* at para 4 citing *Buote Estate v Canada*, 2014 FC 773 at para 8).

[17] Given the overlap between this proposed class and *Nasogaluak*'s proposed class, the AGC's consent is rational. As the Applicant points out, there is no principled basis on which to distinguish the harms experienced by Indigenous peoples in the Territories from the harms experienced by Indigenous peoples elsewhere in Canada (Applicants' Memorandum of Fact and Law at para 5).

[18] To be clear, and as highlighted by the AGC at the hearing, its consent on this motion shall not be taken as a concession on the merits of this matter, nor does the AGC revoke its ability to seek an order under Rule 334.19 of the *Rules* on motion that the class proceeding be amended or decertified.

[19] Rule 334.16(1) of the *Rules* sets out the following criteria for class certification:

Conditions	**Conditions**
334.16 (1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if	**334.16 (1)** Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les

	conditions suivantes sont réunies :
(a) the pleadings disclose a reasonable cause of action;	**a)** les actes de procédure révèlent une cause d'action valable;
(b) there is an identifiable class of two or more persons;	**b)** il existe un groupe identifiable formé d'au moins deux personnes;
(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;	**c)** les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;
(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and	**d)** le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;
(e) there is a representative plaintiff or applicant who	**e)** il existe un représentant demandeur qui:
(i) would fairly and adequately represent the interests of the class,	**(i)** représenterait de façon équitable et adéquate les intérêts du groupe,
(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,	**(ii)** a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,
(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and	**(iii)** n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.	**(iv)** communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

A. *Disclosure of Causes of Action*

[20] The first requirement under Rule 334.16(1) of the *Rules* is that the pleadings must disclose a cause of action. On a motion for certification, a cause of action will be struck, taking the material facts pled as true, if it is "plain and obvious" that no claim exists and it is doomed to fail: *Hunt v Carey Inc*, [1990] 2 SCR 959 at 980; *Hollick v Toronto (City)*, 2001 SCC 68 at paragraph 25 [*Hollick*]; *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at paragraph 63; *Alberta v Elder Advocates of Alberta Society*, 2011 SCC 24 at paragraph 20.

[21] The claim discloses reasonable causes of action in systemic negligence and breaches of sections 15 and 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11 [*Charter*]. These are also the same causes of action raised and considered in *Nasogaluak*. It is not plain and obvious that these claims cannot succeed.

[22] In *Nasogaluak* FC the AGC argued that because the section 15 class period spanned a period prior to the enactment of the *Charter*, there was no common issue and therefore no cause of action. I acknowledged that it is true that potential class members' claims may not have taken place while the *Charter* was in force (*Nasogaluak* FC at para 73). Nonetheless, it was still a proper common issues question and I commented that if this posed a problem, the class could

readily be divided into two subclasses (at para 75). I note that the AGC did not challenge this determination in *Nasogaluak* FCA (at paras 77-81). The reasoning from *Nasogaluak* FC applies the same here.

B. *Identifiable Class of Persons*

[23] *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at paragraph 38 [*Western Canadian*] instructs that the class must be capable of clear definition because it identifies the individuals entitled to notice, entitled to relief (if relief is awarded), and bound by the judgment. *Lin v Airbnb, Inc*, 2019 FC 1563 at paragraph 91 provides three criteria that must be met to find an identifiable class: (i) the class must be defined by objective criteria; (ii) the class must be defined without reference to the merits of the actions; and (iii) there must be a rational connection between the common issues and the proposed class definition.

[24] The parties agree that, like in *Nasogaluak*, the Indigenous status of class members – i.e. their status as a First Nation, Inuit, or Métis person within the meaning of section 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 – is an objective criterion.

[25] As the Plaintiffs rightly point out, there is support for the definition of class membership based on *allegations* of physical or sexual assault (i.e. “claims-based” class definition). In *Nasogaluak* FCA, the Federal Court of Appeal held that the claim-based class definition was, in that case, sufficiently objective having regard to the purposes of defining the class (at para 93). For the same reasons, this proposed class is also sufficiently objective.

[26] The proposed class period runs from May 14, 1953 and applies to those who were alive as of July 20, 2018. Importantly, the class excludes those class members in the Federal Court action *Nasogaluak* with Court file number T-2158-18.

[27] A difference between the *Nasogaluak* class and this class is the terminology. The class in *Nasogaluak* refers to "[a]ll Aboriginal Persons", whereas the class definition provided in the draft certification order refers to "[a]ll First Nations, Inuit and Métis persons".

[28] As noted in *Nasogaluak* FCA at paragraph 98, if a dispute arises regarding who is a member of the identifiable class, judicial guidance is available as to the application of the definition (citing *R v Desautel*, 2021 SCC 17).

C. *Common Questions of Law and Fact*

[29] The common issues are largely the same as in *Nasogaluak* FCA, which removed the fiduciary duty common question from *Nasogaluak* FC. The common issues here are as follows:

a. By its operation or management of the Royal Canadian Mounted Police ("RCMP"), did the Defendant breach a duty of care it owed to the Class to protect them from actionable physical, sexual, or psychological harm?

b. By its operation or management of the RCMP, did the Defendant breach the right to life, liberty, and security of the person of the Class under section 7 of the *Charter*?

c. If the answer to common question (b) is “yes”, did the Defendant’s actions breach the rights of the Class in a manner contrary to the interests of fundamental justice under section 7 of the *Charter*?

d. Did the actions of the Defendant breach the right of the Class to equal protection and equal benefits of the law without discrimination based on race, religion, or ethnicity under section 15 of the *Charter*?

e. If the answer to common questions (b) and (c) is “yes”, or if the answer to common question (d) is “yes”, were the Defendant’s actions saved by section 1 of the *Charter*, and if so, to what extent and for what time period?

f. If the answer to common questions (b) and (c) is “yes”, or if the answer to common question (d) is “yes”, and the answer to common question (e) is “no”, do those breaches make damages an appropriate and just remedy under section 24 of the *Charter*?

g. Does the Defendant’s conduct justify an award of punitive damages?

h. If the answer to common question (g) is “yes”, what amount of punitive damages ought to be awarded against the Defendant?

[30] I note that both *Nasogaluak* and the common questions advanced by the Plaintiffs here include a question of whether the RCMP owed a duty of care to protect the class members from

actionable physical, sexual, or psychological harm (see *Nasogaluak* FC at para 136). However, the class definition does not include psychological harm. Although the class definition does not include psychological harm, it remains open to the trial judge to deal with the common question pertaining to psychological harm.

[31] These issues are common ingredients of the class members' claims. Given the overlap between the certified Federal Court action *Nasogaluak* and this claim, the common question requirement is satisfied.

D. *Preferred Procedure*

[32] The Supreme Court of Canada set out the preferability requirement in *Hollick* at paragraphs 28-30. *Hollick* outlined that the preferability inquiry should be conducted through the lens of the three principal advantages of class actions – judicial economy, access to justice, and behaviour modifications (at para 27).

[33] This class proceeding is the preferable procedure for the just and efficient resolution of the common questions in this proceeding. As in *Nasogaluak* FC, a public inquiry or internal complaint process is not a preferable procedure (at para 118). Given the expansive and national scope of the proposed class, no other forum exists that could reasonably and justly address the issues raised in this proceeding.

E. *Representative Plaintiffs – Adequate Representation*

[34] The parties agree that the proposed representative Plaintiffs, Shirley Meguinis-Martin and Edie Joseph adequately represent the interests of the Class.

[35] Both Shirley Meguinis-Martin and Edie Joseph have provided evidence that they will fairly represent the interests of the class and have produced a litigation plan that outlines a practical method of advancing the proceeding. They have also provided evidence that represents their experience in relation to the RCMP.

V. Conclusion

[36] For the above reasons, it is appropriate to certify the proposed class. The class definition is as follows:

> All First Nations, Inuit, and Métis persons who allege that, between May 14, 1953 and present, they were physically or sexually assaulted during arrest or while being held in custody or detained by members of the RCMP, and who were alive as of July 20, 2018, excluding class members in the Federal Court action styled as *Diane Nasogaluak as Litigation Guardian of Joe David Nasogaluak v Attorney General of Canada* with Court file number T-2158-18.

[37] This matter is placed into abeyance, pending the final expiration of any and all periods of time for the Supreme Court of Canada to address any matters arising on leave or on appeal from the order of the Federal Court of Appeal in *Nasogaluak* FCA. Abeyance may also be terminated by written communication from counsel for both parties to the *Nasogaluak* proceeding.

[38] The proposed litigation plan is accepted following termination of the abeyance and will be further developed through the case management process and subject to the statutory right pursuant to Rule 334.19 of the *Rules* to seek to have the certification order amended.

JUDGMENT in T-778-20

THIS COURT'S JUDGMENT is that:

1. This action is hereby certified as a class proceeding against His Majesty the King, pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106 (the "*Federal Courts Rules*").

2. The Class is defined as:

> All First Nations, Inuit, and Métis persons who allege that, between May 14, 1953 and present, they were physically or sexually assaulted during arrest or while being held in custody or detained by members of the RCMP, and who were alive as of July 20, 2018, excluding class members in the Federal Court action styled as *Diane Nasogaluak as Litigation Guardian of Joe David Nasogaluak v Attorney General of Canada* with Court file number T-2158-18 (the "Class" or "Class Members").

3. Shirley Meguinis-Martin and Edie Joseph are appointed as representative Plaintiffs for the Class, pursuant to Rule 334.17(1)(b) of the *Federal Courts Rules*.

4. The general nature of the claims made on behalf of the Class relates to systemic negligence and breaches of sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "*Charter*").

5. The Class claims the following relief:

a. a declaration that the Defendant breached its common law duty of care and breached the Plaintiffs' and other Class Members' section 7 and 15 rights under the *Charter*;

b. general damages;

c. special damages, including but not limited to past and future loss of income, medical expenses, and out-of-pocket expenses;

d. damages pursuant to section 24(1) of the *Charter*;

e. exemplary, aggravated, and punitive damages;

f. damages equal to the costs of administering notice, administration, and the plan of distribution;

g. recovery of health care costs incurred by provincial and territorial health insurers on behalf of the Plaintiffs and other Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;

h. pre-judgment and post-judgment interest;

i. costs; and

j. such further and other relief as this Honourable Court may deem just.

6. The following common questions of fact or law are certified:

a. By its operation or management of the Royal Canadian Mounted Police ("RCMP"), did the Defendant breach a duty of care it owed to the Class to protect them from actionable physical, sexual, or psychological harm?

b. By its operation or management of the RCMP, did the Defendant breach the right to life, liberty, and security of the person of the Class under section 7 of the *Charter*?

c. If the answer to common question (b) is "yes", did the Defendant's actions breach the rights of the Class in a manner contrary to the interests of fundamental justice under section 7 of the *Charter*?

d. Did the actions of the Defendant breach the right of the Class to equal protection and equal benefits of the law without discrimination based on race, religion, or ethnicity under section 15 of the *Charter*?

e. If the answer to common questions (b) and (c) is "yes", or if the

answer to common question (d) is "yes", were the Defendant's actions saved by section 1 of the *Charter*, and if so, to what extent and for what time period?

f. If the answer to common questions (b) and (c) is "yes", or if the answer to common question (d) is "yes", and the answer to common question (e) is "no", do those breaches make damages an appropriate and just remedy under section 24 of the *Charter*?

g. Does the Defendant's conduct justify an award of punitive damages?

h. If the answer to common question (g) is "yes", what amount of punitive damages ought to be awarded against the Defendant?

7. Murphy Battista LLP and Cooper Regel LLP are appointed as counsel for the Class.

8. The Plaintiffs' Litigation Plan in the form attached as Schedule A is approved.

9. The time and manner for Class Members to opt out of the proceeding is reserved and will be addressed through the case management process.

10. The form and manner of distribution of notice of certification is reserved and will be addressed through the case management process.

11. Given that the defendant has sought leave to appeal to the Supreme Court of Canada in the *Nasogaluak v Attorney General of Canada*, 2023 FCA 61 ("Nasogaluak") matter, the certified action will henceforth be held in abeyance, and the parties will take no steps further to the certification order, until the final expiration of any and all periods of time for the Supreme Court of Canada ("SCC") to address any matters arising on leave or on appeal from the order of the Federal Court of Appeal in *Nasogaluak*.

12. For greater clarity, the reference to "final expiration of any and all periods of time" should be taken as a reference to timeframes accounted for in the *Supreme Court Act*, RSC, 1985, c S-26, the *Rules of the Supreme Court of Canada*, SOR/2002-156 or the SCC's internal processes and the final disposition of the Supreme Court of Canada following the hearing of an appeal, if leave is granted.

13. Notwithstanding the foregoing, "final expiration of any and all periods of time" will also be deemed to expire upon the written communication by counsel for both parties to the Nasogaluak proceeding that they undertake not to take further steps before the SCC in relation thereto.

14. This Order is made on a without costs basis pursuant to Rule 334.39 of the *Federal Courts Rules*.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-778-20
STYLE OF CAUSE:	SHIRLEY MEGUINIS-MARTIN AND EDIE JOSEPH v HIS MAJESTY THE KING
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 12, 2023
JUDGMENT AND REASONS:	MCVEIGH J.
DATED:	JUNE 6, 2023

APPEARANCES:

Angela Bespflug Janelle O'Connor Caitlin Ohama-Darcus	FOR THE PLAINTIFFS
Steven Cooper, KC Maria Grzybowska	
Bruce F. Hughson Deborah Babiuk-Gibson Jennifer Lee Robert Drummond	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Murphy Battista LLP Barristers and Solicitors Vancouver, British Columbia	FOR THE PLAINTIFFS
Cooper Regel LLP Barristers and Solicitors Sherwood Park, Alberta	
Attorney General of Canada Edmonton, Alberta	FOR THE DEFENDANT

SCHEDULE A

LITIGATION PLAN OF THE PLAINTIFFS

I. INTRODUCTION

1. This action is a class proceeding and thus the *Federal Courts Rules*, SOR 98/106 require that a representative plaintiff prepare a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing.

2. This action was commenced on July 20, 2020. The claim was amended and an Amended Statement of Claim was filed on August 9, 2021. A Further Amended Statement of Claim was filed on March 20, 2023.

3. The action is brought on behalf of a national class of all First Nations, Inuit and Métis persons who allege that, between May 14, 1953 and present, they were physically or sexually assaulted during arrest or while being held in custody or detained by members of the Royal Canadian Mounted Police (the "RCMP"), and who were alive as of July 20, 2018, excluding class members in the Federal Court action styled as *Diane Nasogaluak as Litigation Guardian of Joe David Nasogaluak v Attorney General of Canada*, with Court file number T-2158-18 (the "Class" or "Class Members").

4. This litigation plan provides a strategy in three core areas: 1) consultation with Indigenous civilians across Canada about systemic racism and assault at the hands of the RCMP and their goals for this litigation; 2) steps to be taken in the litigation under a proposed timeline; and 3) a concurrent plan to resolve the litigation through alternative dispute resolution, pursuant to the Practice Guidelines for Aboriginal Law Proceedings, April 2016.

5. Subject to issues of scheduling, additional motions, and appeals, the Plaintiffs propose that the proceeding be conducted in accordance with this litigation plan, which is subject to approval and revision by this Honourable Court.

II. CLASS COUNSEL

6. The Plaintiffs and proposed Class Members are represented by Murphy Battista LLP and Cooper Regel LLP ("Class Counsel"). Class Counsel has extensive class action experience, having both litigated and settled a number of large-scale, institutional class actions against the federal Crown.

7. Lawyers at Murphy Battista LLP have been class counsel in several landmark class proceedings before the Federal Court, including *Tiller v Her Majesty the Queen,* 2020 FC 321, *Merlo v Her Majesty the Queen,* 2017 FC 533, *Riddle v Canada,* 2018 FC 641, *Manuge v Her Majesty the Queen*, 2014 FC 640, *Buote/White v Her Majesty the Queen,* 2014 FC 773, *Hardy v Canada*, 2020 FC 73, and *Percival v Canada*, 2019 (unreported).

8. Lawyers at Cooper Regel LLP have also been class counsel in several landmark class proceedings before the Federal Court, including *Hardy v Canada,* 2020 FC 73, *Fontaine v Canada*, and *Anderson v Canada*.

9. Class Counsel has the requisite skill, experience, personnel, and financial resources to prosecute this class action.

III. REPORTING TO AND COMMUNICATING WITH CLASS MEMBERS

10. Class Counsel has staff dedicated to outreach and Class Member communication. Class

Members can contact Class Counsel by telephone, mail, or email. Class Member inquiries received outside of normal business hours are returned promptly.

11. Class Counsel has developed a webpage where information about this action will be posted, along with Court decisions, notices, and other documentation.

12. The webpage will also provide links to the contact information of the lawyers working on the file, so Class Members can submit questions to and speak directly with the lawyers if needed.

13. Class Counsel will provide regular updates to Class Members who contact them and who provide their email address to counsel for that purpose.

IV. CONSULTATION & ENGAGEMENT

14. Class Counsel will develop an initial plan for engagement and consultation with Class Members about issues relevant to this action, including the harms they have endured as a consequence of being subjected to physical and sexual assault by members of the RCMP. Class Counsel is committed to using a culturally sensitive and trauma-informed approach to consultation.

15. Consultation will involve a phased engagement plan that promotes respectful, meaningful, and ongoing collaborative relationships. It is important that the opinions of Class Members be heard and understood so that Class Counsel can ensure that any resolution of this action meets the needs and goals of Class Members.

16. The engagement plan will have several key objectives:

    a) clarifying the current status of the issues;

    b) gathering perspectives of Class Members and other stakeholders on the harm suffered;

    c) assessing matters; and

    d) understanding the impacts.

17. The engagement work will include:

    a) developing and managing a consultation plan;

    b) providing opportunities, at the discretion of Class Members, to engage;

    c) conducting engagement and consultation;

    d) executing outreach strategies to reach Class Members throughout Canada and providing notice about the action;

    e) sharing culturally sensitive and appropriate materials and information; and

    f) meeting with Class Members.

18. Solutions-focused, collaborative, and coordinated approaches will guide the consultation and engagement initiatives.

V. LITIGATION

19. Throughout this litigation, Class Counsel will rely extensively on case management to ensure the just, most expeditious, and least expensive determination of the proceeding on its merits.

20. The certified action is by order to be held in abeyance, and the parties will take no steps further to the certification order, until the final expiration of any and all periods of time for the Supreme Court of Canada ("SCC") to address any matters arising on leave or on appeal from the order of the Federal Court of Appeal in Nasogaluak v Attorney General of Canada, 2023 FCA 61 ("Nasogaluak") or until final determination by the Supreme Court of Canada. Or if both parties to the Nasogaluak proceeding communicate that they undertake not to take further steps before the SCC in relation thereto.

21. The Defendant has not yet filed a Statement of Defence; the parties have agreed that the Defendant can defer the delivery of its Statement of Defence until after certification.

22. Following certification and delivery of the Defendant's Statement of Defence, the Plaintiffs propose the following litigation schedule subject to amendment given the abeyance of the matter until Nasogaluak is determined by the Supreme Court of Canada (see above paragraph 19):

    a) the Plaintiffs produce documents within three months of the action being certified;

    b) the Defendant produces documents within four months of the Plaintiffs' document production, on a rolling monthly basis over the course of six months;

    c) oral examinations for discovery take place within four months of the Defendant's document production, with oral discoveries likely to be conducted over the course of two months;

    d) the Plaintiffs' experts' statements to be served by February 2025;

    e) the Defendant's experts' statements to be served by April 2025;

    f) pre-trial motions to be heard in May 2025; and

    g) a common questions trial to be heard June of 2025, subject to the Court's availability.

23. The Plaintiffs leave open the possibility of bringing a summary trial motion at some point prior to, during, or following the discovery process.

Notice of Certification

24. When abeyance of the matter is lifted or by request of the parties, a case management conference will be held within 30 days of the lifting of the abeyance of the certification order to settle the form, content, and manner of publication of the notice of certification (the "Notice") to be provided to the Class. The Notice will be published in accordance with Rules 334.32 and 334.37 of the *Federal Courts Rules*.

25. In addition to informing Class Members that the action has been certified as a class proceeding, the Notice will specify the time and manner for Class Members to opt-out of the class proceeding.

26. Class Counsel will post the Notice on its webpage for the action.

27. The Defendant will post the Notice on its landing pages for the RCMP, Indigenous Services Canada, and Crown-Indigenous Relations and Northern Affairs Canada.

28. The Notice will be sent by mail or courier to First Nations' band offices throughout Canada, to the Inuit Tapiriit Kanatami, to the Métis National Council, to the Manitoba Métis Federation, to Métis Nation-Saskatchewan, to Métis Nation of Alberta, to Métis Nation British Columbia, to Métis Nation of Ontario, and to other appropriate Indigenous organizations (to be determined

in consultation with the notice expert). Included with the Notice will be a request from Class Counsel, asking that the Notice be distributed to their membership and that physical copies of the Notice be posted, as appropriate, to bring the Notice to the attention of Class Members.

29. The Notice will also be sent to the last known email address of Class Members, where that information is within the knowledge of Class Counsel.

30. The Notice will be published in targeted Indigenous publications and on APTN (Aboriginal Peoples Television Network).

31. The Notice will be published in major national and local newspapers and in other targeted publications. Ads directing Class Members to the Notice will be purchased on various social media platforms, including Instagram, Facebook, and Twitter. Ad placements on the Google Display Network will also be purchased.

32. Class Counsel will work with its notice experts to ensure that the Notice is culturally appropriate, targeted, and wide-reaching, and that it considers all relevant considerations, such as the different languages spoken by Class Members, illiteracy, and transiency.

Opt-Out

33. Class Members may opt-out of the proceeding within the time and in the manner specified by the Notice and approved by the Court, pursuant to Rule 334.21(1).

34. The Notice will, subject to Court approval, provide that the deadline for Class Members to opt-out of the class proceeding be within 60 days of the first publication of the Notice ("Opt-Out Date"), and that no Class Member may opt-out of the proceeding after the Opt-Out Date. Where the Notice is emailed directly to Class Members, an opt-out form - to be approved by the Court - will be attached to the Notice. The opt-out form will also be available on Class Counsel's webpage for the action.

35. The Notice will describe the significance of opting-out and explain that Class Members who choose to opt-out will not participate in the class proceeding and will not receive any payment if the class proceeding is settled or decided in favour of the Class. The Notice will also make clear that persons falling within the Class definition, who do not opt-out, will be considered Class Members and be bound by the Court's judgement or the terms of an approved settlement. The Notice will direct Class Members to resources where they can obtain further information.

Document Production

36. To assist the parties and the Court in efficiently managing the production of documents, the parties will exchange documents in accordance with the protocols established pursuant to Rules 222 through 233 and 334.11 of the *Federal Courts Rules*, or as otherwise directed by the Court or consented to by the parties.

37. The Plaintiffs will seek a case management order, pursuant to Rules 3 and 385(1)(a) of the *Federal Courts Rules*, that the time period in Rule 223(1) does not apply, and that the parties should serve their affidavit of documents, in Form 223, in accordance with the timelines set out in paragraph 22 of this litigation plan.

38. Should the Plaintiffs require the production of documents from non-parties to this litigation, they will seek leave of the Court to obtain production, in accordance with Rule 233 of the *Federal Courts Rules.*

Examinations for Discovery

39. The parties will conduct oral and written examinations for discovery in accordance with Rules 234 through 248 and 334.11 of the *Federal Courts Rules*, or as otherwise directed by the Court or consented to by the parties.

40. The parties will likely seek direction from the Court, in the context of case management, regarding the time permitted for discoveries, persons to be examined, and other relevant or ancillary matters, pursuant to Rule 385.

41. If Class Counsel is not content with the Attorney General's selection of the Defendant's representative to be examined, the Plaintiffs will bring a motion, pursuant to Rule 237, seeking an order that another representative be examined. If Class Counsel believes that it is necessary to examine more than one representative of the Defendant, the Plaintiffs will bring a motion seeking such an order, pursuant to Rule 385(1)(a).

42. If the Defendant seeks to examine for discovery a Class Member or Class Members, other than the Representative Plaintiffs, it will seek leave of the Court to do so after the examinations of the Representative Plaintiffs have taken place, pursuant to Rule 334.22. Class Counsel may oppose such a motion.

43. Class Counsel will have to review disclosed documents, conduct further research, and seek advice of the Plaintiffs' experts before determining whether it will be necessary to examine for discovery non-parties. If Class Counsel determines that such examinations are necessary, it will seek leave of the Court to do so, in accordance with Rule 238.

Expert Evidence

44. Experts will be named and their statements and evidence given, in accordance with the Code of Conduct for Expert Witnesses and Rules 52.1 through 52.6 of the *Federal Courts Rules*, or as otherwise directed or ordered by the Court.

45. If Class Counsel deems that it is necessary to call more than five expert witnesses, it will bring a motion seeking leave of the Court to do so, in accordance with section 7 of the *Canada Evidence Act*, RSC 1985, c C-5.

46. Class Counsel has already retained four experts: Dr. Carmela Murdocca, Dr. Nicole Lugosi-Schimpf, and Dr. Sandra Bucerius, and Dr. Scott Wortley. Drs. Murdocca and Lugosi-Schimpf have each provided reports that the Plaintiffs rely on in support of their application for certification.

Refinement of the Common Questions

47. Following certification, discovery, and the exchange of expert statements - and before the trial of the common questions - the parties or the Court may determine that the common questions need to be amended, and either party may bring a motion to amend them, pursuant to Rule 334.19 of the *Federal Courts Rules*.

48. As this litigation progresses, Class Counsel will determine whether it is appropriate to bring a motion for summary judgement or summary trial and, if advisable, will do so.

Readiness for Trial

49. Once examinations for discovery have been completed, the Plaintiffs will serve and file a requisition for a pre-trial conference, pursuant to Rules 258 and 334.11 of the *Federal Courts Rules*, accompanied by a pre-trial conference memorandum which will contain: a concise

statement of the nature of the proceeding; any admissions of the Plaintiffs; the factual and legal contentions of the Plaintiffs; and a statement of the issues to be determined at the common questions trial. Included with the Plaintiffs' pre-trial conference memorandum will be a copy of all of the documents that the Plaintiffs intend to use at the trial of the common questions that may be of assistance at the pre-trial conference, including all statements of their expert witnesses.

50. The parties will participate in the pre-trial conference and will be prepared to address the common questions generally and the items listed at Rule 263.

51. The Plaintiffs (or the Defendant, if directed by the Court at the pre-trial conference) will serve and file a trial record pursuant to Rule 268, that includes the content required by Rule 269.

52. If it is determined at the pre-trial conference that any additional or rebuttal statements of expert witnesses are required, the Court will order the time for the service of such statements.

Witnesses at Trial

53. If the parties cannot agree on the identity and number of witnesses, they will bring a motion, seeking direction from the Court on these issues.

54. Following the discovery phase of this litigation and the exchange of expert statements, Class Counsel will determine the witnesses that the Plaintiffs wish to call at the common questions trial.

The Common Questions Trial

55. The parties will participate in a trial of the common questions, and the Court's judgement on questions of fact and law will bind every Class Member who has not opted-out of or otherwise been excluded from the proceeding.

56. If the common questions are determined wholly or partially in favour of the Class, it is anticipated that further proceedings, described below, will be needed to resolve any outstanding individual issues.

57. If the Defendant is wholly successful at the common questions trial then, subject to any appeals, the litigation will be at an end.

58. If the common questions are determined wholly or partially in favour of the Class, notice of that determination will be given to the Class, in accordance with Rules 334.33 and 334.37 of the *Federal Courts Rules* (the "Notice of Common Questions Trial").

59. Class Counsel will post the Notice of Common Questions Trial on its webpage for the action.

60. The Defendant will post the Notice of Common Questions Trial on its landing pages for the RCMP, Indigenous Services Canada, and Crown-Indigenous Relations and Northern Affairs Canada.

61. The Notice of Common Questions Trial will be sent by mail or courier to First Nations' band offices throughout Canada, to the Inuit Tapiriit Kanatami, to the Métis National Council, to the Manitoba Métis Federation, to Métis Nation-Saskatchewan, to Métis Nation of Alberta, to Métis Nation British Columbia, to Métis Nation of Ontario, and to other appropriate Indigenous organizations (to be determined in consultation with the notice expert). Included with the Notice of Common Questions Trial will be a request from Class Counsel, asking that it be distributed to their membership and that physical copies of the Notice of Common Questions Trial be posted, as appropriate, to bring it to the attention of Class Members.

62. The Notice of Common Questions Trial will also be sent to the last known email address of Class Members, where that information is within the knowledge of Class Counsel.

63. The Notice of Common Questions Trial will be published - in various Indigenous languages, as appropriate - in targeted Indigenous publications and on APTN (Aboriginal Peoples Television Network).

64. The Notice of Common Questions Trial will be published in major national and local newspapers and in other targeted publications. Ads directing Class Members to the Notice of Common Questions Trial will be purchased on various social media platforms, including Instagram, Facebook, and Twitter. Ad placements on the Google Display Network will also be purchased.

65. Class Counsel will work with its notice experts to ensure that the Notice of Common Questions Trial is culturally appropriate, targeted, and wide-reaching, and that it considers all relevant considerations, such as the different languages spoken by Class Members, illiteracy, and transiency.

Individual Issues Determination

66. If any or all of the common questions are resolved in favour of the Class, and there remain questions of law or fact that apply only to individual Class Members, or if the Defendant's liability to individual Class Members cannot be determined without proof by those individual Class Members, the Plaintiffs propose that a case management conference be held as soon as possible following judgement to discuss the process for determining those individual issues.

67. At the case management conference, both parties will be at liberty to make submissions regarding the methodology for resolving individual issues, in the manner contemplated by Rules 334.26, 334.27 and 385(1)(a) of the *Federal Courts Rules*. Potential methods include: evaluations by a third-party assessor (with assessments to be conducted through a paper-based process, interviews, hearings/adjudications, or a combination thereof); mediation; arbitration; or other means approved by the Court. The Plaintiffs will also ask the Court to specify procedures and deadlines by which Class Members will identify themselves as claimants wishing to make claims for individual compensation.

VI. DISPUTE RESOLUTION

68. The *Federal Courts Rules* provide for dispute resolution conferences. The Rules empower a case management judge, under Rule 385(c), "to fix and conduct any dispute resolution or pre- trial conferences that she considers necessary." Rule 386(1) provides that "[t]he Court may order that a proceeding, or any issue in a proceeding, be referred to a dispute resolution conference".

69. Part III.A of the Federal Courts Practice Guidelines for Aboriginal Law Proceedings, April 2016, encourages the use of dispute resolution for claims involving Indigenous people and Canada. These Guidelines reflect the historic and unique relationship between the federal Crown and Indigenous peoples, which is best honoured through dialogue.

70. Prime Minister Trudeau and former Commissioner of the RCMP, Brenda Lucki, have both acknowledged that systemic racism exists within the RCMP, and they have both confirmed the need to address it and eliminate it. Where a defendant has expressed an interest in addressing an issue, plaintiffs and the Court should explore that possibility through dialogue, without unnecessary delay.

71. Given the nature of the claims in this action, and the goals of the parties, it is appropriate for the parties to engage in dispute resolution discussions at an early stage of the litigation.

72. If a dispute resolution conference is held at an early stage of the litigation and is not successful, nothing is lost.

73. The steps in the litigation can continue, in tandem with dispute resolution discussions, and need not be delayed by exploring resolution of the issues through dialogue. Engaging in dialogue at an early stage of the litigation can also help narrow the issues between the parties and may lead to a quicker – and more just – resolution of the action for Class Members.

74. The Plaintiffs will participate in any settlement discussions, mediations or other forms of alternative dispute resolution as may be agreed by the parties or ordered by the Court, pursuant to Rule 257 or 386, or otherwise.

VII. REVIEW OF PLAINTIFFS' LITIGATION PLAN

75. The Plaintiffs' litigation plan may be reviewed and modified as deemed necessary by the parties or the case management judge during judicial management.

VIII. CASE MANAGEMENT

76. Throughout this litigation, case management conferences and any interlocutory motions will be scheduled as required and will proceed according to the relevant provisions of the *Federal Courts Rules*.