

Federal Court



Cour fédérale

Date: 20230602

Docket: T-2158-18

Ottawa, Ontario, June 2, 2023

PRESENT: The Honourable Madam Justice McVeigh

CLASS PROCEEDING

BETWEEN:

JOE DAVID NASOGALUAK

Plaintiff

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER

UPON the Federal Court of Appeal's judgment in *Canada (Attorney General) v Nasogaluak*, 2023 FCA 61 the certification order is amended as follows:

THIS COURT ORDERS that:

1. The motion for certification is granted against His Majesty the King, pursuant to Rule 334.16(1) of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*].

2. The Class definition shall be:

All Aboriginal Persons who allege they were assaulted at any time while being held in custody or detained by RCMP Officers in the Territories, and were alive as of December 18, 2016 (the “Class” or “Class Members”).

3. Joe David Nasogaluak is appointed as the Representative Plaintiff 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 [Charter]*.
5. The Claims seek: declarations; general, special and exemplary damages including *Charter* damages; prejudgment and post-judgment interest; costs of notice and administration.
6. The following questions are certified as common issues:
 - 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 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 issue (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 the 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 issue (b), (c), or (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 issue (b), (c), or (d) is “yes”, and the answer to common issue (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 issue (g) is “yes”, what amount of punitive damages ought to be awarded against the Defendant?
7. A revised Litigation Plan will be required within 30 days upon resolution of the appeal of the Federal Court of Appeal’s decision.
8. The time and manner for Class members to opt out of the class proceeding are reserved to be addressed through the case management process.

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

"Glennys L. McVeigh"