IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

LAZARIE UTTAK, LYDIA INOOYA, PAUL QUASSA, MADELINE IVALU, ZACHARIAS KUNUK

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

NOTICE TO THE DEFENDANT

1. You are hereby notified that the Plaintiffs may enter judgment against you in accordance with the attached Amended Statement of Claim or such judgment as may be granted under the *Rules of the Nunavut Court of Justice*, without further notice to you unless within twenty five (25) days after service of the Amended Statement of Claim on you, or thirty (30) days after service where service is obtained outside of the jurisdiction, you cause to be filed in the Office of the Clerk of Nunavut Court of Justice either:

    (a) a Statement of Defence, or

    (b) an Appearance.

    and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiffs or the Plaintiffs' lawyer.

2. The attached Amended Statement of Claim is to be served within twelve (12) months from

the day on which it is issued.

3. Every Defendant should consult his or her lawyer or refer to the *Rules of the Nunavut Court of Justice* to determine his or her rights.

The attached Amended Statement of Claim is hereby issued out of the Office of the Clerk of the Nunavut Court of Justice at Iqaluit, Nunavut Territory on the 7th day of June, 2019.

"Kyle St. Laurent"

CLERK OF THE NUNAVUT
COURT OF JUSTICE

This document has been filed electronically in accordance with practice directive #18

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AMENDED STATEMENT OF CLAIM

The Plaintiffs

1. The Plaintiffs, LAZARIE UTTAK ("Uttak"), LYDIA INOOYA ("Inooya"), PAUL QUASSA ("Quassa"), MADELINE IVALU ("Ivalu") and ZACHARIAS KUNUK ("Kunuk"), who are all of Inuit descent were at all material times residents of Igloolik, Nunavut which at the time was part of the Northwest Territories.

The Defendant

2. This proceeding is taken against Her Majesty the Queen in Right of Canada, in the name of the Attorney General of Canada, (hereinafter "Canada"), pursuant to s.23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

3. The Defendant was at all material times to this action responsible for the administration of aboriginal affairs, child welfare, education, health and welfare, social services and justice within the Northwest Territories ("NWT") including that part which on April 1, 1999 became Nunavut (which part herein shall be referred to as "Nunavut").

Background

4. From the time the United Kingdom first asserted jurisdiction over what is now Nunavut, it, and thereafter Canada, undertook and created duties and obligations to the Inuit living in Nunavut ("Nunavummiut") which obligations included fiduciary duties.

5. From the time the United Kingdom, from whom Canada derived any authority it has over Nunavut, and certainly from the time Canada first began to enforce it laws in Nunavut, the Nunavummiut were encouraged to perceive Canada, which was largely represented by Qablunaat/Qallunaat ~~Qalunaq~~ (non-Inuit), and anyone associated with Canada as powerful, superior and influential.

6. Canada created or fostered this perception in Nunavummiut so each would be compliant with and obedient to Canada's laws, by establishing the presence or occasional appearance of the Royal Canadian Mounted Police, Courts and Judges, representatives of the Department of Indian Affairs, regulatory enforcement personnel such as Fisheries and Wildlife Officers, social workers and health care professionals who could control all aspects of their life including but not exclusively: taking their liberty, determining where and when they can hunt and fish, what they can hunt, where they must live, and where their children would be allowed to live.

7. Canada intentionally instilled in Nunavummiut the perception that they must do, without question, as they were told by Canada, to avoid negative repercussions.

8. Canada's fiduciary duties included the duty to protect Nunavummiut from abuses committed by its agents, servants and others, who might be perceived as connected with, or part of, or otherwise, having the authority of the government. Canada was obliged, *inter alia,* not to allow the Nunavummiut to be subjected to experimental procedures without their informed and meaningful consent.

Facts

9. Between 1967 and 1973, under the auspices, supervision, control, direction, acquiescence, knowledge of, or with the financial support of Canada (in each case, either actual or constructive), the Plaintiffs and others, residing in or around Igloolik, were subjected to medical or biological Experiments (the "Experiments").

10. The Experiments were conducted by parties, not known to the Plaintiffs, who represented themselves as being connected with, or agents of Canada or cloaked with Canada's authority and responsible for carrying out an international biological research program.

11. In the alternative, if Canada did not actually authorize or supervise the Experiments, Canada knew or ought to have known the Experiments were carried out under Canada's apparent supervision and approval, and took no action to stop the Experiments. In any event Canada had a proactive duty to prevent the Experiments.

12. Those conducting the Experiments did not appear to be Inuit or Nunavummiut, but rather were Qablunaat/Qallunaat ~~Qalunaq~~, and apparently representing Canada, which lead to the Plaintiffs to believe they had no choice but to submit to the Experiments.

13. The Experiments included, but are not necessarily limited to, the following:

    a) Skin graft Experiments which included the removal of skin from subjects, including the Plaintiffs, with a sharp tool, which skin was thereafter grafted onto other subjects including the Plaintiffs;
    b) Exposing the subjects, including the Plaintiffs, who were not properly clothed for the conditions, to extreme cold so the experimenters could assess the subjects' ability to cope with cold;
    c) Assaulting the subjects, including the Plaintiffs, with sharp objects to assess the subjects' ability to withstand pain; and
    d) Insertion of objects into body cavities of the Plaintiffs, or some of them.

14. The Experiments were carried out under the following conditions:

    a) To the Plaintiffs' knowledge none of those carrying out the procedure were medically trained;
    b) There was no medical or cosmetic reason or benefit to the Plaintiffs;
    c) The Plaintiffs were not informed of any risks associated with the Experiment;
    d) The Plaintiffs were not given the opportunity to decline participation in the Experiment;
    e) They were not conducted under sanitary conditions;
    f) No care was taken to reduce the risk of infection;
    g) There was no follow up conducted to determine if there was an infection;
    h) There was no explanation given for the purpose of the procedure;
    i) Consent was neither given nor requested, and in any event the Plaintiffs were incapable of providing lawful consent due to the concealment of relevant information and the age of the subjects; and

j) The conclusions reached were not communicated to the subjects experimented on.

15. To carry out the Experiments the Plaintiffs were:

a) Summoned or taken from their residence, school or street; or
b) Directed to attend at a specified time and place.

16. To the Plaintiffs' knowledge the experimenters carrying out the Experiments on behalf of Canada included but are not limited to staff from:

a) The University of Manitoba;
b) The University of Alberta;
~~c) The University of McGill; and~~
~~d)~~c) International Biological Program.

17. The Experiments resulted in each or some of the Plaintiffs, experiencing the following physical consequences:

a) Permanent scarring at the location of the skin grafts or puncture;
b) Infections from the procedure being carried out in unsanitary conditions; and
c) Pain and discomfort around the time of the Experiment and while the wound was infected.

18. The Experiments also resulted in each or some of Plaintiffs experiencing the following emotional pain:

a) Persistent concerns that a part of their body was grafted on to someone else;
b) Persistent concerns that a part to someone else was grafted to their body;
c) The perception they were not inherently valuable as human beings but dispensable in the same way a laboratory rat is; and
d) Concerns they were exposed to serious risks solely for the purpose of furthering someone else's knowledge base.

Liability of the Defendants

19. By participating in or permitting the Experiments to be carried out and not intervening to

stop the Experiments, Canada, *inter alia*, breached fiduciary duties and obligations owed to the Plaintiffs as follows:

a) Canada failed to protect the Plaintiffs from being assaulted by Canada's agents or those Canada allowed to hold themselves out as representatives of Canada;
b) Canada failed to respect the right to bodily integrity of the Plaintiffs;
c) Canada failed to respect the inherent value of the lives of the Plaintiffs and instead treated them as dispensable by exposing them to the unreasonable risk of serious bodily harm or death;
d) Canada, having promoted the Nunavummiut to be a compliant group, owed an enhanced duty to the Plaintiffs to protect them from being abused or taken advantage of and breached duties; and
e) By allowing the Plaintiffs to be subject to Experiments which were demeaning and disregarded their inherent value as human beings and having the right to be treated with dignity.

20. Canada's breaches of duty lead to the Plaintiffs being assaulted and experimented on, which abuses caused the Plaintiffs harm, for which Canada is liable.

21. In the alternative, if Canada did not actively supervise or carry out the Experiments, Canada failed to respond to actual or constructive knowledge the Experiments were being carried out by their agents, servants and employees or those holding themselves out as such, by taking reasonable steps to prevent or terminate the abuse.

22. In the further alternate acquiescence, the Experiments could not have taken place without the concurrence, consent and or collaboration of Canada, and Canada took no or inadequate steps to prevent the Experiments.

23. Canada is liable to the Plaintiffs for all of the damages suffered by them as a consequence of all of the foregoing and such other theories of liability as Counsel for the Plaintiffs may argue at the trial of this matter and this Honourable Court might deem be just.

Damages

24. As a result of the assault and negligence of Canada, each of the Plaintiffs suffered some or all of the following impacts including: irreparable psychological harm and other severe

impairments and disabilities, the particulars of which suffered include but are not limited to some, or all of the following:

a) Mistrust of Government representatives, or anyone acting in the position of power;
b) Mistrust of Qablunaat/Qallunaat ~~Qalunaq;~~
c) Ongoing inability to attend upon, and avoidance of medical practitioners and nurses;
d) Physical and psychological pain, suffering and anguish;
e) Impairment of psychological health and well-being, and loss of dignity;
f) Loss of enjoyment of life;
g) Humiliation and betrayal due to the agent violating them physically and emotionally;
h) Continuous distress resulting from memories of the mistreatment; and
i) All of the harms suffered were reasonably foreseeable and Canada knew or ought to have known would be experienced by the Plaintiffs.

25. As a result of the Plaintiffs' young age, vulnerability and/or the position of trust that Defendant held at the time the Plaintiffs were assaulted and degraded, and the Plaintiffs claim an entitlement to aggravated damages.

26. The Defendant's reprehensible misconduct towards the Plaintiffs, and the egregious fashion by which the Defendant permitted, by omission or commission, and to denounce the conduct and discourage repetition of the matters complained of herein, warrants the Court to express its approbation through the medium of punitive damages.

27. The Defendant breached its constitutional and fiduciary duties in such fashion as to require damages beyond those reparations normally attributable to the Plaintiffs or each of them. The Plaintiffs say that damages payable to them are insufficient to address the necessary social reprehension at the events complained of herein.

28. Further, the Plaintiffs say that the conduct of those conducting the Experiments against them as were permitted by the Defendant, by omission or commission, were so far beyond the norm of acceptable conduct that the Defendant must be assessed punitive damages in such amount as to socially repudiate such activity and to provide denunciation of, and deterrence against repetition of such actions against any citizen of Canada and in particular those of Indigenous heritage.

29. The Plaintiffs say that such damages must be at such amount as to reflect the nature and economic power of the Defendant.

30. The Plaintiffs propose that the trial of this matter be held in the Hamlet of Igloolik, Nunavut.

WHEREFORE EACH OF THE PLAINTIFFS CLAIMS FROM CANADA THE FOLLOWING RELIEF:

a) General damages in the amount of $100,000.00;
b) Special damages to be determined at the trial of this matter;
c) Aggravated damages;
d) Punitive damages in the amount of $1,000,000.00;
e) Costs;
f) Pre-Judgment interest on all of the above pursuant to the *Judicature Act (Nunavut)*, S.N.W.T, 1998, c.34, and amendments thereto and regulations thereunder; and
g) Such other and further relief as Counsel for the Plaintiffs may seek at trial and this Honourable Court may allow.

DATED at the Hamlet of Sherwood Park, in Alberta, this 6th day of June, 2019 AND DELIVERED by COOPER REGEL, a Member of Masuch Law LLP, solicitor for the Plaintiffs whose address for service is: GFY Paralegal Services, PO Box 1734, House 2436, Iqaluit, NU X0A 0H0.

COOPER REGEL, a Member of Masuch Law LLP

"Steven L. Cooper"

Per: _____
Steven L. Cooper
Solicitor for the Plaintiffs

Action No. 07-19-283-CVC

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LAZARIE UTTAK, LYDIA INOOYA, PAUL QUASSA, MADELINE IVALU, ZACHARIAS KUNUK

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AMENDED STATEMENT OF CLAIM

The following party consents to the Amended Statement of Claim:

Per: _____
Department of Justice Canada
Solicitor for the Defendant, Attorney General of Canada

This Statement of Claim is issued by:

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