

2017 01G 2568 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

**JANE DOE (#7), ~~JOHN DOE (#9)~~ (Discontinued)
JOHN DOE (#10) AND JOHN DOE (#11)**

PLAINTIFFS

AND:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR**

DEFENDANT

Brought under the Class Actions Act, S.N.L. 2001, c C-18.1

CERTIFICATION ORDER

BEFORE the Honourable Madam Justice McGrath;

UPON HEARING Lynn Moore, Andrew Martin and James Locke for the Plaintiffs and David Rodgers and Michael Rosenberg for the Defendant;

AND UPON READING the Certification Application and Certification Record of the Plaintiffs;

AND ON BEING ADVISED that the parties consent to this Order;

1. **IT IS HEREBY DECLARED AND ORDERED** that this action is hereby certified as a class proceeding pursuant to the *Class Actions Act*, S.N.L. 2001, c. C-18.1 (“*Class Actions Act*”) as of the date of filing of this Order;
2. **IT IS HEREBY DECLARED AND ORDERED** that the Class be and is hereby defined as:

All former residents, save Excluded Persons, who suffered sexual battery and/or other sexual misconduct by a Delegate, or a fellow resident of the Institutions, while residing at any of the Institutions between May 1, 1973 and June 28, 1989 (the “**Class Period**”), inclusive.

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“Delegates” are defined as the servants, contractors, agents, officers, volunteers and employees of the Defendant and the operators, managers, administrators, teachers, and staff of the Institutions;

“Excluded Persons” are defined as:

- (a) all persons who, as of the date of this Order, have executed a release to the benefit of the Defendant for the claims asserted in this class proceeding;
- (b) all persons who, as of the date of this Order, do not make their primary residence in the Province of Newfoundland and Labrador, and who do not opt into this class proceeding in the manner specified in this Order; and
- (c) all persons who died prior to the date of any judgment or settlement approval in this action;

“Institutions” are defined as the following facilities, which housed minors and were operated by the Defendant in the Province of Newfoundland and Labrador during some or all of the Class Period:

- (a) the facility known as the “Whitbourne Training School” and also known as, *inter alia*, the “Whitbourne Youth Center”, “the Boys’ Home”, “the Boys’ Home and Training School”, and “the Whitbourne School for Boys” and which was, at different times, located at the town of Whitbourne, in the Province Newfoundland and Labrador;
- (b) the facility known as “the Pleasantville Training School”, and also known as, *inter alia*, “the Girl’s Home”, “the Girls’ Home and Training School”, and “the Pleasantville School for Girls” and which was, at different times located at the town of Torbay and the City of St. John’s, in the Province of Newfoundland and Labrador; and
- (c) the facility known as the “St. John’s Youth Centre,” which was located in the City of St. John’s, in the Province of Newfoundland and Labrador.

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3. **IT IS HEREBY DECLARED AND ORDERED** that the Class be and is hereby divided into two subclasses defined as:

- (a) The “**Resident Subclass**” being those members of the Class who, as of the date of this Order, are residents of the Province of Newfoundland and Labrador; and
- (b) The “**Non-resident Subclass**” being those members of the Class who, as of the date this Order, do not make their primary residence in the Province of Newfoundland and Labrador.

4. **IT IS HEREBY DECLARED AND ORDERED** that the common issues be and are hereby certified as:

- (a) What procedures or training were in place for staff at the Institutions respecting recognition, discovery, prevention, reporting or otherwise dealing with sexual misconduct? Were these procedures or training adequate, reasonable, and in accord with applicable standards at the relevant times?
- (b) What procedures or training were in place for residents at the Institutions respecting recognition, discovery, prevention, reporting or otherwise dealing with sexual misconduct? Were these procedures or training adequate, reasonable, and in accord with applicable standards at the relevant times?
- (c) If the procedures or training identified in questions (a) or (b) were not adequate, reasonable, and in accord with applicable standards at the relevant times, did this constitute a breach by the Defendant of a duty of care or a fiduciary duty owed to the Class? and
- (d) Did the Defendant fraudulently conceal knowledge that residents of the Institutions suffered sexual battery or other sexual misconduct by a Delegate or a fellow resident of the Institutions between May 1, 1973 and June 28, 1989?

5. **IT IS HEREBY DECLARED AND ORDERED** that Jane Doe (#7), John Doe (#10) and John Doe (#11), whose identities are known to the Honourable Court, be and are hereby appointed as Representative Plaintiffs for the Class and any appropriate subgroup thereof;

6. **IT IS HEREBY DECLARED AND ORDERED** that Morris Martin Moore be and are appointed as class counsel (“Class Counsel”);

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7. **IT IS HEREBY DECLARED AND ORDERED** that no other proceeding based on the subject matter of this action may be commenced without leave of the court;
8. **IT IS HEREBY DECLARED AND ORDERED** that, until the claims asserted in this action are fully and finally decided, settled, discontinued, or abandoned, including the exhaustion of all rights of appeal, any other proceeding based on the subject matter of this action is stayed, save and except for those proceedings maintained by members of the Class making their primary residence in the Province of Newfoundland and Labrador who opt out of this class proceeding in accordance with the terms of this Order and persons making their primary residence outside the Province of Newfoundland and Labrador who do not opt into this class proceeding in accordance with the terms of this Order.
9. **IT IS HEREBY DECLARED AND ORDERED** that class members shall be notified that this proceeding has been certified as a class proceeding as follows, which this Court deems to be adequate notice:
 - (a) by posting the Short Form Notice set out in **Schedule "A"** and Long Form Notice set out in **Schedule "B"**, on Class Counsel's and the Administrator's website;
 - (b) by the Administrator forwarding the Short Form Notice and Long Form Notice to any Class Member who requests it;
 - (c) by the Administrator publishing, within thirty (30) days of the date of filing this Order, the Short Form Notice in the newspapers as set out in **Schedule "C"** attached hereto in quarter-page size in a weekend edition, where practicable;
 - (d) by the Administrator publishing, within thirty (30) days of the date of filing this Order, a press release in the form and according to the plan set out in **Schedule "D"** attached hereto;
 - (e) by the Administrator publishing, within thirty (30) days of the date of filing this Order, electronic advertisements in the form and according to the plan set out in **Schedule "E"** attached hereto;
 - (f) by the Administrator placing, within thirty (30) days of the date of filing this Order, Radio advertisements in the form and according to the plan and with the content set out in **Schedule "F"** attached hereto; and

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- (g) by the Administrator establishing a toll-free support line to provide assistance to class members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class members. The Administrator shall not disclose the identity of any class member or any person who chooses to opt out to any third party without express written consent or as otherwise provided in this Order.
10. **IT IS HEREBY DECLARED AND ORDERED** that Class Counsel will be solely responsible for the cost of giving notice as set out in this Order.
11. **IT IS HEREBY DECLARED AND ORDERED** that Trilogy Class Action Services be and is appointed as the Administrator for the purpose of giving notice as set out in this Order, and Trilogy Class Action Services will certify compliance with this Order in an affidavit served on the Defendant and filed with this Court no later than one hundred and twenty (120) days from the date of filing this Order. The names of those who Opt In or Opt Out will be redacted in the Administrator's affidavit as filed with the Court. An unredacted copy of the Administrator's affidavit will be filed with the Court under seal and served on the Defendant, which will keep it confidential.
12. **IT IS HEREBY DECLARED AND ORDERED** that each Representative Plaintiff shall:
- (a) Create an email account under their court ordered pseudonym (the "**Pseudonym Account**") and provide that address to Class Counsel; and
 - (b) Check the Pseudonym Account for messages no less than twice weekly between the date of filing this Order and the final disposition of the Action, including the exhaustion of any appeals.
13. **IT IS HEREBY DECLARED AND ORDERED** that Class Counsel will promptly provide the addresses of the applicable Pseudonym Accounts to any member of the Class who asks to communicate with one or more of the Representative Plaintiffs.
14. **IT IS HEREBY DECLARED AND ORDERED** that Trilogy Class Action Services be and is appointed as the Administrator for the purpose of receiving opt-out and opt-in coupons, and Trilogy Class Action Services will serve on the Defendant and file with this Court, no later than 120 days from the date of this Order, the names and addresses of all

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persons who opted out or opted into this class proceeding in accordance with the terms of this Order.

15. **IT IS HEREBY DECLARED AND ORDERED** that a Class member who is a resident of the Province of Newfoundland and Labrador may opt out of the class proceeding by mailing a signed opt-out coupon, a copy of which is attached as **Schedule “G”**, or some other legible signed request to opt out, within ninety (90) days of the date of this Order (the “Opt Out Deadline”), to the Administrator, at the following address:

Newfoundland and Labrador Sex Abuse Class Action Class Administrators
117 Queen St., P.O. Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0.

16. **IT IS HEREBY DECLARED AND ORDERED** that a Class member who is not a resident of the province of Newfoundland and Labrador may opt in to the class proceeding by mailing a signed opt-in coupon, a copy of which is attached as **Schedule “H”**, or some other legible signed request to opt in, within ninety (90) days of the date of this Order (the “Opt In Deadline”), to the Administrator, at the following address:

Newfoundland and Labrador Sex Abuse Class Action Class Administrators
117 Queen St., P.O. Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0.

17. **IT IS HEREBY DECLARED AND ORDERED** that following the Opt Out Deadline, no member of the Class may exclude themselves from the Class except with leave of the Court or by agreement between Class Counsel and counsel for the Defendant.

18. **IT IS HEREBY DECLARED AND ORDERED** that following the Opt In Deadline, no person may join the Class except with leave of the Court or by agreement between Class Counsel and counsel for the Defendant.

19. **IT IS HEREBY DECLARED AND ORDERED** that each party shall bear its own costs of the within Application for Certification of this class proceeding.

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DATED at St. John’s, in the Province of Newfoundland and Labrador this 1 day of October, 2019.

Julie Kearley

COURT OFFICER

Justice McGrath

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Schedule "A" – Short Form Notice

NEWFOUNDLAND AND LABRADOR BOYS' HOME AND GIRLS' HOME CLASS ACTION

THE ACTION

A lawsuit was started in the Supreme Court of Newfoundland and Labrador on behalf of the following class:

All former residents, save Excluded Persons, who suffered sexual battery and/or other sexual misconduct by a Delegate, or a fellow resident of the Institutions, while residing at any of the Institutions.

Delegates are defined as the servants, contractors, agents, officers, volunteers and employees of the Defendant and the operators, managers, administrators, teachers, and staff of the Institutions;

Excluded persons are people who have died and who have already sued and received compensation.

The class period is from May 1, 1973 to June 28, 1989.

Justice McGrath of the Supreme Court of Newfoundland and Labrador certified the action Jane Doe (#7), John Doe (#10) and John Doe (#11) v. Her Majesty in Right of Newfoundland and Labrador as a class action, has appointed Jane Doe (#7), John Doe (#10) and John Doe (#11) as Representative Plaintiffs and appointed the law firm of Morris Martin Moore of Mount Pearl as class counsel. This notice is given by order of Justice McGrath.

The lawsuit seeks compensation for class members who were subjected to sexual abuse while living at various residential institutions operated by the government. Sexual abuse may include:

- sexual assault by staff, volunteers, and other residents;

- beatings where the young person was naked or partially naked;
- detention while naked or partially naked; and
- sexually derogatory language.

The residential institutions included in this class action are:

- the Whitbourne Training School, also known as the Whitbourne Youth Center, the Boys' Home, the Boys' Home and Training School, and the Whitbourne School for Boys, at different times, located in Whitbourne;
- the Pleasantville Training School, also known as the Girl's Home, the Girls' Home and Training School, and the Pleasantville School for Girls at different times, located in Torbay and St. John's; and
- the St. John's Youth Centre.

FEES AND DISBURSEMENTS

Plaintiffs' counsel have entered into agreements with the Representative Plaintiffs with respect to legal fees and disbursements for the trial of the common issues. This agreement provides that Plaintiffs' counsel will not receive payment for their work unless and until the class action is successful or costs are recovered from the Defendant. This agreement must be approved by the Court.

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RESIDENTS OF NEWFOUNDLAND AND LABRADOR

Any person in Newfoundland and Labrador who wishes to opt out of the class action as certified must do so by sending a written notice on or before [INSERT DATE], to Newfoundland and Labrador Sex Abuse Class Action, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0. Residents in Newfoundland and Labrador who meet the class definition and do not opt out will be bound by the Court's judgment whether favourable or not. By opting out, your name will not be made public.

NON-RESIDENTS OF NEWFOUNDLAND AND LABRADOR

Any person not residing in Newfoundland and Labrador who wishes to opt in to the class action as certified must do so by sending a written notice on or before [INSERT DATE], to Newfoundland and Labrador Sex Abuse Class Action, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0. Non-residents of Newfoundland and Labrador who opt in will be bound by the Court's judgment whether favourable or not. By opting in, your name will not be made public.

CONTACT INFORMATION

Morris Martin Moore
184 Park Avenue
Mount Pearl, NL A1N 1K8
Tel: 709-747-0077
Fac: 709-747-0104
www.mmmlawyers.com

Newfoundland and Labrador Sex Abuse Class Action Class Administrators
117 Queen St., P.O. Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0
Tel (toll-free): 1-877-[INSERT NUMBER]
Fax: 416-342-1761
inquiry@NFLDsexabuseclassaction.com
www.NFLDsexabuseclassaction.ca

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Schedule “B”- Long Form Notice

NOTICE OF CLASS ACTION

**WHERE YOU IN A GIRLS’ HOME, BOYS’ HOME OR YOUTH DETENTION
CENTRE IN NEWFOUNDLAND FROM MAY 1, 1973 TO JUNE 28, 1989?**

IF YES, A Class Action May Affect Your Rights.

You could be affected by a class action against the Government of Newfoundland and Labrador (the “Province”).

A lawsuit has been certified as a Class Action against the Province. The Statement of Claim alleges that the Province is responsible for sexual abuse inflicted on children and youth who were forced to live in training schools and youth centres in Newfoundland. Sexual abuse may include sexual assault by staff, volunteers, other residents and includes beatings where the young person was naked or partially naked and detention while naked.

The Representative Plaintiffs are Jane Doe (#7), John Doe (#10), and John Doe (#11) who lived in Pleasantville Girls’ Home and the Whitbourne Boys’ Home. Jane Doe (#7) lives in Ontario and both John Does live in Newfoundland.

BASIC INFORMATION

1. Why is there a notice? This lawsuit has been “certified” as a class action. This means that the lawsuit meets the requirements for a class action and may proceed to trial. If you are included in the class, you may have legal rights and options before the Court decides whether the claims being made against the Province on your behalf are correct. This notice explains all of these things. A judge of the Newfoundland and Labrador Supreme Court General Division is currently overseeing this case. The case is known as *Jane Doe (#7) et al v. Her Majesty in right of Newfoundland and Labrador* (Court File No. 2017 01G 2568). The people who sued are called the Plaintiffs. The Province of Newfoundland and Labrador is the Defendant.

2. What is this lawsuit about? The lawsuit says that the Province failed to protect children and youth who resided in Training Schools, Youth Detention Centres, Boys’ Homes and Girls Homes from sexual abuse between May 1, 1973 and June 28, 1989. The Court has not decided whether the Plaintiffs or the Province is right. The lawyers for the Plaintiffs will have to prove their claims in Court. If you are having a difficult time dealing with these issues you can call [INSERT TOLL-FREE NUMBER] for assistance.

3. Why is this a class action? In a class action, people called the “Representative Plaintiffs” (in this case, Jane Doe (#7), John Doe (#10) and John Doe (#11) sued on behalf of other people who have similar claims. All of these people are a “Class” or “Class Members.” The court resolves the issues for all Class Members in one case, except for residents of the Province who remove themselves from the Class or non-residents who do not opt in to the Class.

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4. Who is a member of the Class? The Class includes:

All former residents, save Excluded Persons, who suffered sexual battery and/or other sexual misconduct by a Delegate, or a fellow resident of the Institutions, while residing at any of the Institutions.

Delegates are defined as the servants, contractors, agents, officers, volunteers and employees of the Defendant and the operators, managers, administrators, teachers, and staff of the Institutions;

Excluded Persons are defined as:

- all persons who, as of the date of this Order, have executed a release to the benefit of the Defendant for the claims asserted in this class proceeding;
- all persons who, as of the date of this Order, do not make their primary residence in the Province of Newfoundland and Labrador, and who do not opt into this class proceeding in the manner specified in this Order; and
- all persons who died prior to the date of any judgment or settlement approval in this action;

Institutions are defined as the following facilities, which housed minors and were operated by the Defendant in the Province of Newfoundland and Labrador during some or all of the Class Period:

- the facility known as the “Whitbourne Training School” and also known as, inter alia, the “Whitbourne Youth Center”, “the Boys’ Home”, “the Boys’ Home and Training School”, and “the Whitbourne School for Boys” and which was, at different times, located at the town of Whitbourne, in the Province Newfoundland and Labrador;
- the facility known as “the Pleasantville Training School”, and also known as, inter alia, “the Girl’s Home”, “the Girls’ Home and Training School”, and “the Pleasantville School for Girls” and which was, at different times located at the town of Torbay and the City of St. John’s, in the Province of Newfoundland and Labrador; and
- the facility known as the “St. John’s Youth Centre,” which was located in the City of St. John’s, in the Province of Newfoundland and Labrador.

5. What are the Plaintiffs asking for? The Plaintiffs are asking for money or other benefits for the Class. They are also asking for lawyers' fees and costs.

6. Is there any money available now? No money or benefits are available now because the Court has not yet decided whether the Province of Newfoundland and Labrador did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for your share.

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YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class or whether to remove yourself, and you have to decide this by **[INSERT DATE - 90 days from date of the Certification Order]**. What you are required to do depends on whether or not you are currently a resident of the Province of Newfoundland and Labrador.

If you are currently a resident of Newfoundland and Labrador:

To stay in the Class, you do not have to do anything.

If you do nothing, you will automatically remain in the lawsuit. You will be bound by all Court orders in this case, good or bad, and the Representative Plaintiffs will have authority to resolve your claim. If money or benefits are obtained, you will be notified about how to ask for a share.

Residents who do not want to be a part of the class must opt out by sending a written notice on or before **[INSERT DATE - 90 days from date of the Certification Order]**, to the Class Administrator. Otherwise, you will be bound by the Court's judgment whether favourable or not.

7. By opting out, will my name be made public? No.

If you are NOT currently a resident of Newfoundland and Labrador:

To be in the Class, you need to take action.

Non-residents who want to be a part of the Class are required to opt in to the Class by sending a written notice on or before **[INSERT DATE - 90 days from date of the Certification Order]**, to Newfoundland and Labrador Sex Abuse Class Action, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0. Include your name, address, telephone number, and signature. You can also get an Opt Out Form from www.NFLDsexabuseclassaction.ca You must mail your or Opt Out Form postmarked by **[INSERT DATE - 90 days from date of the Certification Order]**.

If you qualify for the Class, you will be bound by all Court orders in this case, good or bad, and the Representative Plaintiffs will be authorized to resolve your claim. If money or benefits are obtained, you will be notified about how to ask for a share.

Non-residents who do not want to be a part of the class should take no action.

8. By opting out, will my name be made public? No.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case? Yes. The Court has appointed Morris Martin Moore to represent you and other Class members as "Class Counsel." If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

10. How will the lawyers be paid? Class Counsel will only be paid if they win a trial or if there is a settlement. The Court has to also approve their request to be paid. The fees and expenses could be deducted from any money obtained for the Class, or paid separately by the defendant.

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A TRIAL

11. **How and when will the Court decide who is right?** If the lawsuit is not dismissed or settled, the Plaintiffs will have to prove their claims at a trial that will take place in the Province of Newfoundland and Labrador. During the trial, a court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or the Province is right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class.

12. **Will I get money after the trial?** If the Plaintiffs obtain money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. These things are not known right now. Important information about the case will be posted on the website.

GETTING MORE INFORMATION

12. How do I get more information? You can get more information at www.NFLDsexabuseclassaction.ca, by emailing inquiry@NFLDsexabuseclassaction.com, by calling toll free at 1-866-329-7153 or by writing to Newfoundland and Labrador Sex Abuse Class Action, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0.

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“Schedule C” – Print Newspaper Notices

The Short-Form Notice (see Schedule A) will be published in the Saturday edition and/or the designated weekly publication date of the newspapers:

- The Telegram
- Western Star
- Compass
- Southern Gazette
- Packet
- Central Voice
- Gulf news
- Northern Pen
- Labradorian
- Aurora

These newspaper notices will measure 4.68 inches wide by 10.71 inches high (1/4 page) and be printed in black and white.

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“Schedule D” – Press Release

The Long-Form Notice (see Schedule B) will be distributed as a national press release over the Business News Wire, which includes over 1,000 media outlets, including newspapers, magazines, television, radio and online media across Canada.

The Long-Form Notice (see Schedule B) will also be distributed to the following organizations for circulation to their members, clients, and affiliates:

- Pathways Foundation
- Newfoundland and Labrador Association of Social Workers
- Newfoundland and Labrador Sexual Assault Crisis and Prevention Centre
- RAINN
- Status of Women Centres in Newfoundland and Labrador
- Association of Psychology Newfoundland and Labrador
- Newfoundland and Labrador Medical Association.

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“Schedule E” – Electronic Advertisements

The following text advertisement will be placed by way of paid advertisement (known as “sponsored posts”) on Facebook during the 90 days of the noticing period:

“Were you in the Girls’ Homes or Boys’ Homes in Whitbourne, Pleasantville or Waterford Bridge Road? There is a class action for survivors of sexual abuse and physical abuse while naked which may affect you rights. Visit www.NFLDsexabuseclassaction.ca for more details.”

The text above will also be placed by way of paid banner advertisements, with a click-through function directly to the Notice page on www.NFLDsexabuseclassaction.ca, on the following websites during the 90 days of the noticing period:

- CBC.ca/News/Canada/Newfoundland-Labrador
- CTVnews.ca/Newfoundland-Labrador
- TheTelegram.com
- TheWesternStar.com
- CbnCompass.ca
- ThePacket.ca
- Gazette.mun.ca
- TheCentralVoice.ca
- NorthernPen.ca
- SouthernGazette.ca
- TheLabradorian.ca
- TheAurora.ca

Trilogy shall implement one million paid banner advertisements geo-targeted in Newfoundland and Labrador and 250,000 paid banner advertisements geo-targeted to the rest of Canada.

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“Schedule F”- Radio Advertisements

The following text advertisement will be recorded and placed by way of paid advertisement on Stingray Digital group news/talk programs and VOXM-AM -590 AM listen live during the 90-day notice period:

“There is a class action for residents of the Girls’ and Boys’ homes in Whitbourne, Pleasantville and Waterford Bridge Road. The class action is for children and youth who were sexually abused or physically abused while naked. If you were in these institutions during the years 1973-1989, your rights may be affected. To find out more about this class action please call Morris Martin Moore at (709) 747-0077, visit our website at www.NFLDsexabuseclassaction.ca or by emailing inquiry@NFLDsexabuseclassaction.com”.

Trilogy shall implement 25 radio spots per week in a sequence of two weeks on and one week off. The 25 radio spots per week with four per day on broad rotator to capture the audience in all four key news cycle times and place an extra spot on our busiest day on Friday's with no commercials on Sundays.

Broad rotator (also referred to as ¼ reach) is the most common air time chosen for cost effectiveness and efficiency. The commercials are played or rotated during the four key time blocks of the programming day - Morning drive 6am, midday, afternoon drive and evening. Please note that no radio spots will be aired after midnight to 6 am.

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“Schedule G”- Opt Out Form

OPT OUT FORM

**TO: Newfoundland and Labrador Sex Abuse Class Action,
c/o Trilogy Class Action Services,
117 Queen St., P.O. Box 1000,
Niagara-on-the-Lake, Ontario, LOS 1J0,
Tel (toll-free): 1-866-329-7153., Fax: 416-342-1761,
www.NFLDsexabuseclassaction.ca**

Note: To opt out, this form must be properly completed and sent to the above address, postmarked no later than [DATE].

2017 01G 2568

**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR GENERAL DIVISION**

BETWEEN: JANE DOE (#7), JOHN DOE (#9)-(Discontinued), JOHN DOE (#10) AND JOHN DOE (#11)

PLAINTIFFS

AND:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR
DEFENDANT**

I understand that by opting out of this class proceeding, I am confirming that I do not wish to participate in this class proceeding.

I understand that any individual claim I have may be subject to limitation periods. Failure to comply with such periods may result in my claim being legally barred.

I understand that the certification of this class proceeding suspended the running of any limitation periods from the time the class proceeding was filed. Any limitation periods will resume running against me if I opt out of this class proceeding.

I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation periods and for taking all necessary legal steps to protect any claim I may have.

I understand that by opting out, my name will not be made public.

I choose to opt out of this class action

Signature of Witness:

Signature of Class Member Opting Out:

Name of Witness:

Name of Class Member:

Telephone:

Date:



“Schedule H” – Opt In Form

OPT IN FORM

TO: Newfoundland and Labrador Sex Abuse Class Action,
c/o Trilogy Class Action Services,
117 Queen St., P.O. Box 1000,
Niagara-on-the-Lake, Ontario, LOS 1J0,
Tel (toll-free): 1-866-329-7153., Fax: 416-342-1761,
www.NFLDsexabuseclassaction.ca

Note: To opt in, this form must be properly completed and sent to the above address, postmarked no later than [DATE].

2017 01G 2568

**IN THE SUPREME COURT OF NEWFOUNDLAND AND
LABRADOR GENERAL DIVISION**

**BETWEEN: JANE DOE (#7), ~~JOHN DOE (#9)~~ (Discontinued), JOHN DOE (#10) AND JOHN
DOE (#11)**

PLAINTIFFS

AND:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR
DEFENDANT**

I understand that by opting in to this class proceeding, I am confirming that I wish to participate in this class proceeding and I understand that the representative plaintiffs will have the right to direct the resolution of my claim.

I understand that by opting in to this class proceeding I will be bound by any judgement of the Court, whether favourable or not.

I understand that by opting in to this class action, by name will not be made public.

I choose to opt in of this class action

Signature of Witness:

Signature of Class Member Opting In:

Name of Witness:

Name of Class Member:

Telephone:

Date:

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APPENDIX "A"

**2017 01G 2568 CP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

BETWEEN:

**JANE DOE (#7), ~~JOHN DOE (#9)~~ (Discontinued),
JOHN DOE (#10) AND JOHN DOE (#11)**

PLAINTIFFS

AND:

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND
AND LABRADOR**

DEFENDANT

Brought under the Class Actions Act, S.N.L. 2001, c. C-18.1

LITIGATION PLAN

I. COMMON ISSUES AND CERTIFICATION APPLICATION

1. The Plaintiffs seek certification of the following common issues ("Common Issues"):
 - (i) what procedures/training were in place for staff respecting recognition/discovery/prevention/reporting or otherwise dealing with sexual misconduct? Were they adequate/reasonable/in accord with existing standards?
 - (ii) what procedures/training were in place for residents respecting recognition/discovery/prevention/reporting/ or otherwise dealing with sexual misconduct? Were they adequate/reasonable/in accord with existing standards?
 - (iii) whether the Defendant fraudulently concealed knowledge of the Abuse during the Class Period; and

(iv) for each or any of the above, if there was a failure to meet a standard which was adequate/reasonable/in accord with existing standards, was such a failure negligent or in breach of a fiduciary duty?

2. Morris Martin Moore have been retained as Class Counsel to prosecute the proposed Class Action. Class Counsel have the requisite knowledge, skill, experience, personnel and financial resources to prosecute this Action to resolution.

3. The Plaintiffs propose that Trilogy Class Action Services (Trilogy) serve as the Class Administrator ("Class Administrator") for the purposes of noticing, as well as receiving forms related to the opting in and out of Class Members. Trilogy, having administered class proceedings in the past, has the necessary knowledge and experience to perform such tasks.

II. CLASS DEFINITION

4. The proposed Class definition is as follows:

"Class" or "Class Members" means all former residents, save Excluded Persons, who suffered sexual battery and/or other sexual misconduct ("the Abuse") by a Delegate, or a fellow resident of the Institutions, while resident at any of the Institutions operated by the Defendant during the Class Period. "Excluded Persons" being all persons who have executed a release to the benefit of the Defendant for the within claims and who have died prior to the date of judgment or Court approval of settlement.

5. The Class Period is defined as May 1st, 1973 to June 28th, 1989.

6. The Plaintiffs recognize the need, pursuant to s.7(2) of the *Class Actions Act*, to divide the aforementioned Class into subclasses comprised of those resident in Newfoundland and Labrador and those resident elsewhere.

III. NOTIFICATION OF CERTIFICATION AND OPT IN/OUT PROCEDURE

7. The Plaintiffs request that the Court settle the form and content for notification of the Certification of this Action ("Notice Document"), the timing and manner of providing notice of certification ("Notice Plan") and set an opt in and opt out procedure.

a) Notice Document

8. The Plaintiffs request that the Court approve the Notice Document attached to the draft Order as Schedule "A" as an adequate form of notice of certification of a class proceeding and order that it shall be issued pursuant to the Notice Plan.

b) Notice Plan

9. The Plaintiffs will be solely responsible for the cost of providing notice of certification of a class proceeding in accordance with the Notice Plan.
10. The Notice Document will be disseminated by the Class Administrator, in accordance with the Notice Plan, as follows, and will be deemed adequate notice by the Court:
 - (a) delivered by regular mail or email to:
 - (i) those Class Members whose contact information the Defendant has identified;
 - (ii) those Class Members whose contact information is obtained through information provided by the Defendant; and

- (iii) those Class Members whose contact information has been provided directly to Class Counsel from potential Class Members.
 - (b) forwarded by mail or email to any person who requests it from the Class Administrator;
 - (c) made available orally by recorded message at a toll-free line established and managed by the Class Administrator;
 - (d) posted on the Class Action website to be supervised by the Class Administrator;
 - (e) posted on the website of Class Counsel;
 - (f) within thirty (30) days following the date of the Certification Order, published once, in quarter-page size where practicable, in the weekend edition, where practicable, in various newspapers across Canada.
 - (g) broadcast by various radio stations across Canada.
11. The Class Administrator will serve and file an affidavit certifying compliance with the Notice Plan on a date fixed by the Case Management Judge.

c) Opt In and Opt Out Process

12. (a) persons primarily resident in Newfoundland and Labrador falling within the definition of the Class will be bound by the determination of the Common Issues unless they opt out of the Class Action;
- (b) persons otherwise falling within the definition of the Class who are not primarily resident in Newfoundland and Labrador will not be bound by the determination of the Common Issues unless they opt in to the Class Action;
- (c) a person may only opt in or opt out of the Class Action by sending a written election to the Class Administrator before a date fixed by the Court;

- (d) Class Members will be given ninety (90) days following the Certification of the Action to opt out of the Class;
 - (e) no person may opt out of the Class Action after the date fixed by the Court; and
 - (f) persons otherwise falling within the definition of the Class who are not primarily resident in Newfoundland and Labrador will be given ninety (90) days following the Certification of the Action to opt in to the Class.
13. The Plaintiffs will ask the Court to order that no person may opt out a person who is mentally incapable without leave of the Court after notice to the Public Trustee.
 14. The Plaintiffs request that the Court approve the Opt Out and Opt In Forms attached to the draft Order as Schedule "G" and Schedule "H", respectively.
 15. The Plaintiffs will ask that the Court appoint the Class Administrator to organize and receive Opt In and Opt Out Forms. Only written election to opt in and opt out using the aforementioned forms will be accepted and must be delivered to the Class Administrator within the aforementioned timeframes.
 16. Within one hundred and twenty (120) days after the expiration of the opt out period, the Class Administrator will serve and file an affidavit listing the names of all persons who have opted out of, or opted into, the Class Action.

IV. LITIGATION STEPS PRIOR TO THE DETERMINATION OF THE COMMON ISSUES

a) Pleadings and Production

17. The Defendant shall serve a Statement of Defence within one hundred and twenty (120) days from the date of the Certification Order.

18. The Defendant shall have one hundred and twenty (120) days from the date of the Certification Order to issue and serve any third-party claims.
19. Any potential third party shall have sixty (60) days from service of the third-party claim to serve a third-party defence and defence to the main Action if any.
20. In any event, all pleadings in the Action shall be served and filed within one hundred and eighty (180) days from the Certification Order.
21. Within sixty (60) days from the Certification Order the parties shall agree upon a timetable for production of further documents and examinations, to be approved by Court Order.
22. The Plaintiffs request that the Defendant and Class Counsel be expressly obliged to do the following:
 - (a) exchange a list of names of any Class Members known to them;
 - (b) exchange the names of any other Class Members or potential class members as they become known to them;
 - (c) advise the Court and each other of their best information as to the number of Class Members; and
 - (d) together with their servants and agents, as well as Class Members, be enjoined from destroying or disposing of any documents relevant to this Action.
23. The Plaintiffs shall apply for such further directions as may be required.

b) First Pre-Trial

24. The Plaintiffs propose that the first pre-trial of this Action be fixed for hearing before the Judge assigned to consider all applications in this within sixty (60) days of the Certification Order to:

- (a) approve the production and examination timetable to be agreed between the parties;
- (b) set a deadline for the hearing of applications arising from productions and examinations;
- (c) set dates for further pre-trials or case conferences as necessary; and
- (d) fix a date for the trial of the Common Issues.

c) Common Issues Trial

25. The Common Issues Trial will determine the Common Issues at a time and place fixed by the Court.

V. LITIGATION STEPS FOLLOWING THE DETERMINATION OF COMMON ISSUES FAVOURABLE TO THE CLASS

a) Notice of Resolution of Common Issues

26. Assuming that the Common Issues are resolved by judgment in favour of the Class, it may be necessary for the Court to establish and supervise a process to determine individual issues. The Plaintiffs propose that a Case Management meeting be held as soon as practicable following judgment on the Common Issues, at which time the parties will be at liberty to make submissions regarding the methodology for resolving individual issues.

27. The Plaintiffs will ask the Court to:

- (a) settle the form and content of the notification of the resolution of the Common Issues (“Notice of Resolution”);

- (b) settle the timing and manner of providing the Notice of Resolution;
- (c) establish and approve a process (“Damages Assessment Regime”) to provide for the effective and efficient distribution of damages payable to Class Members; and
- (d) set a deadline (“Claims Deadline”) by which date Class Members will be required to make claim under the Damages Assessment Regime;

28. The Plaintiffs propose that the Damages Assessment Regime provide for the assessment of damages on the basis of individual experience.

b) Individual Assessment Process (“IAP”)

29. Payment shall be made to each Class Member on an individualized basis for damages arising from sexual batteries and/or other sexual misconduct by a Delegate while resident at any of the Institutions.

30. The Court will settle the means of assessing damages on the basis of individual experience.

VI. MISCELLANEOUS

a) Review of the Plan

31. This Litigation Plan may be reconsidered and revised under the continuing Case-Management authority of the Court after the determination of the Common Issues or as required by the Court.

b) Funding

32. Class Counsel has entered into an agreement with the Representative Plaintiffs with respect to legal fees and disbursements. This agreement provides that Class

Counsel will not receive payment for their work unless and until the Class Action is successful or costs are recovered from the Defendant.

33. The Plaintiff's legal fees are to be paid on a contingency basis and are subject to the Court's approval, as per s. 35 of the *Class Actions Act*.

c) Claims Administration

34. Class Counsel currently proposes that a Claims Administrator oversee the administration of claims for any settlement achieved, or for the distribution of damages to Class Members, as appropriate.

35. If a settlement is achieved and a settlement fund is provided, Class Counsel proposes that settlement funds be distributed by the Claims Administrator based on a process approved by the Court.

d) Class Action Website

36. From time to time, the Class Administrator will post frequently asked questions and answers and other documentation relating to the Class Action on the Class Action website supervised by the Class Administrator for the information of Class Members.

e) Case Management

37. It is expected that this Action will continue to be case managed. Regular Case Management meetings and interlocutory applications will be scheduled as required, including but not limited to, applications dealing with publication bans on the identity of class members, as required.

f) Applicable Law

38. The applicable law is the law of Newfoundland and Labrador in all respects.