

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

RPC1, RPC2 AND RPC3

PLAINTIFFS

-and-

THE ATTORNEY GENERAL OF CANADA, THE COMMISSIONER OF NUNAVUT
and THE COMMISSIONER OF THE NORTHWEST TERRITORIES

DEFENDANTS

CERTIFICATION ORDER

BEFORE THE HONOURABLE)
JUSTICE BYCHOK)
IN CHAMBERS)

ON FRIDAY, THE 14th DAY OF
FEBRUARY, 2020 AT THE
CITY OF IQALUIT, NUNAVUT

UPON HEARING Stephen Cooper and Lynn Moore for the Plaintiffs, Andrew Fox for the Attorney General of Canada, and Ryan Baxter for the Commissioners of Nunavut and the Northwest Territories, and having read the Certification Record, the Brief of the Plaintiffs, the Brief of the Second and Third Defendants and the Certification Application, all filed;

IT IS ORDERED AS FOLLOWS:

1. **THAT** this action is hereby certified as a class proceeding as of the date of filing of this Order. The Class is defined as those people who were:
 - a) enrolled as students in schools owned or operated by the Defendants in Nunavut Territory between April 1, 1969 and July 30, 1981;
 - b) exposed to Maurice Russell Cloughley (“Cloughley”) during the time Cloughley was employed by either Defendant as a

teacher in the community where the Class Member lived;
and

- c) sexually assaulted by Cloughley while they were in his charge, or were made to be subjects of child pornography by Cloughley, or were made to engage in sexual activities with other children by Cloughley, or some combination of these forms of sexual exploitation.

2. **THAT** the common issues be and are hereby certified as:

- (a) What procedures or training were in place for staff 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 students 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 owed to the Class?
- (d) Is the Defendant vicariously liable for the actions of Cloughley?; and
- (e) If the procedures or training identified in (a) or (b) were not adequate, reasonable, and in accord with the applicable standards at the relevant times, did this constitute a breach of fiduciary duty by the Defendant?

3. **THAT** RP1 and RP2, whose identities are known to the Honourable Court, be and are hereby appointed as Representative Plaintiffs for the Class and any appropriate subgroup thereof;

4. **THAT** Cooper Regel and Morris Martin Moore be and are appointed as class counsel (“Class Counsel”);

5. **THAT** no other proceeding based on the subject matter of this action may be commenced without leave of the Court;

6. **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 who opt out of this class proceeding in accordance with the terms of this Order

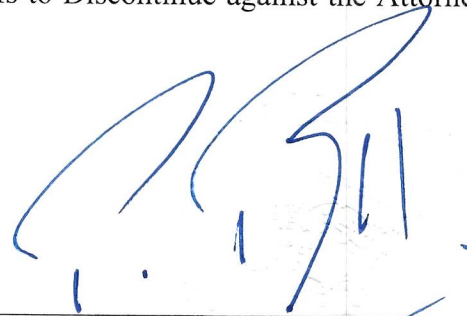
7. **THAT** Class Members shall be notified that this proceeding has been certified as a class proceeding by direct notice as follows, which this Court deems to be adequate notice:
 - (a) the Defendants shall provide a list of all students in all schools taught by Cloughley during the class period to the Administrator within thirty (30) days of the date of this Certification Order. The Administrator will begin a process of direct noticing of all these potential class members;
 - (b) by posting the Short Form Notice set out in **Schedule “A”** and the Long Form Notice set out in **Schedule “B”** on Class Counsel’s and the Administrator’s website;
 - (c) by the Administrator forwarding the Short Form Notice (see **Schedule “A”**) to all homeless shelters for men and women located in Montreal, Ottawa, Winnipeg and Edmonton;
 - (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 “C”** attached hereto; and
 - (e) 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.

8. **THAT** the Defendants will be solely responsible for the cost of giving notice as set out in this Order.

9. **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 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 Defendants, which will keep it confidential.
10. **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 of this Order and the final disposition of the Action, including the exhaustion of any appeals.
11. **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.
12. **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 Defendants and file with this Court, no later than 120 days from the date of this Order, the names and addresses of all persons who opted out of this class proceeding in accordance with the terms of this Order.
13. **THAT** a Class Member may opt out of the class proceeding by mailing a signed opt-out coupon, a copy of which is attached as **Schedule "C"**, 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:

Cloughley Sex Abuse Class Action Class Administrators
117 Queen St., P.O. Box 1000
Niagara-on-the-Lake, ON
L0S 1J0

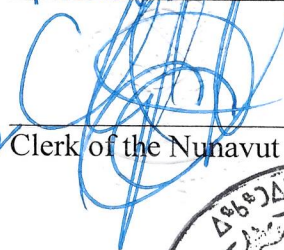
14. **THAT** following the Opt Out Deadline, no member of the Class may exclude themselves from the Class except with leave of the Court or by agreement between Class Counsel and counsel for the Defendant.
15. **THAT** a judgement on the common issues of the class binds every member of the class who has not opted out of the class proceeding
16. **THAT** leave is granted for RP3 to wholly discontinue her action.
17. **THAT** leave is granted for the Plaintiffs to Discontinue against the Attorney General of Canada with no order as to costs.



Justice of the Nunavut Court of Justice

JUSTICE P. BYCHOK
Nunavut Court of Justice

ENTERED on this 14th day of AUGUST, 2020.



Clerk of the Nunavut Court of Justice



Schedule "A" – Short Form Notice

‘CLOUGHLEY SEX ABUSE CLASS ACTION

THE ACTION

A lawsuit was started in the Nunavut Court of Justice on behalf of the following class of people who were:

- enrolled as students in schools operated by Nunavut or NWT between April 1, 1969 and July 30, 1981;
- exposed to Maurice Russell Cloughley ("Cloughley") during the time Cloughley was employed by NWT as a teacher in the community where the Class Member lived; and
- sexually assaulted by Cloughley while they were in his charge, or were made to be subjects of child pornography by Cloughley, or were made to engage in sexual activities with other children by Cloughley, or some combination of these forms of exploitation.

The class period is from April 1, 1969 to July 30, 1981.

Justice Bychok of the Nunavut Court of Justice certified the action RPC1 and RPC2 v. the Commissioner of Nunavut and The Commissioner of the Northwest Territories as a class action, has appointed RPC1 and RPC2 as Representative Plaintiffs and appointed the law firms of Cooper Regel of Sherwood Park, Alberta and Morris Martin Moore of Mount Pearl, Newfoundland and Labrador as class counsel. This notice is given by order of Justice Bychok.

The lawsuit seeks compensation for class members who were subjected to sexual abuse by Maurice Cloughley while attending schools in Nunavut and the Northwest Territories. Sexual abuse may include:

- sexual contact by Cloughley or other students at Cloughley's directions,
- inappropriate touching by Cloughley while bathing;
- being forced to participate in child pornography (naked photographs) by Cloughley.

FEEES 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 Defendants. This agreement must be approved by the Court.

OPTING OUT

Any person who wishes to opt out of the class action as certified must do so by sending a written notice on or before **September 17, 2020** to Cloughley Sex Abuse Class Action Administrators, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0. Residents in Nunavut 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.

CONTACT INFORMATION

Cooper Regel

77 Chippewa Road, Suite 200
Sherwood Park, AB T8A 6J7
Tel: 1-800-944-7477
www.cooperregelnorth.ca

Morris Martin Moore

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

Cloughley Sex Abuse Class Action Class Administrators

117 Queen St., P.O. Box 1000
Niagara-on-the-Lake, Ontario, L0S 1J0
Tel (toll-free): **1-866-329-7153**
Fax: 1-416-342-1761
inquiry@cloughleysexualabuseclassaction.ca
www.cloughleysexualabuseclassaction.ca

Schedule "B"- Long Form Notice

NOTICE OF CLASS ACTION

WERE YOU TAUGHT BY MAURICE CLOUGHLEY IN THE TERRITORY OF NUNAVUT FROM APRIL 1, 1969 TO JULY 30, 1981?

IF YES, A Class Action May Affect Your Rights.

You could be affected by a class action against the Government of Nunavut and the Northwest Territories (the "**Territories**").

A lawsuit has been certified as a Class Action against the Territories. The Statement of Claim alleges that the Territories are responsible for sexual abuse inflicted on children and youth who were taught by Maurice Cloughley. Sexual abuse may include sexual assault by Cloughley, forced sexual contact with other students, and being forced to pose naked for photographs.

The Representative Plaintiffs are RPC1 and RPC2 who were taught by Cloughley and live in Nunavut.

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 Territories on your behalf are correct. This notice explains all of these things. A judge of the Nunavut Court of Justice is currently overseeing this case. The case is known as *RPC1 and RPC2 v. The Commissioner of Nunavut and The Commissioner of the Northwest Territories* (Court File No. 08-16-722-CVC). The people who sued are called the Plaintiffs. The Territories of Nunavut and The Northwest Territories are the Defendants.

2. **What is this lawsuit about?** The lawsuit says that the Territories failed to protect children and youth who attended schools in Nunavut and the Northwest Territories and who were taught by Maurice Cloughley April 1, 1969 and July 30, 1981. The Court has not decided whether the Plaintiffs or the Territories are right. The lawyers for the Plaintiffs will have to prove their claims in Court.

3. **Why is this a class action?** In a class action, people called the "Representative Plaintiffs" (in this case, RPC1 and RPC2) 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 people who remove themselves from the Class.

4. **Who is a member of the Class?** The Class includes: All former people who were:

- enrolled as students in schools owned or operated by the Defendants in Nunavut Territory between April 1, 1969 and July 30, 1981;
- exposed to Maurice Russell Cloughley (“Cloughley”) during the time Cloughley was employed by either Defendant as a teacher in the community where the Class Member lived; and
- sexually assaulted by Cloughley while they were in his charge, or were made to be subjects of child pornography by Cloughley, or were made to engage in sexual activities with other children by Cloughley, or some combination of these forms of sexual exploitation.

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 Territories 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.

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]** 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.

If you are having difficulty completing the Opt-In form, you can call **1-866-329-7153** for assistance.

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

THE LAWYERS REPRESENTING YOU

8. **Do I have a lawyer in the case?** Yes. The Court has appointed the law firms of Cooper Regel and Morris Martin Moore to represent you and other Class members as “Class Counsel”.

9. **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.

A TRIAL

10. **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 Territory of Nunavut. During the trial, a Court will hear all of the evidence, so that a decision can be reached about whether the Plaintiffs or the Territories are right about the claims in the lawsuit. There is no guarantee that the Plaintiffs will win any money or benefits for the Class. All Class Members will be bound by the result whether positive or not.

11. **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.cloughleysexualabuseclassaction.ca, by emailing inquiry@cloughleysexualabuseclassaction.ca, by calling toll free at **1-866-329-7153** or by writing to Cloughley Sex Abuse Class Action, 117 Queen St, P.O. Box 1000, Niagara-on-the-Lake, Ontario, L0S 1J0.

“Schedule C” – 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 in English.

"Schedule D"
OPT OUT FORM

TO: Cloughley Sex Abuse Class Action,
c/o Trilogy Class Action Services,
117 Queen St., P.O. Box 1000,
Niagara-on-the-Lake, Ontario, L0S 1J0,
Tel (toll-free): 1-866-329-7153, Fax: [INSERT NUMBER]
www.cloughleysexualabuseclassaction.ca, inquiry@cloughleysexualabuseclassaction.ca

This is **NOT** a claim form. Completing this **OPT OUT FORM** will exclude you from receiving any compensation arising out of any settlement or judgment in the class proceeding named below:

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

08-16-772-CVC
IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:	RPC1 AND RPC2	PLAINTIFFS
AND:	THE COMMISSIONER OF NUNAVUT	FIRST DEFENDANT
AND:	THE COMMISSIONER OF THE NORTHWEST TERRITORIES	SECOND 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 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:

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

RPC1; RPC2 and RPC3

PLAINTIFFS

- and -

**THE ATTORNEY GENERAL OF CANADA, THE
COMMISSIONER OF THE TERRITORY OF NUNAVUT and
THE COMMISSIONER OF THE TERRITORY OF THE
NORTHWEST TERRITORIES**

DEFENDANTS

CERTIFICATION ORDER

COOPER REGEL A MEMBER OF MASUCH LLP
Suite 200, 77 Chippewa Road
Sherwood Park, AB
T8A 6J7

&

MORRIS MARTIN MOORE
184 Park Avenue
Mount Pearl, NL
A1N 1K8

Whose address for service is in care of:
GFY Paralegal Services
P.O. Box 1734, Iqaluit, NU
X0A 0H0

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Fax: (780) 570-8467
File No. 80284 ARR
Roll No. 20150005

LYNN MOORE
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Roll No. 2015014

