

CANADIAN HUMAN RIGHTS TRIBUNAL

Between:

**CATHY WOODGATE, RICHARD PERRY, DOROTHY WILLIAMS, ANN TOM,
MAURICE JOSEPH and EMMA WILLIAMS**

Complainants

-and-

CANADIAN HUMAN RIGHTS COMMISSION

Commission

-and-

ROYAL CANADIAN MOUNTED POLICE

Respondent

COMPLAINANTS' STATEMENT OF PARTICULARS

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OVERVIEW

1. The Complainants,¹ who are six members of the Lake Babine First Nations community, claim discrimination by the Royal Canadian Mounted Police (RCMP). They allege adverse differential treatment and denial of access to police services based on race and national or ethnic origin contrary to Section 5 of the *Canadian Human Rights Act (CHRA)*.
2. This case describes at least two ways in which the RCMP's investigative methods are discriminatory. First their traditional investigative methods fail to meet the needs of Indigenous victims of abuse, and are executed with biased attitudes. Second, the RCMP failed in their obligation to modify their traditional practices to meet Indigenous people's cultural needs, an obligation arising from the known distrust of the RCMP by Indigenous people
3. The Complainants' claim is about the RCMP's investigation into their experiences of childhood abuse in Northern British Columbia, but it represents the experiences of many other Indigenous people nationwide. The case demonstrates the inequality that Indigenous communities experience in accessing justice. It reveals the biased attitudes and systemic discrimination that exists in police investigative methods, and shows how Indigenous victims of abuse suffer adverse impacts, such as being disbelieved and/or dehumanized, being subject to incomplete and/or inadequate investigations, receiving little or no support, and being treated with a lack of respect and dignity.
4. This case also demonstrates how the protection of powerful individuals serves to exacerbate the discrimination of oppressed groups. Indeed the converse side of racism allows for the protection and privilege of non-Indigenous individuals, particularly if the individual holds significant political power and/or potential financial influence over the RCMP. Bias in favour of powerful non-Indigenous individuals, even if unconsciously held, results in harmful treatment to Indigenous complainants of abuse.
5. The consequence of the RCMP's discriminatory investigative methods to the Complainants and other Indigenous people has been to signal to them that they do not matter. This dehumanization has resulted in their psychological emotional, and spiritual harm. They demand treatment of a quality equal to that received by non-Indigenous Canadians, and to be provided investigative services that will allow them to access justice.

¹ "Complainants" using upper case "C" refers to the six named complainants in this case, while "complainants" using lower case "c" refers to all individuals who have a

MATERIAL FACTS

6. Beginning in 2004, a former teacher, coach and missionary from Immaculata day school, Prince George College and other schools in the Roman Catholic Episcopal Corporation of the Prince Rupert in British Columbia diocese, was appointed CEO for the 2010 Olympics in Vancouver (VANOC CEO) and began to appear in the media regularly. The Complainants, and many others who had been taught or coached by the former teacher, recognized him and remembered his abusive behavior when they were children. There is no evidence that anyone reported their allegations to the RCMP in the time period from 2004, up to and including the 2010 Olympics.
7. In February 2011, journalist Laura Robinson was asked to review the book, *"Patriot Hearts: Inside the Olympics that Changed a Country"*, written by the VANOC CEO. Prior to the Vancouver Olympics in 2009, a First Nation person had told Ms. Robinson that the CEO had come from Ireland and worked at a residential school somewhere in Northern B.C. She could not confirm that information through Internet research at that time.
8. However, the book *Patriot Hearts* identified the Northern B.C. town as Prince George. This information led Ms. Robinson back on-line where a "Frontier Apostle" alumni Facebook site had been created. Someone had posted photos from the Prince George College yearbook from the early 1970's. The VANOC CEO was in many photos as a sports coach. Ms. Robinson was able to see the names of the basketball players and contacted them. Her story, which appeared on the Danish "Play the Game" website in April 2011, questioned if this history had been known by Vancouver Olympic decision-makers, would they have chosen a former missionary from a residential school as CEO of the Olympics?
9. In March, 2012, Jacob Beaton a First Nation person from Northern B.C, whose mother was a residential school survivor, contacted Ms. Robinson. He advised that he had read her April 2011 article, and suggested that she should also learn about allegations of abuse at Immaculata and Prince George College. He told her to contact the Burns Lake Band office.
10. Ms. Robinson contacted the Band office. She received six allegations of abuse over the phone from First Nations people within 24 hours, and an invitation to come to the community. A former student, who was in the Band office when Ms. Robinson called, wrote in an email; *"I was also amazed to see [the teacher] running the olympics. If you need someone to*

recruit people, I can get members from umpteen FN's. He wasn't a nice man."

11. On April 21, 2012 Ms. Robinson arrived at the Burns Lake band office. There were approximately thirty-five people there. Most had signed a sheet the Band office provided for people who wanted to be interviewed about their experiences at Immaculata and/or Prince George College, and left. A number stayed. Ms. Robinson took statements at the band office, but most statements were taken in people's homes, as they left after they signed the sheet.
12. Ms. Robinson returned to Burns Lake on April 30, 2012 as her Vancouver editor asked for affidavits from the students. At that point more people contacted her. In total, twenty-two people gave statements or affidavits alleging abuse by the teacher/coach, while at least eight more people gave statements alleging that at least one other person at the school had abused them. The editor was satisfied with eight affidavits, but twelve more students were ready to swear their statements.
13. One of those who left her contact information at the Band office was Ms. Beverly Abraham. Ms. Robinson met her during her first trip to Burns Lake, and took a statement from her at a local restaurant. Ms. Abraham became traumatized as she alleged physical, psychological and sexual abuse by the teacher/coach. As they left the restaurant, Ms. Robinson asked her if she intended to go to the police or sue the former teacher. Ms. Abraham said she wanted to do both, but needed to gain the strength to do so.
14. When Ms. Robinson returned to Burns Lake on April 30, Ms. Abraham converted her statement to an affidavit. Four other people did the same, but three people who had not previously been interviewed contacted Ms. Robinson, stating they too would like to give an affidavit. All affidavits were carefully deputized by Burns Lake lawyer Warren Chapman. The originals were left with Mr. Chapman's office for the affiants to pick up. Ms. Robinson sent electronic copies of the signed affidavits to her editor and kept electronic copies for herself. Both believed the affidavits belonged to the people who gave them.
15. In July, 2012, Ms. Abraham believed she had built up enough strength to report the sexual abuse to the Burns Lake RCMP. She had recently moved back to Burns Lake and could no longer endure the memories of sexual abuse while at Immaculata day school, as she had to walk by the old school nearly daily from her new residence in order to get downtown.

16. RCMP Constable Larsen took Ms. Abraham's statement on July 11, 2012. Like many, Ms. Abraham told him she had seen the build-up to the Olympics on TV, and recognized the VANOC CEO as her former teacher/coach for years before the Games commenced. She told Cst. Larsen that when she saw the VANOC CEO on TV, she called out to her husband, and became very distraught. The RCMP did not ever interview her husband. Ms. Abraham also alleged that her sister had met with the VANOC CEO to ask for an apology for the beating she received at Immaculata. She alleged her sister brought two friends because she was still afraid of him. Cst. Larsen did not ask any follow-up questions about the beating or the meeting.
17. While Ms. Abraham was providing her statement, Cst. Larsen made 11 attempts to convince her to take a polygraph test. Ms. Abraham responded that she did not see why she should have to take a test when she was telling the truth.
18. RCMP documents show that on July 12, 2012, an internal RCMP email was sent, which stated in part, "*With the approach of the London Olympics Games in weeks, Canadian Olympic Committee advises that [VANOC CEO] is not part of the Canadian Olympic delegation, but will be on site in the coming weeks in London in his capacity as Chair of the federal Olympic support program Own The Podium (OTP) likely present for the opening ceremonies and other events.....Whether this allegation is based on a single victim or further individuals possibly come forward as suggested, if they are substantiated it will prove to be an embarrassment at a number of levels of governments, private and sporting corporations, associations and other organizations including the Canadian and International Olympic Organizations....Should the allegation(s) be substantiated, the entire matter will likely be linked to the greater issue of First Nations and Native Residential Schools.*"
19. That email appears to have been originally sent by Superintendent Paul Richards to Randy Beck, Assistant Commissioner of British Columbia. Supt. Richards was located in Vancouver and had expertise in terrorism, drugs and gangs. He had held a "Platinum" position in the Integrated Security Unit during the Vancouver Olympics. Another senior officer who had worked on Olympic security (Privy Council Office) was Chief Superintendent Rod Booth. He was located in Prince George and held a supervisory position to the soon-to-be investigating officer Cpl. Mackie. The email sent by Supt. Richards was forwarded to Cpl. Mackie by Prince George Superintendent Leslie Bains on September 27, 2012.

20. On July 13, 2012 Supt. Richards wrote the following under “Current Status”; *“Robinson has authored articles on the Internet highly critical of [VANOC CEO] including his period teaching in Northern B.C. This criticism is focused on his work at Catholic day and residential schools....thereby linking him with the Residential School history and legacy and First Nations in the area.”*
21. Ms. Robinson had been a full-time sports journalist for 22 years in 2012, and covered the Vancouver Olympics as a fully accredited member of the media. The VANOC CEO was prominent in Canadian sport for many of those years. In the hundreds of articles created by Ms. Robinson, the VANOC CEO was mentioned in four; all of them appearing a year after the Olympics were over.
22. The Burns Lake RCMP detachment was experiencing a staff shortage, and on July 16, 2012 Cpl. Mackie of the B.C. RCMP Division E, North District, located in Prince George, was assigned the task of investigating Ms. Abraham’s sexual abuse allegations. Prince George is approximately 225 kilometers from Burns Lake. On that same day Cpl. Mackie contacted Sgt. Beson of the RCMP’s Risk Management Unit to determine if the VANOC CEO’S mandatory security clearance for the Olympics included the year he first came to Canada. Ms. Abraham had alleged the abuse occurred in 1969-70, but the Olympic CEO had written a biography and given many speeches in which he said he arrived in Canada in 1974. Sgt. Beson reported back that there had been no security clearance done on the CEO. RCMP files show Cpl. Mackie did not ever ask the VANOC CEO why he said he came to Canada in 1974, five years after he had actually arrived, which was 1969.
23. On August 8, 2012, Ms. Robinson returned a call Cpl. Mackie had made to her home in Ontario. She had never spoken to him before, and was covering the London 2012 Olympics. Cpl. Mackie told her Ms. Abraham was inconsistent when she alleged the abuse by her former teacher/coach, even though he had not seen Ms. Abraham’s affidavit. Cpl. Mackie asked if all of the affidavits could be sent to him. Ms. Robinson believed the affidavits belonged to the people who swore them. She could not at that time contact the affiants to see if they would share them with the RCMP so she connected Cpl. Mackie to her editor, Charlie Smith, at the Georgia Straight newspaper in Vancouver.
24. Mr. Smith told Cpl. Mackie that he would give the RCMP the affidavits if they obtained a Production Order. He reminded Cpl. Mackie that it was a Constitutional right of journalists to retain information, but that a Production Order from a judge would also ensure the right of the police to necessary information while conducting criminal investigations. Cpl.

Mackie did not secure a Production Order for the affidavits from the Georgia Straight.

25. On August 20, 2012 Ms. Robinson told Cpl. Mackie that she believed it would be far more comprehensive if he obtained the class-lists from the Diocese. During the same time period, the RCMP asked the Prince George Diocese if, and when the VANOC CEO had taught at Immaculata. The Diocese gave the RCMP inaccurate dates for his tenure, and advised them if they wanted files, they would have to obtain a Production Order. The RCMP did not obtain one.
26. As part of Cpl. Mackie's investigation, Ms. Abraham's friend, who attended Immaculata day school with Ms. Abraham, was interviewed. She revealed that Ms. Abraham told her that "a teacher was bothering her," but did not remember when she told her about the abuse, or who the abuser was. The friend also disclosed that she knew of the boiler room of which Ms. Abraham spoke because someone had attempted to sexually abuse her there too. Cpl. Mackie did not inquire further or investigate into the friend's allegation of childhood sexual abuse at Immaculata day school. He did not offer her support, nor report back to her about the investigation.
27. On September 27, 2012, Ms. Robinson's article about the VANOC CEO was published by The Georgia Straight newspaper. By then she had interviewed twenty-two former students from Immaculata and/or Prince George College. In the article, a number of students alleged physical, psychological and racial abuse by their former teacher/coach. Cathy Woodgate, and Hereditary Chief Richard Perry, both Complainants in the case, were quoted, along with Ms. Abraham and others. Paul Joseph, the brother of Maurice Joseph, another Complainant, was also quoted.
28. Additionally, the article noted that a former student met with the VANOC CEO immediately prior to the Olympics, after she identified him while watching television as the teacher who beat her. The article did not reveal her name, but did note that the Georgia Straight had her name and that the VANOC CEO allegedly brought along Dan Doyle, who was VP of Construction for VANOC, to the meeting. By the time the article appeared, Doyle was the Chief of Staff of then Premier Christie Clark.
29. That same day, following the publication of the article, the VANOC CEO in a televised statement suggested that he had been extorted after the meeting with the student. Though the RCMP had the name and location of this former student's workplace, they did not interview her about the abuse allegations, or about the meeting. She remains emphatic that she

never asked for money. She hoped for an apology, but did not receive one.

30. On September 27, 2012, co-author of the CEO's memoir, *Patriot Hearts*, Gary Mason of The Globe and Mail, was interviewed by the Vancouver-based newspaper The Tyee. He categorically stated the CEO had not told him about arriving to Canada in advance of 1974. Mr. Mason also tweeted this information on September 27, 2012 immediately after Ms. Robinson's article appeared.
31. On October 23, 2012, nearly a month after Mr. Mason had made this statement, Cpl. Mackie met with the VANOC CEO, his lawyer Marvin Storrow and his PR person Andrea Shaw. Cpl. Mackie's notes show that the VANOC CEO mentioned that 35,000 words had to be cut out of his book, and that's why there was no mention of his earlier arrival to Canada. An RCMP Witness List shows Cpl. Mackie was to obtain a Production Order for the first draft of his book, *Patriot Hearts*. He did not obtain one.
32. Also on September 27, 2012, an RCMP internal email was sent by Supt. Richards to Supt. Bains requesting a briefing note on the Beverly Abraham investigation and advising that another briefing note had been sent to Ottawa on July 13, 2012. Supt. Bains forwarded that email to Cpl. Mackie asking for an update on the investigation.
33. Following the Georgia Straight article, many more Indigenous individuals contacted Ms. Robinson or the Georgia Straight, reporting abuse from the former teacher/coach while attending Immaculata, Prince George College, or another Diocese school. Three more of the six Complainants in this case were among those individuals. They were Emma Williams, Ann Tom, and Dorothy Williams. All three gave on-the-record statements about physical, psychological and racial abuse by their former teacher.
34. Most, but not all of the allegations made were by Indigenous people, and many lived in remote communities with little or restricted access to communication. Some non-Indigenous people contacted the Georgia Straight and the journalist to verify that what the Indigenous people had said was true.
35. On September 28, 2012, the Chief of Lake Babine First Nation at that time, Wilf Adam, stated to the Canadian Press that because of the VANOC CEO's presence in the media, people had been coming to him with abuse allegation about the VANOC CEO while he was their teacher/coach. Chief Adam also disclosed that he too had experienced psychological and physical abuse by the VANOC CEO. However, even

after Chief Adam made this statement and said that the community needed a full investigation of the allegations he had heard over many years, the RCMP did not interview him. A RCMP Witness List with Chief Adam's name on it has the words, "disregard" written beside it.

36. On October 18, 2012, after a story was published in The Globe and Mail naming more Indigenous people who alleged abuse by the VANOC CEO, the Georgia Straight editor sent the eight affidavits to Cpl. Mackie.
37. Even after receiving the eight affidavits, the names of other former students listed by various media outlets who alleged abuse, and names of other students supplied by Ms. Abraham, the police did not conduct an investigation regarding abuse suffered by Indigenous people at Immaculata and/or Prince George College. They instead focused on whether or not witnesses could corroborate Ms. Abraham's allegation of sexual assault.
38. On January 14, 2013 the Georgia Straight filed a Response to a civil suit filed against it by the VANOC CEO, and listed a number of new abuse allegations made by Indigenous people about the VANOC CEO. On January 16, two days later, Cpl. Mackie wrote in a Concluding Report that there was no evidence to support Ms. Abraham's sexual abuse allegations.
39. On January 21, 2013, Ms. Robinson filed a Response to the same civil suit, which included excerpts from various affidavits and statements alleging abuse, along with the names of almost all of those who made them. Ms. Robinson's Response included two new sexual abuse allegations: one at Prince George College and another by an ex-wife of the alleged abuser. Neither of those women was interviewed. The RCMP interviewed only 20 of the 32 individuals named in Ms. Robinson's legal Response. Three were deceased. The interviews conducted as part of the RCMP's investigation into childhood physical abuse by the VANOC CEO were often very brief, dismissive and failed to follow up on information provided. Nine of the complainants listed were not interviewed or refused to speak with the RCMP. Many of those who refused to speak to the RCMP did so because of their distrust of the RCMP.
40. On July 13, 2013, the Assistant Commissioner of Division E of the B.C. RCMP, told Cpl. Mackie that a review of his investigation into the sexual abuse allegations by Ms. Abraham would be conducted by Division K, from Edmonton. Cpl. Mackie wrote to the former VANOC CEO and his counsel on the same date stating, "*....my inspector had approved my report for conclusion and asked that I draft the letters to inform all parties that we were done with this investigation. Unfortunately I have*

now been informed that Assistant Commission of "E" Division (BC) has decided that this investigation should be reviewed by an independent investigative team. ...I realize that you and your client would like to see this resolved and I am very sorry for the delay. If you should have any questions, please do not hesitate to call me."

41. The investigation review report, conducted by the RCMP's Division K Serious Crime Unit's Peer Review team, was completed August 6, 2013. It resulted in 28 recommendations for further steps to be taken. These recommendations included further investigating, obtaining taped statements and documenting the individual abuse allegations. The steps recommended were not complex investigative techniques, but rather basic procedures such as interviewing individuals who had alleged abuse that had not been interviewed. Cpl. Mackie did not provide any explanation to the reviewers for the prior investigative deficiencies.
42. Recommendation #28 directed Cpl. Mackie to re-interview and tape record the former VANOC CEO about the extortion allegation and about *"allegations of physical and sexual abuse while teaching PE at Immaculata School."* Cpl. Mackie was to *"consider a polygraph"* for him, and interview everyone who was present at the meeting prior to the Vancouver Olympics when he alleged that the extortion took place. This included then B.C. Premier, Christie Clark's Chief of Staff, Dan Doyle. Cpl. Mackie did not ask the VANOC CEO to take a polygraph test, nor did he re-interview him or any of the people present at the pre-Olympic meeting.
43. In November 2013, the RCMP investigation into abuse at Immaculata school was still ongoing and many of the interviews recommended in the August 2013 Division K report were still outstanding. At this time the investigation was split into two separate investigations, one file for the sexual abuse allegation by Abraham, and another file for all abuse allegations at Immaculata school. No investigation file was assigned to abuse allegations at Prince George College.
44. Members of the Indigenous community continued to provide statements about their abuse at Immaculata day school or Prince George College to Laura Robinson after she filed her Response to the civil suit. None of these individuals approached the RCMP due to their distrust of them.
45. In May 2014, the RCMP investigations into both files were considered complete. A Concluding Report indicated that a determination was made that all individuals interviewed had recollections that were devoid of *"details for time, place, identity of suspect, and any corroborating events that could possibly overcome these deficiencies."*

Those findings were made even though witnesses interviewed had been asked very few questions about details and no follow-up interviews had been conducted. Consequently, no charges were laid. The report identified that 18 interviews were conducted, only 6 of which were recorded.

46. None of the individuals interviewed, other than Ms. Abraham, was advised of the outcome of the investigation, nor the reasons for the outcome. Ms. Abraham received a letter saying there was not enough evidence for Crown counsel to recommend charges, however a RCMP file indicates: *"In the end the Crown made no recommendations because they did not have intimate file knowledge but did say that there is a threshold that needs to be met for charge approval."*
47. Moreover, other than to Ms. Abraham, no support services were offered to any of the individuals interviewed, nor were translation services offered to those for whom English was a second language. Many who were interviewed expected follow-up interviews but none occurred.
48. Names of former students on Division K's list of 28 recommendations included a number of former students who alleged that abuse had occurred at Prince George College. For example one witness named claimed that female students had become pregnant by a teacher, and another witness claimed that she was sexually abused there. The RCMP failed to investigate those and many other claims arising from Prince George College, focusing only on complaints alleged to have occurred at Immaculata School. No explanation was ever provided for limiting their investigative scope.

LEGAL ISSUES

Services Customarily Available to the Public

49. There can be little dispute that police investigations into abuse are services customarily available to the public. It is further submitted that police practices must result in abuse investigations that are thorough, appropriate, accessible to victims, and carried out without discrimination.
50. When analyzing a claim under the *CHRA*, the Supreme Court has held that a broad purposive approach should be applied, that takes into account "the full social, political and legal context of the claim."² As such, the

² *Law v Canada (Minister of Employment and Immigration)* [1999] 1 SCR 497 at para 30.

Court's comments in *Eldridge v British Columbia (Attorney General)*,³ are very apt to the discrimination in question:

"Discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public."

RCMP Conduct Resulting in Adverse Differentiation

Traditional Investigative Practices

51. There are many examples of the ways in which the RCMP inadequately carried out its traditional investigation practices due to discriminatory attitudes and conduct. The following are examples of circumstantial evidence of discrimination.
52. Production Orders were not obtained for Diocese files containing class lists, hostel lists and information about teachers and the years they taught. Such information would have significantly improved the RCMP's information about the time period so long in the past. Further, the RCMP did not obtain a Production Order for Ms. Robinson's notes pertaining to specific abuse allegations, despite internal notes directing such order be obtained. No reason was apparent for the failure to obtain these orders other than lack of effort.
53. The RCMP did not expeditiously contact all individuals who had provided affidavits or statements made public regarding their childhood abuse. Many such witnesses were never interviewed or lengthy delays elapsed before they were interviewed.
54. Despite police protocols to do so, no support was offered to most victims reporting abuse. The pain and trauma associated with childhood abuse was either not recognized by the RCMP, was ignored, or was even used to categorize the witness as being "uncooperative." No steps were taken to address collective trauma or intergenerational trauma.
55. In many circumstances RCMP officers did not follow up with information provided by those who made statements. For example, allegations of abuse by individuals other than the VANOC CEO were not pursued, and allegations of abuse at Prince George College were not investigated.
56. RCMP officers did not report back to individuals they interviewed to provide the outcome of investigation. This left the complainants who

³ *Eldridge v British Columbia (Attorney General)*[1997] 3 SCR 624 at para 78.

spoke to police, in the dark about whether or not the investigation was complete, what the outcome was, and the reasons for the outcome.

Assumption complainants Could be Duped

57. The RCMP also demonstrated discrimination against the complainants through their attitude toward the journalist, Ms. Robinson, who received the complainants' statements. By speculating that the reporter manipulated the Indigenous people who reported childhood abuse, the RCMP failed to credit the complainants with the ability to tell the truth. By viewing approximately 47 witnesses as susceptible to undue influence by a journalist, the RCMP portrayed the complainants as less than human, without their own free will and intelligence. The manner in which the RCMP investigation was conducted reflected that dehumanization and dismissal of Indigenous people.

Obligation to Modify Traditional Investigative Practices

58. Not only was the RCMP's application of traditional investigative practices woefully deficient in this case, but also we state that they were obliged to modify their traditional investigative methods to take into account the known distrust of them by the Indigenous community.
59. For example, the RCMP should not have required complainants to initiate contact with the RCMP, but instead should have reached out to individuals who were former students at Immaculata or Prince George College, and other Diocese schools by using class lists, by using publically available witness statements, and by following up with individuals named by witnesses.
60. The result of requiring complainants to initiate contact with the RCMP was that many Indigenous individuals who experienced abuse as a student at Immaculata, Prince George College or other Diocese schools did not have an opportunity to access justice for the harm they suffered.

The Application of section 43 of the Criminal Code

61. In dismissing the allegations of childhood physical abuse, the RCMP relied on section 43 of the *Criminal Code*, which until 1973 in British Columbia, allowed physical force by teachers if it was justified by way of correction of the student. However, the RCMP's reliance on that provision was based on bias and the incorrect assumption that the students receiving physical force had behaved in a way justifying correction. The RCMP position was not supported by evidence given, or available, to them. The former students' reports often described use of physical force by teachers for no reason other than students' race. This physical force was not for

'correction' of the students and therefore was not justified under section 43. Further, in many cases the amount of physical force described should have been viewed as excessive force regardless of the reason. The RCMP's misinterpretation of section 43 was based on discrimination and dehumanization of Indigenous children.

Conclusion regarding Adverse Differentiation

62. Hence, the Complainants and other victims of childhood abuse at Immaculata, Prince George College and other diocese schools suffered adverse impact discrimination by being disbelieved, dehumanized and discarded as unworthy of proper police investigation services. Perhaps the greatest adverse impact was the denial to have their experiences considered within the framework of the legal system and applicable criminal law.

Connection Between Indignity and Adverse Impact

63. Tribunal jurisprudence dictates that the connection between the prohibited ground, in this case race, and the adverse impact experienced by the Complainants, need not be causal, nor the sole reason for the adverse impact⁴.
64. In this case the Complainants' race was a factor in the adverse impacts experienced, because the RCMP's stereotypes and biased attitudes toward the complainants caused deficiencies in the execution of their investigation, and the RCMP did not accommodate the Indigenous community's long history of distrust of the RCMP. Further, the methods used did not allow for the fact that the complainants had suffered individual, collective and intergenerational trauma due to their race, or that English was not their first language.

Indigenous Peoples' Relationship of Distrust with RCMP

65. Many former students of Immaculata, Prince George College and other diocese schools did not come forward to the RCMP or did not agree to speak with officers regarding their complaints of childhood abuse because they did not trust the RCMP. This distrust was longstanding and based on a number of factors including personal experiences and the history of Indigenous people's relationship with the RCMP.

⁴ *First Nations Child and Family Caring Society of Canada v Attorney General (for the Minister of Indian and Northern Affairs Canada)*[FN Caring Society] 2016 CHRT 2 at para 22 referencing *Moore v British Columbia (Ministry of Education)* 2012 SCC 61 at para 25.

66. Some of the complainants' personal experiences that gave rise to their distrust included violence they observed or experienced at the hands of the RCMP. Their experiences, which can be expanded upon by each of them, led to fear of the RCMP or an opinion that the RCMP would not believe them.

History of Distrust

67. The RCMP, originally known as Northwest Mounted Police were created to assert sovereignty over Indigenous lands and people. Later, in the era of residential and day schools the RCMP were used to enforce truancy laws and return runaways who complained of abuse. Consequently, many Indigenous people saw the RCMP as complicit in the abuse inflicted in residential and day schools.
68. Further, a wealth of publically available information is accessible regarding the RCMP's discriminatory treatment of Indigenous peoples, including but not limited to Human Rights Watch's February 2013 Report, "Those Who Take Us Away" on RCMP violence against Indigenous women in Northern B.C.; fifty-eight submissions by Indigenous and human-rights organizations as Parties With Standing at the National Inquiry into Missing and Murdered Indigenous Women and Girls regarding how distrust had tragic consequences; the Final Report of the Inquiry into Missing and Murdered Indigenous Women and Girls; the Canadian Human Rights Commission Report "Honouring the Strength of our Sisters: Increasing Access to Justice For Indigenous Women and Girls;" and the Truth and Reconciliation Commission Final Report. These reports add to the decades of documentation on the relationship of distrust between Indigenous people and the RCMP.

Surveillance and Eviction of Indigenous Protesters

69. Additionally, during the time period of the RCMP abuse investigation, RCMP were involved in a stand-off at the Burns Lake Band office. Band members of the Burns Lake band were joined by members of the Lake Babine band and either occupied the offices or stood in solidarity with those who did, demanding more transparency about Band council finances, and unquestioned support of the Enbridge pipeline. It was a protest supported by the majority of the community. However on April 8, 2013, the 14th day of this non-violent protest, approximately 50 RCMP officers surrounded the office and evicted the few occupants, who willingly left the office. Officers were described as hiding everywhere and some had their guns drawn. The protesters were shocked, questioning why such a large show of force was required to have them leave.

70. It should be noted that some of the demonstrators at the Burns Lake Band office had provided statements about their childhood abuse.
71. Also during the relevant time period, the RCMP were involved in surveying Idle No More protesters and those protesting Enbridge pipeline development, sparing no expense. Experts report that:
“Ever since the Idle No More movement arose in 2012, the RCMP became so preoccupied with Indigenous protests that it set up [Project SITKA](#) to monitor and track activists taking part in so-called “public order events.”⁵
72. The RCMP’s definition of “public order events” included protests about land claims, shale gas fracking, or calling for an inquiry on missing or murdered Indigenous women and girls.⁶ RCMP documents also classify Indigenous protesters as potential criminals, extremists and terrorists.

Discrimination Exacerbated by Power Differential

73. The adverse impact discrimination experienced by the Indigenous victims of childhood abuse resulting from the RCMP investigation was exacerbated by the privilege accorded to the white subject of the investigation.
74. The RCMP are duty bound not to perpetuate the privilege of white people regarding Indigenous peoples in pursuing investigations. Indeed, it would be expected that the RCMP be skillful in dealing with and ameliorating all power differentials between parties. The more pronounced the power imbalance, the greater the precautionary measures one would expect to be taken to address it. However, no measures were taken by the RCMP in this investigation, despite the subject of the investigation holding not only a very powerful position in sport and business, but also one that benefited the RCMP.

⁵ Jeffrey Monaghan, (a criminology professor at Carleton University) quoted in article “From the Archives: When Indigenous Assert Rights, Canada Sends Militarized Police” by Andrew Nikiforuk, The Tyee.ca, 17 January, 2019. Online: <https://thetyee.ca/Analysis/2019/01/17/Indigenous-Rights-Canada-Militarized-Police/> See also Jeffrey Monahan and Miles Howe, “Strategic Incapacitation of Indigenous Dissent: Crowd Theories, Risk Management and Settler Colonial Policing,” (2018) 43(4) Canadian Journal of Sociology 325. Online: <https://www.thefreelibrary.com/Strategic+Incapacitation+of+Indigenous+Dissent+%3a+Crowd+Theories%2c+Risk...-a0571514434>

⁶ Project SITKA report, online:
<https://warriorpublications.files.wordpress.com/2016/11/project-sitka-report.pdf>

75. In this case the subject of the investigation held the position of CEO of VANOC, the organizing committee for the Vancouver Olympics in 2010, which in turn led to his business relationship with the RCMP. The RCMP became the lead security organization for the ISU (Integrated Security Unit for the Olympics) and signed contracts and MOU's with VANOC, and various levels of government (Multi-party Agreement) for approximately \$900 million.
76. After the 2010 Olympics, the VANOC CEO was appointed Chair of Own The Podium (responsible for international high performance athletes from Canada). He also held a position on the Canadian Olympic Committee. In these positions he continued to pursue opportunities for future Olympics bids and other international sporting events in Canada, which had potential implications for security contracts with the RCMP.
77. Further, the subject of the investigation held political influence in British Columbia, having established public relationships with the Premier and the Attorney General. These alliances were relevant because the province of British Columbia relies almost exclusively on the RCMP for police services. The RCMP acts as B.C.'s federal and provincial police service and acts as the municipal police service for 65 out of 77 municipalities.⁷ The Multi-Party Agreement also shows the significant partnership between VANOC, the federal government, and the RCMP as the lead security agency.
78. It should also be noted that two of the senior officers overseeing the abuse investigation, were senior officers with Olympic security. Under the *RCMP Act*⁸, these officers should have recused themselves. Instead they had significant influence over the officers conducting the investigation under their command.
79. In sum, the role and power held by the subject of the investigation resulted in him being afforded high deference and unquestioned belief by the RCMP. His powerful influence over the RCMP stood in stark contrast to the oppressed position of the Indigenous community, toward whom the RCMP demonstrated ongoing suspicion by conducting regular surveillance. This power differential between the parties exacerbated the discrimination experienced by the Complainants and other Indigenous members of the community.

⁷ <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/police/publications/statistics/police-resources.pdf>

⁸ *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, s. 37(d)

Comparator Analysis

80. Courts have clarified that comparator groups are not required in order to prove discrimination. While the Complainants experienced differential adverse impacts in the way that the RCMP conducted abuse investigations compared to police investigations of non-Indigenous complainants of abuse, it is not necessary for that to be proven.
81. In *Moore v. British Columbia (Ministry of Education)* the Supreme Court rejected the necessity for a comparator group analysis used in section 15 *Charter* challenges, even though that case involved a government service and could have attracted *Charter* scrutiny.⁹ Instead the court identified the harmful effects of the failure to accommodate a disability regardless of whether or not any other group received the same accommodation.¹⁰ The Federal Court of Appeal in *First Nations Child and Family Caring Society of Canada v Attorney General (for the Minister of Indian and Northern Affairs Canada)* provided a helpful review of the current state of the law regarding comparator groups:

In *Moore v. British Columbia (Ministry of Education)*... the Supreme Court reiterated that the existence of a comparator group does not determine or define the presence of discrimination, but rather, at best, is just useful evidence. It added that insistence on a mirror comparator group would return us to formalism, rather than substantive equality, and "risks perpetuating the very disadvantage and exclusion from mainstream society the [*Human Rights*] Code is intended to remedy" ... The focus of the inquiry is not on comparator groups but "whether there is discrimination, period."¹¹

82. While not necessary, in this case the RCMP investigation into childhood abuse of Indigenous complainants can be compared to police abuse investigations into allegations by young non-Indigenous hockey players against Graham James. The vast differences in investigative methods are useful to highlight the discrimination experienced by the Indigenous complainants.
83. By comparison, the RCMP investigation into abuse of Indigenous children at Immaculata School and Prince George College was starkly inferior to the investigation of sexual abuse of non- Indigenous hockey players by Graham James.

⁹ Joanna Birenbaum & Kelly Gallagher-Mackay, "From Equal Access to Individual Exit: The Invisibility of Systemic Discrimination in Moore" (2013) 10 JL & Equality 93 at 93.

¹⁰ Gwen Brodsky, "Moore v British Columbia: Supreme Court of Canada Keeps the Duty to Accommodate Strong" (2013) 10 JL & Equality 85 at 85.

¹¹ *Moore v British Columbia (Ministry of Education)* 2012 SCC 61 at para 60.

84. The first complainant in that case, NHL hockey player Sheldon Kennedy, underwent multiple lengthy tape-recorded interviews with the Calgary Police, with the assistance of an officer trained in sexual abuse investigations. Subsequently, regardless of James's high profile as a hockey coach, the police began looking for other victims with the aid of multiple police forces. They looked as far back as the late 1970s.¹²
85. Team member lists were obtained from every team coached by Graham James. Sheldon Kennedy then reviewed the lists and identified individuals who were to be interviewed as either a potential victim or witness. The interviews were detailed and included questions related to the suspect's patterns of behavior that had been identified.
86. The complainants in the Graham James investigation did not experience the kind of adverse impacts experienced by the Complainants in this case. Once identified, witnesses were interviewed promptly and thoroughly and were also supported. Those that reported abuse were kept informed about the investigation and the results.

Government Acknowledgement of Systemic Discrimination

87. On June 11, 2020 Prime Minister Justin Trudeau acknowledged that the RCMP suffers from systemic discrimination regarding race, stating:¹³

"We're facing a really important time in our country right now where we are recognizing what many Indigenous Canadians and radicalized Canadians have known for a long time - that there is systemic discrimination right across our country and every part of our country and in our institutions. And recognizing that is difficult."

88. He also said:

"Systemic racism is an issue right across the country, in all our institutions, including in all our police forces, including in the RCMP. That's what systemic racism is... This is a moment where Canadians are recognizing that there is unfairness built into our system. That it is always unfair seemingly towards the same groups of people. And that's what we have to tackle together" ¹⁴

¹² See witness statement of Brian Bell former Calgary Police Officer.

¹³ <https://www.thestar.com/politics/federal/2020/06/11/elizabeth-may-accuses-the-rcmp-of-being-a-racist-institution.html>

¹⁴ <https://www.cbc.ca/news/politics/rcmp-systemic-racism-lucki-trudeau-1.5607622>

REMEDIES SOUGHT

89. The Complainants seek remedies to address the discrimination they and all survivors of childhood abuse experienced while attending schools in the Roman Catholic Episcopal Corporation of Prince Rupert British Columbia diocese. (List of schools attached as **Appendix A**). The remedies outlined below are intended to:
- a. Allow past Indigenous childhood abuse survivors the ability to access non-discriminatory investigations into criminal conduct to validate the individual and collective trauma they experienced in these schools; and
 - b. Ensure that future victims of abuse can access non-discriminatory investigations into criminal conduct and prevent their re-traumatization.

Remedies for the Complainant and Past Abuse Survivors

90. The Complainants seek an apology from the RCMP as redress for discriminatory treatment they suffered, pursuant to subsection 53(2)(a) of the *CHRA*.
91. Further, pursuant to subsection 53(2) (b) of the *CHRA* the Complainants seek an Order for the provision of the investigatory services that they were denied because of the RCMP's discriminatory practices. Such Order should specify that the investigatory services to be made available to the Complainants must extend to all individuals who attended the schools listed in **Appendix A**.
92. The Complainants state that implementing new policies or improving officer training cannot dismantle systemic discrimination. Therefore the Order under subsection 53(2)(b) for the provision of investigative services should not be provided by the RCMP, but instead must be provided by a team of investigators that is fully independent of the RCMP and includes investigators with the following components:
- a. At least one member of the local Indigenous community;
 - b. A member that speaks the local Indigenous language;
 - c. A recognized Elder from the Indigenous community;
 - d. A member trained and experienced in abuse and sexual abuse investigations;
 - e. A member trained and experienced in mental health and trauma and able to provide referrals for counseling;
 - f. A member recognized as a spiritual advisor;

- g. A member trained and experienced in archive / historical research;
and
 - h. A member familiar with the Final Report of the Truth and Reconciliation Commission and the legacy of residential and day schools
93. The Complainant also requests the Tribunal to retain jurisdiction to assist in determining the composition of the independent investigative team.
94. Pursuant to subsection 53(2) (e) of the *CHRA* the Complainants seek an Order for compensation in the sum of \$20, 000 per Complainant for the pain and suffering they experienced as a result of the RCMP's discriminatory practices. The Complainants' pain and suffering includes the psychological and emotional harm each suffered from being disbelieved, dehumanized and deprived of access to justice. The Complainants seek that this Order to be extended to any individual who was abused while attending a school listed in **Appendix A**.
95. Additionally, in light of the wealth of public information raising concern about the RCMP's discriminatory practices, pursuant to subsection 53 (3) of the *CHRA* the Complainant seeks an Order for compensation in the sum of an additional \$20,000 per Complainant for the RCMP's engagement in willful or reckless discrimination. The Complainants seek that this order also be extended to any individual who was abused while attending a school listed in **Appendix A**.
96. An order for compensation for expenses incurred as outlined in **Appendix B**, is sought pursuant to subsection 53(2)(c) of the *CHRA*.
97. Pursuant to subsection 53(2)(d) the Complainant seeks an order for compensation for the costs of obtaining alternative services, and for the expenses incurred and that continue to be incurred due to the lack of access to police investigative services for complainants. Rather than seeking an order for costs for ongoing counseling, the Complainants seek funding for the building of a Healing Center in their community.
98. The Complainants also seek an award of interest on the compensation ordered under subsection 53(4) of the *CHRA*.

Systemic Remedies

99. Pursuant to subsection 53(2)(a)(i) of the *CHRA*, the Complainants seek an Order that the RCMP cease their discriminatory investigative practices, and correct or prevent the same practices from occurring in

the future by adopting a special program, plan or arrangement as referred to in subsection 16(1) of the *CHRA*.

100. In order to prevent, eliminate or reduce the disadvantages based on discrimination suffered by the Complainants, the special program under subsection 16(1) should direct the RCMP in British Columbia to divest itself of all abuse investigation services in Indigenous communities and replace its investigative service branch with an independent investigatory team as described in paragraph 92 above.
101. The special program should recognize the inherent right to self-determination and should affirm all existing treaty obligations and negotiations. For example, in 2001 the Lake Babine First Nation and the provincial and federal governments agreed upon and signed a Framework Agreement as part of the BC Treaty Commission¹⁵ process. Pursuant to section 5.1.7 of this Framework Agreement, the administration of justice was identified as a substantive issue for negotiation.¹⁶ The treaty negotiations have not progressed beyond this Framework Agreement.
102. Pursuant to British Columbia's *Declaration on the Rights of Indigenous Peoples Act*,¹⁷ the special program should recognize and affirm Article 34 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which states "*Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.*"¹⁸
103. There should be a transfer of funds from the RCMP's investigation services branch to Indigenous communities in order to facilitate and ensure the development and implementation of the special program. This is consistent with Article 39 of the *United Nations Declaration on the Rights of Indigenous Peoples*, which states "*Indigenous peoples have the right to have access to financial and technical assistance from States*

¹⁵ BC Treaty Commission, online: <http://www.bctreaty.ca>

¹⁶ Lake Babine Nation Framework Agreement, online: http://www.bctreaty.ca/sites/default/files/lakebabi_framework.pdf

¹⁷ SBC 2019, chapter 44, <http://www.bclaws.ca/civix/document/id/complete/statreg/19044>

¹⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) 9.

and through international cooperation, for the enjoyment of the rights contained in this Declaration.”¹⁹

104. The development and implementation of the special program should be led by Indigenous communities in British Columbia with appropriate and relevant support from all levels of government.
105. The Complainants request the Tribunal to retain jurisdiction to assist in the development and implementation of the special program.
106. The Complainants reserves their right to seek further or other remedies, depending on the evidence that may come to light during the Tribunal's disclosure and hearing processes.

LIST OF DOCUMENTS TO BE DISCLOSED

107. See **Appendix C**

LIST OF PRIVILEGED DOCUMENTS

108. See **Appendix D**

LIST OF WITNESSES

109. See **Appendix E**

DATED on this 29th day of June, 2020.

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¹⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007) 10.