SEALED

Form 1
(Rules 8 and 20)

S.C. No. 22-A0097

SUPREME COURT OF YUKON
COUR SUPRÊME DU YUKON
JUN 8 2 2023
FILED / DÉPOSÉ

SUPREME COURT OF YUKON

Between

GX, by their Guardian ad litem, YY and
TA by their Guardian ad litem BB in a representative capacity on behalf of all students and former students of Jack Hulland Elementary School who were subject to holds and restraints and/or who were locked in a room and/or placed in seclusion between January 1, 2002 and June 30, 2022

Plaintiffs

and

Government of Yukon, Department of Education
Jack Hulland Elementary School Council of Attendance Area #22

Defendants

Brought under Rule 5(11) as a proposed class proceeding

2ND AMENDED STATEMENT OF CLAIM

Dated this 2nd day of June 2023, pursuant to Rule 24(1)(a) and the Order of Chief Justice Duncan made on the 2nd day of May, 2023

Dated this 23rd day of February 2023, pursuant to Rule 24(1)(a) and Rule 15(5) and the Order of Chief Justice Duncan made on the 23rd day of February, 2023
(Original Statement of Claim filed 31 October 2022)
(Amended Statement of Claim filed 23 February 2023)

(Name and address of each plaintiff)
GX by their Guardian ad litem, YY
c/o Tucker Carruthers
Law Office
301 - 303 Alexander St.
Whitehorse, YT Y1A 2L5

TA by their Guardian ad litem, BB
c/o Tucker Carruthers
Law Office
301 - 303 Alexander St.
Whitehorse, YT Y1A 2L5

(Name and address of each defendant)
Government of Yukon, Department of Education
c/o Legal Services Branch
Department of Justice
Government of Yukon
2nd Floor, 2134 Second Avenue
Whitehorse, YT Y1A 5H6

Jack Hulland Elementary School Council of Attendance Area #22
1304 Fir Street
Whitehorse, YT V1A 4C4

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this 2nd Amended Statement of Claim.

IF YOU INTEND TO DEFEND this action, or if you have a counterclaim, YOU MUST

(a) GIVE NOTICE of your intention by filing an APPEARANCE in Form 9 in the registry of this court, at the address shown below, within the time for appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this 2nd Amended Statement of Claim, and

(b) FILE A STATEMENT OF DEFENCE in Form 10 in the registry of this court within the time for defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR LAWYER may file the Appearance and the Statement of Defence. You may obtain an APPEARANCE form and a STATEMENT OF DEFENCE form at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

(a) YOU FAIL to file the Appearance within the time for appearance provided for below, or

(b) YOU FAIL to file the Statement of Defence within the time for defence provided for below.

TIME FOR APPEARANCE

If this 2nd Amended Statement of Claim is served on a person in Yukon, the time for appearance by that person is 7 days from the service (not including the day of service).

If this 2nd Amended Statement of Claim is served on a person outside Yukon, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days from the end of the time for appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1)	The address of the registry is: The Law Courts 2134 Second Avenue Whitehorse, Yukon Y1A 5H6 Telephone: (867) 667-5937 Fax: (867) 393-6212
(2)	The plaintiff's ADDRESS FOR DELIVERY (Required: Residential address or business address AND postal address in Yukon) is: c/o Tucker Carruthers 301-303 Alexander St. Whitehorse, YT, Y1A 2L5 <u>Optional</u>: Fax number for delivery: 867-667-2109 Email address: jtucker@yukonlaw.com Telephone: 867-667-2099
(3)	The name and office address of the plaintiff's lawyer is: James R. Tucker Tucker Carruthers Law Office 301-303 Alexander St. Whitehorse, YT, Y1A 2L5 Joe Fiorante, K.C. Camp Fiorante Matthews Mogerman 400-856 Homer St. Vancouver, BC, V6B 2W5

STATEMENT OF CLAIM

Overview

1. This action is brought as a proposed class proceeding and arises from the systemic use of holds, restraints and involuntary seclusion to control students' behaviour at Jack Hulland Elementary School ("Jack Hulland") beginning in, or about, September, 2002 and continuing to about June, 2022.

The Representative Plaintiffs

2. The Plaintiff, GX, is a resident of the City of Whitehorse, YT. From in or about October of 2017 until June of 2022, GX was a student at Jack Hulland.

3. As of the date of the commencement of this action, GX is 12 years old

4. The Plaintiff, TA is a resident of the City of Whitehorse, YT. From in or about August of 2015 until March of 2022, TA was a student at Jack Hulland.

5. As of the date of the commencement of this action, TA is 11 years old.

The Class

6. The Plaintiffs, GX and TA, through their Guardians ad litem, bring this action in their representative capacity on behalf of the following class members:

> All students and former students of Jack Hulland who were subject to holds and restraints and/or who were locked in a room and/or placed in seclusion between January 1, 2002 and June 30, 2022 (the "Class" or "Class Members").

The Defendants

7. The Defendant, Government of Yukon, Department of Education, (the "Department"), is a department of the Government of Yukon presided over by the Minister of Education for Yukon (the "Minister"). Through and with the Department, the Minister establishes schools in Yukon pursuant to s. 6 of the *Education Act*, RSY 2002, c. 61, (the "Act"), and is responsible for the operation and management of any school in an attendance area in which there is a school committee or Council, pursuant to s. 114 of the Act.

8. The Defendant, Jack Hulland Elementary School Council of Attendance Area #22 (the "Council") is a corporation established further to the Act. At all material times, the Council operated Jack Hulland.

The Use of Holds, Restraints, and Seclusion at Jack Hulland

9. Further to Division 4 of the Act, every child who as at September 1 in a calendar year is 6 years and 9 months of age or older and is younger than 16 years of age is obliged to attend a school operated by the Minister or a School Board, unless they are excused from doing so.

10. Jack Hulland is an elementary school located at 1304 Fir Street, Whitehorse, YT in which children are taught grades from Kindergarten through to grade 7, inclusive. Jack Hulland is operated by the Council under the authority and supervision of the Minister. In any year, approximately 400 students attend Jack Hulland.

11. From 2010 until 2021, the Grove Street Program, ("Grove Street"), operated in Jack Hulland. Grove Street was a shared resource program developed by the Department, and purported to be a supported learning environment for students in grades four through seven with social, emotional and behavioural difficulties. Students enrolled in Grove Street were a part of the Jack Hulland community and students at Jack Hulland.

12. At all relevant times, the Department encouraged parents of students with social, emotional or behavioural difficulties to transfer their children to attend grades kindergarten to seven inclusive at Jack Hulland and utilize Grove Street if necessary.

School Policies and the HAWK Rules

13. At all relevant times, the Council adopted and implemented policies, practices, and/or procedures which authorized and/or, in particular circumstances, directed the use of holds, restraints and seclusion on students as a means of controlling and modifying student behaviour (collectively, the "Forcible Confinement Policies").

14. The Forcible Confinement Policies directed the use of holds, restraints and seclusion upon students including the Plaintiffs and Class Members in circumstances where the students posed no risk of harm to themselves or others.

15. At all relevant times, the Department of Education was aware of and approved of the Forcible Confinement Policies.

16. At all relevant times, students at Jack Hulland were required to follow the "Hawk Rules". The Hawk Rules were:

- Have respect for yourself and others;
- Appropriate language only;
- Will follow instructions (the 1st time); and,
- Keep your hands and feet to yourself.

17. The HAWK Rules were enforced through the Forcible Confinement Policies.

Implementation of the Forcible Confinement Policies – Use of Holds and Restraints

18. From in or about September of 2002 until in or about October of 2021, the administration and staff including teachers and education assistants, (collectively, the "Staff"), at Jack Hulland used physical holds and restraints, (collectively referred to as "Holds") as set out in the Forcible Confinement Policies, to confine, transport or restrict the movement of the Plaintiffs and the Class Members when the Staff deemed it necessary.

19. Members of the Staff were routinely assigned to be part of a two or three person team, (the "Team"), which would be called upon to assist other Staff, when necessary, in employing Holds on the Plaintiffs and the Class Members. The Team and other Staff were provided mobile handheld radios to permit Staff to call upon the Team to assist with employing Holds on the Plaintiffs and the Class Members.

20. The Staff used Holds on the Plaintiffs and the Class Members when:

(a) the Plaintiffs and/or the Class Members became emotionally heightened, dysregulated and/or upset, even though the Plaintiffs and the Class Members did not present a risk of harm to themselves or to others; and

(b) the Plaintiffs and/or the Class Members were disobedient and/or did not follow instructions from the Staff the first time the instructions were given, as required by the HAWK rules.

21. The Staff used Holds on the Plaintiffs and/or the Class Members when there was no justification or reason to do so and in particular, when there was no risk of harm to any person. On each occasion the Staff used Holds on a Plaintiff or a Class Member, the Staff committed assault on that Plaintiff or Class Member, battery on that Plaintiff or Class Member, and/or the tort of false imprisonment against that Plaintiff or Class Member.

22. On occasion, the Staff would employ Holds on the Plaintiffs and/or the Class Members on a continuous basis for hours, such that two or more individuals from the Staff would have to take turns employing Holds on the student as Staff became exhausted.

23. On occasion, the Staff would employ Holds on the Plaintiffs and/or the Class Members which were dangerous and injurious to the Plaintiffs and/or the Class Members, such as sitting on the torsos of the Plaintiffs and/or the Class Members and applying pressure to the joints in the arms and shoulders of the Plaintiffs and/or the Class Members.

24. On occasion, the Staff would employ Holds on the Plaintiffs and/or the Class Members to drag the Plaintiffs and/or the Class Members against their will to a place where they would be placed in seclusion, as described below.

25. The use of Holds in the manner described above constitutes any or all of assault, battery, false imprisonment and corporal punishment. Corporal Punishment is specifically prohibited by s. 36 of the Act.

26. As mandated by the Department of Education, each time the Staff used Holds or seclusion on a student, the staff member was required to fill out a Workplace Risk Assessment ("WRA"). Completed WRA's were sent to Student Support Services branch of the Department for review.

27. As a practice, Staff did not inform or fully inform parents that the Plaintiffs and Class Members were being subjected to seclusion and Holds. On the occasions when the parents and/or guardians became aware that the Plaintiff or Class Member was subjected to Holds and/or involuntary seclusion, the Staff deceived the parents or guardians with respect to the nature and extent of the Holds and/or involuntary seclusion to which the Plaintiff or Class Member was subjected, told the parents and/or guardians that the Holds and/or involuntary seclusion were necessary to regulate or deescalate the Plaintiff or Class Member and blamed the parents or guardians for the behaviour of the child and suggested there were factors from home contributing to the school behaviour of the Plaintiff or Child and/or that they were bad parents.

Implementation of the Forcible Confinement Policies – Use of Seclusion

28. In or about 2008, the Staff constructed or caused to be constructed four isolation cells, approximately three feet by three feet in dimension in a small classroom at Jack Hulland.

29. The isolation cells had doors with glass windows. The doors on the isolation cells could be locked from the outside. The main area of the small classroom had a video camera which permitted the Staff to remotely observe the Plaintiffs and/or the Class Members locked in the isolation cells from the main office of Jack Hulland, where a monitor was set up for that purpose.

30. The Staff came to refer to the small classroom with the four isolation cells as the "study hall", and later, the "nest" (the "Nest").

31. From in or about 2002 until in or about June of 2022, the Staff locked or barred students in the isolation cells in the Nest or in other rooms in Jack Hulland to impose on the Plaintiffs and/or the Class Members a period of involuntary seclusion.

32. Once placed in seclusion, in the Nest or otherwise, the Plaintiffs and/or the Class Members would remain locked up for varying lengths of time. On occasion, Plaintiffs and/or the Class Members were kept in seclusion in the Nest or in another room for several hours. Sometimes, the Plaintiffs and/or the Class Members would remain in seclusion through their lunch and recess periods.

33. Some Class Members were kept in seclusion in the Nest or in another room for extended periods of time on a repeated or sometimes daily basis.

34. On each occasion when the Plaintiffs or the Class Members were locked or barred in the Nest or in another room in Jack Hulland, they were subjected to unlawful and involuntary imprisonment.

35. The imprisonment was against the will of the Plaintiffs and the Class Members.

36. The imprisonment constitutes corporal punishment.

37. The imprisonment of the Plaintiffs and the Class Members was, in all cases, unlawful and without legal authority.

38. On each occasion the Staff secluded a Plaintiff or a Class Member, the Staff committed the tort of false imprisonment against that Plaintiff or Class Member.

The Treatment of GX

39. Between in or about October of 2017 and June of 2022, GX was subjected to Holds and involuntary seclusion on a frequent and repeated basis.

40. On each occasion when the Staff subjected GX to Holds, neither GX nor their parents or guardians consented to the Staff performing Holds on GX. Furthermore, the Holds were performed on GX against the will of GX and without any legal authority.

41. On each occasion when the Staff subjected GX to Holds, the Staff committed the torts of assault, battery and/or false imprisonment on GX.

42. Between in or about October of 2017 and June of 2022, GX was forcibly confined in the Nest and imprisoned against their will, without the consent of GX or their parents and without any legal authority, frequently and repeatedly for extended periods of time.

43. On each occasion when GX was forcibly confined in the Nest and imprisoned against their will, GX was subjected to a false imprisonment by the Staff.

44. On the occasions when the parents and/or guardians of GX became aware that GX was subjected to Holds and/or involuntary seclusion, the Staff deceived the parents or guardians of GX with respect to the nature and extent of the Holds and/or involuntary seclusion to which GX was subjected, told the parents and/or guardians of GX that the Holds and/or involuntary seclusion were necessary to regulate or deescalate GX and blamed the parents of GX for the behaviour of their child and suggested there were factors from home contributing to the school behaviour of GX and/or that they were bad parents.

45. As a result of repeatedly being subjected to assault, battery and false imprisonment by the Staff, GX has suffered and continues to suffer:

(a) Emotional distress;

(b) Anxiety;

(c) Depression;

(d) Post traumatic stress disorder; and

(e) Such further damages as counsel will advise at trial.

The Treatment of TA

46. Between or about August of 2015 and March of 2022, TA was subjected to Holds and involuntary seclusion on a frequent and repeated basis.

47. On each occasion when the Staff subjected TA to Holds, neither TA nor their parents or guardians consented to the Staff performing Holds on TA. Furthermore, the Holds were performed on TA against the will of TA and without any legal authority.

48. On each occasion when the Staff subjected TA to Holds, the Staff committed the torts of assault, battery and false imprisonment on TA.

49. Between in or about August of 2015 and March of 2022, TA was forcibly confined in the Nest and imprisoned against their will, without the consent of TA or their parents or guardians and without any legal authority, frequently and repeatedly for extended periods of time.

50. On each occasion when TA was forcibly confined in the Nest and imprisoned against their will, TA was subjected to a false imprisonment by the Staff.

51. On the occasions when the parents and/or guardians of TA became aware that TA was subjected to Holds and/or involuntary seclusion, the Staff deceived the parents or guardians of TA with respect to the nature and extent of the Holds and/or involuntary seclusion to which TA was subjected, told the parents and/or guardians of TA that the Holds and/or involuntary seclusion were necessary to regulate or deescalate TA and blamed the parents of TA for the behaviour of their child and suggested there were factors from home contributing to the school behaviour of TA and/or that they were bad parents.

52. As a result of repeatedly being subjected to assault, battery and false imprisonment by the Staff, TA has suffered and continues to suffer:

(a) Emotional distress;

(b) Anxiety;

(c) Depression;

(d) Post traumatic stress disorder; and

(e) Such further damages as counsel will advise at trial.

Liability of the Council

53. The Council owed a duty of care to students of Jack Hulland, including the Plaintiffs and Class Members, to provide and ensure a safe learning environment free of violence including corporal punishment and to reasonably minimize the risk of physical and mental harm to students.

54. At all material times, the Council had authority over the management and operation of Jack Hulland. The responsibilities of the Council included, inter alia:

(a) reviewing, modifying and approving rules for Jack Hulland and procedures for the enforcement of rules at Jack Hulland, pursuant to s. 39 of the Act;

(b) reviewing and developing school-based policies, pursuant to s. 113 of the Act;

(c) providing an environment free of corporal punishment further to ss. 36 and 39 of the Act;

(d) approving the allocation and expenditure of discretionary funds allocated to the school within its budget, pursuant to s. 113 of the Act;

(e) staffing issues, such as directing the superintendent or principal to evaluate employees, or recommending the dismissal, transfer, discipline or demotion of employees, pursuant to s. 113 of the Act.

55. In overseeing and performing its duties described above, the Council was vicariously liable for the actions of the Staff when they intentionally committed the torts of assault, battery and forcible confinement or false imprisonment. Alternatively the Council was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to harm to the Plaintiffs and the Class Members.

56. At all material times, the Forcible Confinement Policies were harmful to the physical and emotional well being of students including the Plaintiffs and Class Members and contrary to the prohibition on corporal punishment.

57. At all material times, the implementation of the Forcible Confinement Policies, including the use of Holds and seclusion on the Plaintiffs and/or the Class Members by Staff as outlined above was known, permitted, condoned and/or encouraged by the Council on a systemic basis. Alternatively the Council was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to the implementation of the Forcible Confinement Policies.

58. At all material times, the existence of the Nest and the forcible confinement of students by Staff as outlined above was known, permitted, condoned and/or encouraged by the Council on a systemic basis. Alternatively the Council was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to the existence of the Nest and the forcible confinement of students by Staff as outlined above.

59. In particular, the Council knew, or ought to have known of the:

(a) rules and policies implemented and the procedures for the enforcement of rules and policies at Jack Hulland;

(b) WRAs provided to the Department and the Minister via the Student Services Branch of the Department;

(c) renovations undertaken in or about 2008 to create the "Nest" as described in paragraphs 28 to 30; and

(d) conduct of Staff at Jack Hulland, including the conduct involving the use of Holds and forcible confinement on students.

60. The Council breached the duty of care owed to the Plaintiffs and the Class Members. Particulars of the Council's negligence presently known to the Plaintiffs include:

(a) the development of and the approval of unlawful policies, rules, and/or methods of enforcement thereof at Jack Hulland that include the Forcible Confinement Policies, or, in the alternative, the failure to prevent the same;

(b) the failure to provide a learning environment free of violence including corporal punishment;

(c) the approval of allocation and expenditures to renovate Jack Hulland to construct the "Nest", or, in the alternative, the failure to prevent the construction of the "Nest";

(d) the failure to take adequate measures to supervise and oversee the staff who were engaging in the use of Holds and seclusion;

(e) the failure to take adequate measures to protect students of Jack Hulland from Holds and seclusion;

(f) failing to act in the best interest of the students including the Plaintiffs and Class Members.

61. The Council was in a special relationship with students of Jack Hulland, including the Plaintiffs and Class Members, who were obliged to attend school further to the Act, and who, in many cases, were encouraged to attend Jack Hulland due to Grove Street and their particular learning needs. Further, the Plaintiffs and Class Members were a vulnerable group due to their status as minors in the care of the defendants.

62. As such, the Council owed a fiduciary duty to the students of Jack Hulland, and breached that duty by failing to provide a learning environment free of corporal punishment, and failing to prevent the development and implementation of the Forcible Confinement Policies.

63. The Council is vicariously liable for the conduct of the Staff at Jack Hulland including in the implementation of the Forcible Confinement Policies.

Liability of the Department

64. The Department and the Minister owed a duty of care to students of Jack Hulland, including the Plaintiffs and Class Members, to provide and to ensure a safe learning environment free of assault, battery, forcible confinement or false imprisonment and corporal punishments and to minimize the risk of physical and mental harm to students.

65. At all material times, the Department and the Minister were responsible for the operation, oversight, and management of Jack Hulland.

66. At all material times, the Forcible Confinement Policy was known, permitted, authorized, condoned and/or encouraged by the Department and the Minister. Alternatively, the Department and Minister ought to have known about the Forcible Confinement Policy and their failure to do so was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to harm to the Plaintiffs and the Class Members.

67. At all material times, the implementation of the Forcible Confinement Policy including the use of Holds and seclusion on the Plaintiffs and/or the Class Members by Staff as outlined above was known, permitted, condoned and/or encouraged by the Department and the Minister on a systemic basis. Alternatively, the Department and Minister ought to have known about the implementation of the Forcible Confinement Policy and their failure to do so was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to harm to the Plaintiffs and the Class Members.

68. At all material times, the existence of the Nest and the use of seclusion on students by Staff as outlined above was known, permitted, condoned and/or encouraged by the Department and the Minister on a systemic basis. Alternatively, the Department and Minister ought to have known about the Nest and the use of seclusion on students and their failure to do so was negligent and/or reckless, and such negligence and/or recklessness caused or contributed to harm to the Plaintiffs and the Class Members

69. In particular, the Department and the Minister knew, or ought to have known:

(a) of the WRAs provided to the Department and the Minister via the Student Services Branch of the Department; and

(b) of the renovations undertaken in or about 2008 to create the "Nest" as described in paragraphs 28 to 30.

70. The Department and the Minister breached the duty of care owed to the Plaintiffs and Class Members. Particulars of the negligence presently known to the Plaintiffs include:

(a) approving the Forcible Confinement Policy;

(b) permitting the implementation of the Forcible Confinement Policy including by use of Holds and seclusion;

(c) failing to provide a learning environment free of violence including corporal punishment;

(d) approving the allocation and expenditures to renovate Jack Hulland to construct the "Nest", or, in the alternative, failing to prevent the construction of the "Nest";

(e) failing to ensure that Jack Hulland students who, because of intellectual, communicative, behavioural, physical, or multiple exceptionalities were provided programs, including but not limited to Grove Street, which were delivered in the least restrictive and most enabling environment that was practicable;

(f) failing to take adequate measures to supervise and oversee the Council;

(g) failing to take adequate measures to supervise and oversee the Staff involved in the implementation of the Forcible Confinement Policy including the use of Holds and seclusion;

(h) failing to take adequate measures to protect students of Jack Hulland from physical and emotional harm including the use of Holds and seclusion; and

(i) failing to act in the best interest of the students including the Plaintiffs and Class Members.

71. The Department and the Minister are in a special relationship with students of Jack Hulland who were obliged to attend school further to the Act, and who, in many cases, were encouraged by the Department to attend Jack Hulland due to Grove Street and their particular learning needs. Further, the proposed class members were a vulnerable group due to their status as minors in the care of the defendants.

72. As such, the Department owed a fiduciary duty to the students of Jack Hulland, and breached that duty by failing to provide a learning environment free of corporal punishment, and by failing to prevent the use of Holds and seclusion on the students.

73. At all material times, the Staff who implemented the Forcible Confinement Policy were employees of the Department.

74. The Department is vicariously liable for the actions of the Council, and is vicariously liable for the action of the Staff, including the Staff's use of Holds, seclusion and isolation on the Plaintiffs and the Class Members.

All Students Suffered Harm

75. The Plaintiffs and Class Members who were subjected to Holds suffered the torts of assault, battery, and false imprisonment by the Staff and are entitled to damages.

76. The Plaintiffs and Class Members who were locked or barred in the Nest or another room at Jack Hulland suffered the tort of false imprisonment and are entitled to damages.

77. The Defendants intentionally and fraudulently concealed their unlawful conduct from the public, including the Plaintiffs, Class Members, and their guardians and/or parents. As such, the Plaintiffs and Class Members were unaware of the existence of the cause of action.

78. As a result of the assault, battery, and false imprisonment experienced by Class Members, Class Members have suffered damage including, but not limited to:

(a) Pain and suffering;

(b) Psychological injuries;

(c) Addiction issues;

(d) Fear, humiliation and embarrassment as a child and adult;

(e) Physical injuries;

(f) Loss of employment both in the past and continuing in the future;

(g) Cost of care, past and future;

(h) Out of pocket expenses.

79. Effective 7 March 2023, the Plaintiffs and the Council Settlement Class entered into a Settlement Agreement with the former defendant, the Jack Hulland Elementary School Council of Attendance Area #22 (the "Council"). The Settlement Agreement was approved by the Yukon Supreme Court by order made 2 May 2023.

80. Pursuant to the Settlement Agreement, the Plaintiffs and Council Settlement Class waive all rights to recover from the Council, any portion of their damages which are attributable to any fault of the Council, and for which the Government of Yukon could claim for contribution, indemnity and/or other relief pursuant to the *Contributory Negligence Act*, R.S.Y. 2002, c. 42, any successor legislation, or otherwise.

The Plaintiffs claim as follows:

(a) An order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class pursuant to Rule 5(11);

(b) A declaration that each of the defendants are liable for the torts of assault and battery, false imprisonment, or in the alternative, negligence;

(c) A declaration that each of the defendants breached the duty of care owed to the Class Members;

(d) A declaration that each of the defendants breached the fiduciary duty owed to the Class Members;

(e) A declaration that the Council is vicariously liable for the acts and omissions of Staff;

(f) A declaration that the Department is vicariously liable for the acts and omissions of the Council;

(g) A declaration that the Department is vicariously liable for the acts and omissions of the Staff;

(h) General Damages for each plaintiff and Class Member – to be assessed;

(i) Special Damages for each plaintiff and Class Member – to be assessed;

(j) Aggravated Damages – to be assessed;

(k) Punitive Damages – to be assessed;

(l) Court ordered interest pursuant to the *Judicature Act*, RSY 2002, c. 128;

(m) Costs; and

(n) Such further relief as this Honourable Court deems just in the circumstances.

Date: ~~October 31, 2022~~

~~February 23, 2023~~
June 2nd, 2023

Signature of the lawyer for Plaintiffs

James R. Tucker

Signature of lawyer for Plaintiffs

James R. Tucker for Joe Fiorante, KC

~~**NOTICE OF CASE MANAGEMENT CONFERENCE**~~

~~TAKE NOTICE that a Case Management Conference will be November 29, 2022 at the Law Courts, 2134 2nd Avenue, Whitehorse, Yukon pursuant to Rule 1 (7) on November 29, 2022 at 4:00pm.~~

~~If you fail to attend, orders may be made in your absence.~~

~~Date: October 31, 2022~~

~~Signature of lawyer for Plaintiffs~~

~~James R. Tucker~~

~~Signature of lawyer for Plaintiffs~~

~~Joe Fiorante, KC~~