

CANADA

COUR SUPÉRIEURE
Chamber of Collective Actions

PROVINCE OF QUEBEC
MONTREAL DISTRICT

MICHAEL CARRIER

No.: 500-06-000943-181

Applicant

c.

ATTORNEY GENERAL OF QUEBEC

Defendant

**APPLICATION TO INITIATE PROCEEDINGS IN A COLLECTIVE ACTION
(art. 583 C.P.C)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF THE
DISTRICT OF MONTREAL, THE PLAINTIFF RESPECTFULLY STATES THE
FOLLOWING:**

I. Context

"The Ministry of Public Security has ignored the citizens who are on the territory of Nunavik and has treated them as second-class citizens.

"I'm telling you, it's a double standard, citizens (...) in northern Quebec don't have the same rights as citizens in southern Quebec, it's unacceptable".

Simon Jolin-Barrette¹

1. This class action seeks justice for the gross and systematic violation of the human rights of the following class members, virtually all of whom are Inuit²:

"Any person who, having been charged in the territory of Nunavik with a criminal offence after September 4, 2015, has been detained for a period exceeding three clear days without a bail hearing being held pursuant to section 515 of the Criminal Code."

¹ The Quebec Minister of Justice was then the spokesperson for the second opposition group on justice issues, as appears from the transcript of Mr. Simon Jolin-Barrette's press briefing dated February 18, 2016, **exhibit P-1**.

² The Inuktitut word Inuit means "men or humans". It is the plural form of the word Inuk and the related adjective, Inuit, is invariable.

(hereafter, the "**Group**")

2. In a free and democratic society, the State must take all necessary measures to minimise the risk of unjustified deprivation of liberty of its citizens, even if only for a single day. For this reason, anyone accused of a crime is presumed innocent and, as a general rule, should remain free pending trial.
3. It is indisputable that freedom lost is lost forever and that the damage resulting from this loss can never be fully repaired.
4. Therefore, where the State intends to detain a person provisionally pending trial, it must first bring the person before a judge in order to have the lawfulness of the provisional detention reviewed under the regime set out in Part XVI of the Criminal Code.
5. Under Article 516 of the Criminal Code, this judicial review, commonly called a release hearing, must be held within a maximum of three (3) clear days following the appearance of the detainee (hereinafter, the "**three-day rule**").
6. Compliance with the Three-Day Rule is essential to ensure that pre-trial detention remains consistent with the *Charter of Rights and Freedoms* (hereinafter, the "**Quebec Charter**") and the Canadian Charter of Rights and Freedoms (hereinafter, the "**Canadian Charter**").
7. The State therefore has an absolute obligation to ensure that a system is in place to ensure that the Three-Day Rule is respected at all times, throughout the province. Only the accused can legally waive the protection of the Three-Day Rule.
8. The Three-Day Rule is scrupulously respected by the State throughout Quebec, *except* in Nunavik where 90% of the population is Inuit.
9. Instead, in Nunavik, the State has established and maintained a system that is incapable of ensuring compliance with the Three-Day Rule, resulting in the systematic violation of the fundamental rights of the Group's members, which are guaranteed to all citizens in Canada and Québec (hereinafter, the "**Nunavik System**").
10. For decades, members of the Group whom the State wishes to temporarily detain in Nunavik have been arrested, charged, handcuffed, and then forcibly transported thousands of kilometres to have their release hearing held in the "south", in Amos, Abitibi.
11. This degrading journey by plane and cell van lasts for days, even weeks, during which the defendants, both men and women, are strip-searched multiple times, usually between four and six times.
12. The cruelty and illegality of the Nunavik System has been decried for years by just about everyone in the justice system. Judges, politicians, police officers, Crown

and defence attorneys, the Québec Ombudsman and the Québec Bar have all called for its dismantling.

13. Despite these warnings and despite its duty to ensure compliance with the Three-Day Rule, the State continued to implement the Nunavik System with total indifference.
14. Thousands of people, almost all Inuit, have been unjustly deprived of their liberty in humiliating and degrading conditions, all because of a blatantly illegal regime that violates the Three-Day Rule.
15. Class members are entitled to be compensated for damages suffered as a result of this system that violates their fundamental rights, and the State must also pay punitive damages to sanction and deter systems that flout the inalienable rights conferred by the Canadian Charter and the Quebec Charter.

II. The respondent

16. The Attorney General of Quebec ("**AGQ**") represents several state actors who collectively control the administration of justice in criminal matters in Nunavik.
17. The AGQ represents :
 - a. the *Director of Criminal and Penal Prosecutions* (hereinafter, the "**DPCP**"), which is responsible for directing criminal and penal prosecutions in Quebec on behalf of the State.
 - b. the *Ministry of Justice* (hereinafter, the "**MJQ**") which, according to its website, "*has the mission of fostering public confidence and respect for individual and collective rights by maintaining in Quebec (i) a justice system that is both accessible and honest, and (ii) the rule of law.*"
 - c. the *Ministry of Public Security* (hereinafter "**MPS**") which is responsible for the custody of detained persons pending trial.

III. Collective action

18. On January 10, 2022, the plaintiff, Michael Carrier (hereinafter the "**Plaintiff**"), obtained leave from the Quebec Court of Appeal to bring a class action against the State to seek redress for damages suffered by him and the members of the Class as a result of the Nunavik System.

IV. The systematic violation of the Three-Day Rule by the Nunavik System

19. Nunavik is a vast territory located north of the 55th^e parallel, covering almost one third of the area of Quebec.

20. Almost all of the 13,000 residents of this territory are Inuit (hereinafter, "**Nunavimmiut**").
21. Inuktitut is the mother tongue of 97.2% of Nunavimmiut.
22. Nunavimmiut live in 14 communities along Ungava Bay and Hudson Bay. These communities, with populations ranging from 200 to 2,500, are not connected by road; they are generally served by air or, more rarely, by sea.
23. As appears, inter alia, from the Final Report of the Commission of Inquiry into relations between Aboriginal people and certain public services in Quebec: Listening, Reconciliation and Progress (hereinafter, the "**Viens Commission**"), **Exhibit P-2**, the Crown discriminates against Nunavimmiut in the administration of justice in Nunavik, notably through its systematic failure to comply with the Three-Day Rule.
24. When an individual is arrested in Nunavik and the State intends to detain him or her pending trial, the individual is removed from his or her community to be deported and temporarily detained in the "south" (in Amos), in order to hold his or her release hearing. This deportation can last for weeks, so the Three-Day Rule is systematically violated in this territory.
25. When the State informs the Justice of the Peace before whom the accused appears that it intends to detain him or her provisionally, the Justice of the Peace has no option but to order the accused to be remanded in custody pending his or her release hearing in Amos, which cannot be held within the time frame provided by the Three-Day Rule because of the Nunavik System.
26. The defendant is then taken to the airport, handcuffed in front of their entire community, to be placed on a commercial plane to Montreal. This humiliating flight can involve up to 7 stopovers, each lasting from 30 minutes to a few hours.
27. Upon arrival in Montreal, the accused is placed in a cell van and taken to the Saint-Jérôme detention facility (hereinafter, **the "SJDF"**), where they are held for a few hours at best, if not several days.
28. The defendant is strip-searched once on admission and again on departure from the SJDF.
29. From Saint-Jérôme, the accused is then transported to the detention facility in Amos, Abitibi (hereinafter, **the "ADF"**). This arduous journey of nearly 500 kilometres in a cell van may require two or three stops.
30. On arrival in Amos, the defendant is strip-searched a third time and then imprisoned in the ADF.

31. The accused, who has not had access to a lawyer since their departure from Nunavik, must then prepare for their release hearing in a hurry, far from their loved ones and their support, or risk having their detention extended by several days.
32. When the accused does not speak English or French, he or she has to manage to make himself or herself understood and be understood by his or her lawyer, often assisted by members of his or her community or fellow inmates. It should be mentioned here that the indictments and evidence provided by the State are not translated into Inuktitut.
33. Once ready to proceed, the accused must appear at the Amos courthouse *for the sake of formality*, only to set the date for his bail hearing, which has still not taken place. They are then strip-searched a fourth time on his release, and a fifth time on their re-admission to the ADF.
34. Because of all these constraints, the bail hearing for the defendant is held several days after their arrival in Amos.
35. If the defendant remains in custody after the hearing, he or she is imprisoned in the 'south', usually in the ADF, pending trial.
36. In most cases, however, the accused is simply released by the court at the end of their release hearing. They must then return to Nunavik in the opposite direction, having been strip-searched once again on his way out of the ADF.
37. This 'hazardous' return journey effectively extends the defendant's deprivation of liberty by one or more days.
38. As can be seen from the foregoing, the Three-Day Rule is systematically violated as a result of the Nunavik System. Data provided by the MJQ in response to an access to information request, **Exhibit P-3**, demonstrates that between 2015 and 2019, violation of the Three-Day Rule is the norm in Nunavik:

	Number of inquiries	Violation of the 3-Day Rule	Violation (%)
2015	681	666	97,80%
2016	769	748	97,27%
2017	690	674	97,68%
2018	761	750	98,55%
2019	847	818	96,58%
Total	3748	3656	97.55%

39. The State, which compiles this data itself, was well aware of the systematic violation of the Three-Day Rule in Nunavik and necessarily knew that the members

of the Group were almost all Inuit. Yet it did nothing to remedy the violation of the human rights of thousands of Nunavimmiut for decades.

V. The particular case of the applicant

40. The applicant is Inuit.
41. He was born on 10 May 1990 in the northern village of Kangirsuk, Nunavik.
42. He is the father of two children, now aged 4 and 5.
43. On 5 July 2018, he was arrested in the northern village of Kangirsuk and taken to the local police station to appear in court by telephone.
44. During his telephone appearance, which lasted approximately two minutes, the State objected to the Applicant's release, as appears from the transcript and minutes of the hearing of July 5, 2018, and the removal order dated the same day, **Exhibit P-4**.
45. In accordance with the system then in place, his file was "automatically" scheduled at the Amos courthouse *for formality* on July 10, 2018, five days later. The Nunavik System simply did not allow for release hearings to be held within the three clear days, so no waiver of the Three-Day Rule was even possible.
46. The applicant was simply advised that he would be transported to Amos and that he would reappear before the Court in five (5) days.
47. From Kangirsuk, he was transported on a commercial flight in handcuffs to Kuujuaq where he was detained at the police station.
48. On 7 July 2018, he left Kuujuaq on another commercial flight, still handcuffed, to Montreal.
49. From Montreal, he was placed in a cell van and driven to Saint-Jérôme, where he was incarcerated.
50. He was first strip-searched on arrival at SJDF.
51. On 9 July 2018, the applicant was again placed in a cell van to be transported from the SJDF to the EDF. This arduous journey of over 500 km took a full day.
52. He was strip-searched a second time when he left the SJDF and then strip-searched a third time when he arrived at the EDF.
53. On July 10, 2018, he appeared at the Amos courthouse and was advised that his release hearing would be held on July 13, 2018, as indicated in the transcript and minutes of the hearing of July 10, 2018, as well as the warrant of reference dated the same day, **exhibit P-5**.

54. He was strip-searched a fourth time before being taken to the Amos courthouse and then strip-searched a fifth time upon his return to the ADF.
55. On July 13, 2018, the Crown finally consented to the Applicant's release on recognizance, as indicated in the transcript and minutes of the appearance of July 13 2018 and the recognizance dated the same day, **Exhibit P-6**.
56. He was therefore detained on 5, 6, 7, 8, 9, 10, 11, 12 and 13 July pending a release hearing which never took place.
57. After a sixth strip search, he was released in Amos and had to travel back to Kangirsuk.
58. It was only on 15 July 2018 that he was finally able to return to his community and reunite with his children, 10 days after his arrest.

VI. The responsibility of the State

a) A long-standing problem

59. Over the years, the cruelty and illegality of the Nunavik System has come to the attention of many in the justice system who have openly denounced it.

i. The judiciary

60. In its 2012 annual report, the Court of Quebec denounced "*the failure to respect legal deadlines by holding release investigations*":

*This leads to unnecessary and repetitive travel for many detainees or families, when it comes to youth-related cases. These trips result in high transport costs and **the failure to meet legal deadlines for release hearings**. In addition, they may also give rise to applications for stays of proceedings based on the right to a trial within a reasonable time recognized by the Canadian Charter of Rights and Freedoms. (our emphasis)*

as appears from the 2012 Public Report of the Court of Quebec, **Exhibit P-7**.

61. In 2018, the Court of Québec stated that it had "*consistently*" opposed the Nunavik System before the Aboriginal Socio-Judicial Forum, which includes representatives of the MJQ, the MSP, the DPCP and other government departments and agencies, according to a presentation document filed by the Court of Québec before the Viens Commission, **Exhibit P8**.
62. Also before the Viens Commission, the Honourable Lucille Chabot, Coordinating Judge for Abitibi-Témiscamingue-Eeyou Istchee-Nunavik, stated that she had been calling for an end to the Nunavik System for ten (10) years and deplored the fact that the Three-Day Rule was still not respected "in the era of videoconferencing:

"We are in two thousand and eighteen (2018) and the three (3) day time limit for bail hearings is still not respected. We are in the era of video conferencing."

(...)

"For 10 years we have been asking that people who are arrested continue to be detained in the North, until they are 'adjudicated' in their release."

(...)

"They will not have been made to travel seven (7), eight (8), nine (9) days to be released in Amos and sent back on the plane to their community."

(...)

"We can work by videoconference, there are many things that are done by videoconference. We are still making this request."

As appears from the transcript of the testimony of the Honourable Lucille Chabot and the Honourable Danielle Côté before the Viens Commission dated December 10, 2018, **exhibit P-9**.

63. The Honourable Danielle Côté, then Associate Chief Justice of the Criminal and Penal Division of the Court of Québec, explained that she had been "fixated" on the Nunavik System and calling for changes for seven years:

"On-site release investigations... I almost feel like telling you that I'm fixated on this. Because we find it inconceivable that we can... When we started there, often ten (10), twelve (12) days. Because the accused leaves the village, goes to Saint-Jérôme, ends up in the South."

(...)

"Doing release investigations without moving people. I've been working on this for seven (7) years. I'm still waiting."

(...)

"We know the problems, we have ideas about solutions, but when we arrive to implement the solutions, the resources are not there."

As appears from the transcript of the testimony of the Honourable Danielle Côté, exhibit P-9.

64. In a judgment rendered in 2019, the Honourable Jacques Ladouceur also examined the Nunavik System, denouncing in harsh terms the "*passive acceptance*" of this "*injustice*" by the State for "*too many years*":

"There is a passive acceptance of that situation even if all the interveners of the judicial system and the government are conscious that this is how it proceeds for many years now.

(...)

"19] Even if I know that reserving the rights of the accused is mainly symbolic, I add that the first goal here is to denounce a situation that last for too many years, hoping that changes will be made to correct such an injustice. "

As appears from *R. v. Koneak*, QCCQ2019 3851 dated June 18, 2019, **exhibit P-10**.

ii. The Public Protector

65. In a report published in 2016, the *Ombudsperson* painted a bleak picture of the administration of justice in Nunavik, as appears from the *Ombudsperson's Report* entitled "Conditions of Detention, Administration of Justice and Crime Prevention in Nunavik", dated February 18, 2016, **Exhibit P-11**.
66. Focusing specifically on the transfer of Inuit defendants to the "south", the Québec Ombudsman noted the systematic violation of the Three-Day Rule in Nunavik and expressed concern about the human impact of these repeated transfers:

*"The Criminal Code provides for a maximum period of three days for the holding of an enquiry for the release of an accused. **This time limit must be respected, unless the accused consents not to be respected.** However, since release investigations are conducted from Abitibi-Témiscamingue, **the three-day time limit for the removal warrant has almost always expired when the accused finally appears before the judge, which contravenes the Criminal Code.**"*

(...)

*"(...) the Québec Ombudsman insists that it is urgent that the incarceration conditions of the Inuit in Nunavik, which are otherwise highly deplorable, be brought back to a level acceptable to a society governed by the rule of law such as Québec. The short duration of incarceration in these places should not be used as an argument for allowing such a situation to persist. **The fundamental rights of these citizens, including the right to human dignity, must be respected.***

There are also significant delays associated with these practices, particularly due to the extended pre-trial detention caused by transfers to the 'south'. The average length of stay in remand for Inuit has increased by about eight days in five years and is about eighteen days longer than for the rest of the prison population." (Our emphasis)

As appears from the Québec Ombudsman's Report, Exhibit P-11.

67. When she tabled her report, Ms. Raymonde Saint-Germain, then Ombudsman, denounced the State's "indifference" and its "*lack of initiative*" to put an end to the Nunavik System:

"We have noted a lack of initiative in the implementation of solutions in the area of corrections, and yet these solutions are possible and known. The three main ones are: the creation of an air bridge between Abitibi - mainly Amos - and Nunavik, the regrouping of the clientele incarcerated south of the 49th^e parallel in the same detention centre, and the increased use of remote appearances, i.e. videoconferences, to appear.

*I insisted that this report be tabled in the National Assembly, as I am convinced that there has **been too much indifference and trivialisation** in this matter **and that it is now time for a solid action plan to be put in place**. The problems have been known for a long time, the solutions are also known.*

(...)

"Having visited a number of prisons in Africa as part of my work with the Association des ombudsmans et médiateurs de la Francophonie, I reacted exactly as you did, saying to myself: The Third World is not so far away.

It's a situation that has been trivialized, and we've been comforted by the explanation that I've heard relatively officially, which is to say: Ah, the people of Nunavik are used to living in overcrowded conditions, so they don't complain, they're used to difficult conditions. And, for me, the Ombudsman, this is a comment that is totally unacceptable. We can't have different levels of public services, two-tiered public services depending on where people are, depending on how far away they are. There is no administrative convenience that justifies the lack of respect for people and their rights. (Our emphasis)

All this as it appears from the transcript of a press conference held by Ms. Raymonde Saint-Germain on February 18, 2016, **exhibit P-12**.

68. Following the tabling of this report in the *National Assembly*, the Quebec Minister of Justice, Mr. Simon Jolin-Barette, who was then the justice critic for the second opposition group, severely criticised the MSP, pointing out in passing that the Nunavik System could easily be avoided by the use of videoconferencing:

"The Ministry of Public Security has ignored the citizens who are on the territory of Nunavik and has treated them as second-class citizens.

(...)

"I'm telling you, it's a double standard, citizens (...) in northern Quebec don't have the same rights as citizens in southern Quebec, it's unacceptable.

(...)

"(...) we leave the villages of Nunavik, Montreal, Saint-Jérôme, Amos, and then the people, if they are released, return to the North, to Nunavik. So it's completely unacceptable, especially since the families can't necessarily accompany these individuals in the event that they are detained during those days.

(...)

"It's 2016, it's possible to use technology, and it would be cheaper.

(...)

"(...) it's not normal for the Department of Public Safety to have to react to the Ombudsman's report. There have already been reports in recent years, particularly by the Barreau, on the administration of justice. These were known elements, and it takes a report for the Ministère de la Sécurité publique to wake up.

(...)

"You see that there is discrimination in the treatment of citizens' cases, in the sense that the conditions of detention are not the same and are unacceptable.

As appears from the transcript of Mr. Simon Jolin-Barrette's press briefing, exhibit P-1

69. Directly challenged by the Québec Ombudsman, the MSP and the MJQ committed to "do everything possible in the coming months to implement large-scale projects that will provide solutions," as appears from the letter of commitment from the MSP and the MJQ dated May 31, 2016, **exhibit P-13**.
70. Despite this wishful thinking, the State has knowingly continued to apply the Nunavik System for years.

iii. The DPCP and the Nunavik police

71. In 2018, the Honourable Marie-Chantal Brassard, j.s.c. then Chief Prosecutor of the DPCP, acknowledged the "problem" with the Nunavik System and stated that she had been proposing solutions for a "long time":

"We ourselves have been lobbying the MSP for a long time, if only to describe the problem and report what we thought were solutions, and obviously this [videoconferencing] is one that we have already seen and named four or five times.

the whole as it appears from the transcript of the testimony of the Honourable Marie-Chantal Brassard dated November 13, 2018, **exhibit P-14**.

72. The chief and director of the Nunavik police, Mr. Jean-Pierre Larose, spoke of "continuously out-of-time" transportation, in "inhuman" conditions:

"We are continually out of time."

(...)

"To appear] four, five, six - seven (7) days later, in deplorable conditions, I tell you, a bit inhuman, difficult, difficulty and accessibility to a lawyer through all that, although we try, with... the defendant, but, accessibility to the lawyer is an issue, is a problem. It's a concern for the family of the defendant.

(...)

"Health care, ... hygiene, etc., it's completely inappropriate, and, obviously it's highlighted, and you know it very well, by the Public Protector, it concerns me, it concerns us really." (Our emphasis)

As appears from the transcript of the sworn testimony of Mr. Jean-Pierre Larose dated November 22, 2018, **exhibit P-15**.

73. According to Chief Larose, the Nunavik System is the result of a lack of will and funding only because the solutions are known and applied elsewhere in Quebec:

"I want to find alternative solutions, humane conditions for the transport of our defendants. What is happening now is unacceptable. And it's clear that we agree with the Québec Ombudsman.

(...)

"It's blocked. It's a financial issue."

(...)

"Everything is there. It's all there, it's a question of will and financial only, unfortunately (...)"

(...)

*"So it's possible, it's feasible. And it is... I would add: **why does it work in the Magdalen Islands?***

In the Magdalen Islands, Commissioner, an accused person, he is arrested and held in custody by a security agency hired by the Sûreté du Québec at the courthouse, and if he remains in custody for his release hearing, the correctional services, by plane, will pick him up in the Magdalen Islands and bring him back to New Carlisle for his court appearance." (Emphasis added)

As appears from the transcript of the sworn testimony of Mr. Jean-Pierre Larose, exhibit P-15.

iv. The Quebec Bar

74. The testimony of the Honourable Nathalie Pelletier, j.s.c., then Bâtonnière du Barreau d'Abitibi-Témiscamingue-Nord-du-Québec, illustrated the systematic violation of the Three-Day Rule and the resulting "fundamental violation" of Nunavimmiut rights:

*"On average, between the time the individual is arrested and the time the person appears, there is **often a period of eight (8) to ten (10) days. Eight (8) to ten (10) days, the Criminal Code talks about a bail hearing (...), but maximum within three (3) days. It is a maximum, the three (3) days.***

(...)

*"So what does that do? **It makes me hold someone illegally. It is illegal to detain an individual for ten (10) days. (...) This is a fundamental violation of the rights of the people who live in the Far North. And it is unacceptable.***

(...)

*"All I want, as Bâtonnière, all I want is for the litigant to have his rights respected. That is what I want. **(Our emphasis)***

As appears from the transcript of the testimony of the Honourable Nathalie Pelletier dated April 19, 2018, **Exhibit P-16.**

75. In its brief to the Viens Commission, the Barreau du Québec stressed the urgency and necessity of acting quickly to ensure respect for the fundamental rights of Nunavimmiut:

"The Barreau du Québec agrees with the Québec Ombudsman's recommendations that the pre-trial stages of a criminal case (appearance, bail hearing) should, with some exceptions, be held at a distance, using technology (telephone or videoconferences).

This measure not only avoids unnecessary displacement or transfer of accused persons and justice system actors, but also ensures that the fundamental rights of accused persons are respected, for example, with respect to time limits for court appearances or release investigations. (Emphasis added)

As appears from the Quebec Bar's brief entitled "The Justice System and the Aboriginal Peoples of Quebec: Urgent and Necessary Reforms", dated April 19, 2018, **Exhibit P-17.**

v. The Come Commission

76. After an exhaustive investigation lasting almost two years, the Honourable Jacques Viens devoted an entire section of his final report to the Nunavik System.
77. Insulted by the apathy of the State, the Honourable Jacques Viens went so far as to make it one of his "Calls to Action":

From my point of view, it is unacceptable that such an obvious solution, [videoconferencing], which would make a significant improvement for so many people, has not yet been implemented.

I therefore recommend that the Government :

CALL TO ACTION No. 50

Implement as soon as possible the use of videoconferencing during release hearings for detainees in remote regions, particularly in Nunavik.

As appears from the final report of the Viens Commission, exhibit P-2.

78. In his final report, the Honourable Jacques Viens also reports on the situation of an Inuit inmate to illustrate the treatment of Nunavimmiut in Quebec prisons:

"Throughout the work of the Commission, a number of instances of racism and direct discrimination against First Nations or Inuit people were brought to my attention in relation to corrections. These were sometimes perpetrated by existing staff and sometimes by their fellow inmates. Insults from correctional officers, vexatious behaviour, discriminatory treatment of non-Aboriginal inmates - the comments and actions reported to me are simply unacceptable. Imbued with contempt and violence, they convey the most vile prejudices against Aboriginal peoples, as illustrated by the story told by Moses Nutaraluk, who was successively detained at the Amos, Saint-Jérôme, Rivière-des-Prairies, and Bordeaux institutions in the Montreal region:

When they insulted me, they always called me an "eskimo", a "raw meat eater", a "glue sniffer", an "alcoholic" and they said: "You got lost while hunting and you ended up here? I was questioning myself saying, "I'm not here... I'm not hunting, do you think I'm hunting? And then they'd start laughing and they'd say, "Oh yeah, go get some seals." And I would ask, "What does that mean? They said, "In French, that word means a seal. I thought to myself, "What, the English word that starts with the letter .F means a... seal in your language? And they would say, "Yeah, go get some fucking seals. And I said, "Oh, don't insult me like that.

As appears from the final report of the Viens Commission, exhibit P-2.

79. The Honourable Jacques Viens further denounces the potential impact of prolonged pre-trial detention on guilty pleas:

"Appearing in custody and having to remain in remand for long periods of time is also, according to Gladue Senior Court Judge Mara Greene and others, a powerful incentive to plead guilty. Defendant Conrad André recounted in court that he made this argument:

The lawyer told me: "you will say guilty if you want to get out". Then I had to pay him too. Then I thought about it, but it's things that didn't happen, things that are... that have... that I'm accused of, it's [not] what happened, but I said

'guilty', because I'd be there for two months for nothing, that's worse, that's why I said 'guilty'. Then knowing that if I said "guilty", I would get out today, well, then I said "guilty". I helped the police in their misdeed by saying "guilty". That's what happened. And this kind of situation happens very often in the community [...]. It's always the same thing, it's always the same way we are treated. We are told to say 'guilty' even though we didn't do it.

As appears from the final report of the Viens Commission, exhibit P-2.

80. His conclusions on the administration of justice in Nunavik echo the Final Report of the Inuit Working Group on Justice which, already in 1993, laconically stated:

"What is wrong with the administration of justice in Nunavik? Just about everything!"

As stated in the Final Report of the Inuit Working Group on Justice "Clearing the Path to a Better Future" dated 1993, **Exhibit P-18**.

b) Solutions that have been ignored for too long

81. As early as 1996, technology was mentioned as a solution to avoid unnecessary transfers of prisoners from Nunavik to the "south":

"(...) when you make trips, the itinerant court, could we not facilitate a large part of the appearances from other territories, with the means we have today, I think of the remote appearance program, to prevent travel, preventive incarcerations which, in reality, are perhaps not?"

As appears from the Journal des débats de l'Assemblée nationale for the day of 1 August 2, 1996, **exhibit P-19**.

82. Over time, virtually all actors in the Quebec justice system have asked the State to use videoconferencing in Nunavik so that Inuit defendants can hold their release hearings directly from their communities.³
83. The implementation of this simple solution, advocated by all, seemed to be self-evident since other public bodies were already using videoconferencing in Nunavik.
84. When confronted with this issue during the Viens Commission, the MJQ did not want to commit to using videoconferencing to hold release hearings in Nunavik, as appears from the transcript of the testimony of Ms. Josée Trottier, Regional

3 Nunavik Justice Working Group, **Exhibit P-18**, the Honourable Danielle Côté, **Exhibit P-9**, the Honourable Jacques Ladouceur, **Exhibit P-10**, the Honourable Lucille Chabot, **Exhibit P-9**, Commissioner Jacques Viens, **Exhibit P-2**, the Québec Ombudsman, **Exhibit P-11**, the Barreau du Québec, **Exhibit P-17**, the Honourable Nathalie Pelletier, **Exhibit P-16**, the Honourable Daniel Bédard, **Exhibit P-8**, the Honourable Marie-Chantal Brassard, **Exhibit P-14**.

Director of Judicial Services for Abitibi-Témiscamingue and Nord-du-Québec, dated October 5, 2018, **exhibit P-20**.

85. The unlawful, intentional and malicious conduct of the State should be sanctioned by an award of punitive damages.

VII. The compensation claimed

86. By keeping in place a system that ensured the violation of the Three-Day Rule, the Respondent unjustly deprived the Class members of their liberty.
87. In doing so, the defendant violated their right to liberty and security, protected by section 7 of the *Canadian Charter* and section 1 of the *Quebec Charter*.
88. Defendant also violated their right not to be deprived without just cause of reasonable bail, a right guaranteed by section 11(e) of the *Canadian Charter* and section 31 of the *Quebec Charter*.
89. Defendant violated their right to be presumed innocent, a right guaranteed by section 11(d) of the *Canadian Charter* and section 33 of the *Quebec Charter*.
90. Defendant also infringed their right to be protected from arbitrary detention, a right guaranteed by section 9 of the *Canadian Charter* and section 24 of the *Quebec Charter*.
91. Defendant also infringed their right to protection from cruel and unusual treatment, a right guaranteed by section 12 of the *Canadian Charter* and section 25 of the *Quebec Charter*.
92. Finally, Defendant violated their right to the equal recognition and exercise of their rights and freedoms, a right guaranteed by section 15 of the *Canadian Charter* and section 10 of the *Quebec Charter*.
93. In doing so, the defendant acted with full knowledge of the immediate and natural consequences of its conduct on the rights of the Class members.

a) Damages

94. The Nunavik System has had a serious negative impact on the lives of Nunavik defendants that has affected all members of the Group in a common way.
95. The impossibility of having a release hearing within a strict time limit, as is the case for any defendant elsewhere in Quebec, combined with forced travel over several thousand kilometres in inhumane conditions of detention, the language barrier and the distance from family and community are all factors that increase the feeling of abandonment, loneliness, powerlessness, anxiety and despair linked to the deprivation of liberty suffered by the members of the Group.

96. The applicant is entitled to claim, for himself and for the members of the Group, compensation of \$10,000.00 for each day of detention exceeding three clear days from the date of appearance.
97. It appears that between 2015 and 2020, approximately 3,650 release investigations were held in violation of the Three-Day Rule, as per data provided by the MJQ, Exhibit P-3, affecting approximately 1,500 individuals.
98. During this same period, the members of the Group were detained for an average of 9 to 10 days before their release hearing, i.e., approximately 6 days more than the maximum set out by the three-day rule, all of which is borne out by the testimony of the representatives of the judiciary and the Quebec bar before the Viens Commission: The Honourable Danielle Côté speaks of 10 to 12 days, Exhibit P-9; the Honourable Lucille Chabot, of 7 to 9 days, Exhibit P-9; and the Honourable Nathalie Pelletier speaks of an average period of 8 to 10 days, Exhibit P-16.
99. Thus, the total amount of the award to which the defendant is to be held is calculated in the following sufficiently precise manner:
 - a. \$10,000.00 times six (6) days, representing the average time beyond the three clear days; multiplied by :
 - b. 3,650, representing the number of times the State has violated the Three-Day Rule.

This represents a total of \$219,000,000.00.

b) Punitive damages

100. At all times relevant to this case, the State was aware of its obligations under the Three-Day Rule to Class Members.
101. For years, the State has persisted in applying the Nunavik System despite repeated warnings from just about everyone in the Quebec justice system.
102. Given the unlawful, intentional and malicious actions of the State and the fundamental importance of deterring the State from disregarding the human rights of those it holds in custody, a historically disadvantaged and severely over-judged group, the plaintiff is entitled to request that the defendant be ordered to pay \$50,000.00 for each member of the Class, for a total of of \$75,000,000.00.
103. This amount is necessary to prevent the erosion of rights protected by the *Canadian* and *Quebec Charters* and to discourage further violations by the defendant.
104. The total amounts claimed also constitute, in any event, a just and appropriate remedy within the meaning of section 24(1) of the *Canadian Charter*, in order to

fulfil the threefold function of defending the right in question, deterring further violations and compensating the victims.

105. The present application is well founded in fact and in law.

FOR THESE REASONS, PLEASE THE COURT:

WELCOME the applicant's action on behalf of all group members;

ORDER the Defendant to pay to the members of the Class the aggregate sum of \$219,000,000.00 as damages collectively recoverable and/or as just and proper relief within the meaning of s. 24(1) of the *Canadian Charter*, the whole with interest at the legal rate plus the additional indemnity since September 3, 2018;

ORDER the defendant to pay to the members of the Class the aggregate sum of \$75,000,000.00 as punitive damages and/or as a just and proper remedy within the meaning of section 24(1) of the *Canadian Charter*, to be recovered collectively;

FIX modalities for the distribution of the amounts recovered collectively;

ORDER that the claims of the Class members be individually liquidated in accordance with Articles 596 to 598 C.C.P. or, if impracticable or ineffective, order the Defendant to implement such remedies as this Honourable Court considers to be in the best interests of the Class members,

ALL with costs, including the costs of all experts, opinions and expenses of the administrator, if any.

Montreal, February 17, 2022

Montreal, February 17, 2022

COUPAL CHAUVELOT S.A.

Applicant's co-counsel

Mr Victor Chauvelot
Me Louis-Nicholas Coupal
460 Saint-Gabriel, Suite 500
Montreal, Quebec H2Y 2Z9
Phone: (514) 903-3390 (514) 903-3390
Fax: (514) 221-4064
victor@coupalchauvelot.com
inc@coupalchauvelot.com

KUGLER KANDESTIN LLP

Applicant's co-counsel

Mr Robert Kugler
Mr. Alexandre Brosseau-Wery
Mr. William Colish
1 Place Ville Marie, Suite 1170
Montreal, Quebec H3B 2A7
Phone: (514) 878-2861 (514) 878-2861
Fax: (514) 875-8424
rkugler@kklex.com
awery@kklex.com
wcolish@kkles.com

CANADA

COUR SUPÉRIEURE
Chamber of Collective Actions

PROVINCE OF QUEBEC
MONTREAL DISTRICT

MICHAEL CARRIER

No.: 500-06-000943-181

Applicant

c.

ATTORNEY GENERAL OF QUEBEC

Defendant

**LIST OF DOCUMENTS IN SUPPORT OF THE
APPLICATION TO INSTITUTE PROCEEDINGS**

- Exhibit P-1:** Transcript of the press briefing by Mr. Simon Jolin-Barette on 18 February 2016;
- Exhibit P-2:** Final Report of the Commission of Inquiry into relations between Aboriginal people and certain public services in Quebec: Listening, Reconciliation and Progress;
- Exhibit P-3:** Response of the Ministry of Justice to an access to information request dated 21 December 2021;
- Exhibit P-4:** Transcript and minutes of a hearing held on 5 July 2018 and a referral warrant dated the same day, *en liasse*;
- Exhibit P-5:** Transcript and minutes of a hearing held on July 10 2018 and remand warrant dated the same day, *en liasse*;
- Exhibit P-6:** Transcript and minutes of a hearing held on July 13 2018 and undertaking dated the same day, *en liasse*;
- Exhibit P-7 :** 2012 Public Report of the Court of Quebec;
- Exhibit P-8 :** Presentation document submitted by the Court of Quebec to the Viens Commission;
- Exhibit P-9 :** Transcript of the testimony of the Honourable Lucille Chabot and the Honourable Danielle Côté before the Viens Commission on 10 December 2018;
- Exhibit P-10:** *R. v. Koneak*, QCCQ2019 3851 dated June 18, 2019;
- Exhibit P-11 :** *Québec Ombudsman* report entitled "Conditions of Detention, Administration of Justice and Crime Prevention in Nunavik", dated February 18, 2016;

- Exhibit P-12 :** Transcript of a press conference by Ms Raymonde Saint-Germain dated 18 February 2016;
- Exhibit P-13 :** Letter of commitment from MSP and MJQ dated 31 May 2016;
- Exhibit P-14:** Transcript of the testimony of the Honourable Marie-Chantal Brassard dated 13 November 2018;
- Exhibit P-15 :** Transcript of the sworn testimony of Mr. Jean-Pierre Larose dated 22 November 2018;
- Exhibit P-16 :** Transcript of the testimony of the Honourable Nathalie Pelletier dated 19 April 2018;
- Exhibit P-17 :** Brief of the *Barreau du Québec* entitled "The Justice System and the Aboriginal Peoples of Quebec: Urgent and Necessary Reforms" dated 19 April 2018;
- Exhibit P-18 :** Final Report of the Inuit Justice Working Group "Leading the Way to a Better Future" dated 1993;
- Exhibit P-19 :** Journal of the debates of the National Assembly for the day of August 21 1996;
- Exhibit P-20 :** Transcript of the testimony of Ms. Josée Trottier dated October 5, 2018;

Montreal, February 17, 2022

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COUPAL CHAUVELOT S.A.
Applicant's co-counsel

KUGLER KANDESTIN LLP
Applicant's co-counsel