

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

**NUNAVUT TUNNGAVIK INCORPORATED, BERNICE
TUJJAAQTUQAQ CLARKE, and LILY ANNE MANIAPIK**

Plaintiffs

- and -

**THE COMMISSIONER OF NUNAVUT AS REPRESENTED
BY THE GOVERNMENT OF NUNAVUT and THE
GOVERNMENT OF NUNAVUT AS REPRESENTED BY
THE ATTORNEY GENERAL**

Defendants

NOTICE OF MOTION

TAKE NOTICE that an application by the defendants (the “**Government of Nunavut**”) will be made to the presiding judge in Court at the Nunavut Justice Centre, 510 Kangiqsliq, in Iqaluit, Nunavut, on a special chambers date to be fixed by the Clerk pursuant to Rule 387(2) and Practice Directive #33, for an order that:

1. the Court strike the plaintiffs’ amended statement of claim dated January 28, 2022 in its entirety under Rule 129(1)(a)(i), without leave to amend, on the ground that it discloses no cause of action;
2. the Court dismiss this action under Rule 129(1)(b); and
3. the plaintiffs pay the Government of Nunavut’s costs on the motion and the action.

THE GROUNDS for the relief sought by the Government of Nunavut are as follows:

i. Overview

1. The plaintiffs seek a declaration (and ancillary relief) that certain provisions of the *Education Act*, S.Nu. 2008, c. 15 and the *Inuit Language Protection Act*, S.Nu. 2008, c. 17, as recently amended, infringe s. 15(1) of the *Canadian Charter of Rights and Freedoms*.
2. The impugned provisions were adopted by the Nunavut Maligaliurvia/Legislative Assembly of Nunavut (the “**Assembly**”) and came into force on November 10, 2020. The provisions have the effect of modifying, extending and/or phasing in legislated deadlines for the implementation of fully bilingual (Inuit language and English or French) K-12 education in Nunavut.
3. Prior to the adoption of the amendments, the *Education Act* and the *Inuit Language Protection Act* had set 2019 as the deadline for the implementation of fully bilingual, Inuit language-English/French K-12 education in Nunavut, which deadline was not fully met and was determined by the Assembly not to have been achievable based on existing resources and capacity. (Fully bilingual, Inuit language-English/French education from kindergarten to Grade 3, implemented since 2009, remains in place and is undisturbed by the amendments.)
4. In adopting the amendments, the Assembly deemed it appropriate to replace the prior framework with a phased-in system of bilingual education, culminating in 2039 in a full Inuit Language Arts programme from Grades 4-12. The stated purpose for modifying the prior framework, as expressed in the debates leading to the adoption of the amendments, is that dedicating resources to teaching Inuit Language Arts would be the most effective way of building a sustainable and realistic foundation for Inuit-English/French bilingual education for Grades 4-12, taking into account available resources and capacity constraints – most importantly, a limited pool of available, qualified Inuit language-speaking teachers and a lack of standardized Inuit language vocabulary, especially for technical

subjects. The Assembly expressed the view that the new framework constituted the best path forward to counter Inuit language loss in the territory.

5. In bringing the present claim, the plaintiffs assert that the impugned amendments are contrary to s. 15 of the *Charter*, on the ground that “Inuit students are statutorily deprived of the right to Inuit Language Education from Grades 4 to 12” (claim at para. 64).
6. The plaintiffs ask the Court to strike the amended provisions down (plus a related regulation), and for an order that the Government of Nunavut deliver all education “primarily in the Inuit language”, from Kindergarten to Grade 12, within five years of an order being issued (claim at paras. 4 and 79).
7. The defendant, the Government of Nunavut, while deeply committed to Inuit language education, moves to strike the claim as disclosing no cause of action and having no prospect of success, on the following grounds:
 - (a) the claim asserts, in substance, a right in relation to language and/or language of instruction;
 - (b) the claim relies upon and is grounded in s. 15 of the *Charter*;
 - (c) section 15 does not include or protect rights in relation to language or language of instruction;
 - (d) the *Charter* contains a complete code in relation to language rights, including rights pertaining to language of instruction, which code cannot be amplified or modified by s. 15; and
 - (e) constitutionally, as directed by the framers of the Nunavut Territory (including the plaintiff Nunavut Tunngavik Incorporated) and pursuant to the *Nunavut Act* and the Nunavut Land Claims Agreement (“**NLCA**”), authority in relation to education, as well the preservation, use and promotion of Inuit languages, are matters within the exclusive purview of the Assembly.

ii. **Facts**

(a) **Nunavut’s legislative jurisdiction over education and Inuit languages**

8. Under s. 23 of the *Nunavut Act*, S.C. 1993, c. 28, the Assembly has legislative jurisdiction over: “education in and for Nunavut” (s. 23 (m)); and “the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages” (s. 23 (n)).
9. Pursuant to that legislative jurisdiction, the Assembly established a framework under the *Education Act* and the *Inuit Language Protection Act* mandating the Nunavut Department of Education to provide for fully bilingual (i.e. a combination of Inuit languages and English or French) education from Kindergarten to Grade 12 by July 1, 2019.

(b) **The Bill 25 amendments to the *Education Act* and the *Inuit Language Protection Act***

10. In June 2019, Bill 25, *An Act to Amend the Education Act and the Inuit Language Protection Act*, was tabled. The bill proposed a broad suite of changes to the *Education Act* and the *Inuit Language Protection Act*, including:
 - (a) consolidating references to Inuit Qaujimajatuqangit into Part I of the *Education Act*;
 - (b) redefining the education program, school program, and local program, and clarifying the respective roles of the Minister, the District Education Authorities, and the Commission scolaire francophone du Nunavut under the *Education Act*;
 - (c) revising inclusive education requirements;
 - (d) revising language of instruction requirements to ensure that Inuit language capacity is properly utilized and monitored;

- (e) phasing in the implementation of Inuit Language Arts courses by 2039;
 - (f) revising certain responsibilities of the District Education Authorities; and
 - (g) enhancing the responsibilities of the Coalition of Nunavut District Education Authorities.
11. Bill 25 received royal assent and came into force on November 10, 2020.
12. Among the provisions contained in Bill 25 are the following, of particular relevance to the plaintiffs' claim:

Section 28 of the *Education Act*

- (a) Section 28 of the *Education Act* previously required that Part 4 of the *Act* (containing the language of instruction obligations in the *Act*) was to be fully implemented up to Grade 12 by the 2019-2020 school year. Bill 25 repealed this obligation and replaced it with a new provision. Among other things, the new s. 28 removes implementation timelines for kindergarten to Grades 1 to 3 (since instruction is already delivered bilingually in those grades), and directs that implementation for Grades 4-12 shall occur in accordance with the new Schedule to the *Education Act*.

The new Schedule to the *Education Act*

- (b) The new Schedule, in addition to various technical matters, directs that Part 4 of the *Education Act* (setting out the broad language of instruction obligations) and s. 8 of the *Inuit Language Protection Act* (parents' rights to have their children receive Inuit language instruction) are to be implemented for Grades 4 to 12 according to the timeline established by the Schedule and set out in an included Table:

Table 1: Inuit Language Arts – Inuktitut as a first language

Grade(s)	Application date
Grade 4	July 1, 2026
Grade 5	July 1, 2028
Grades 6 to 8	July 1, 2033
Grade 9	July 1, 2035
Grade 10	July 1, 2036
Grade 11	July 1, 2038
Grade 12	July 1, 2039

Table 2: Inuit Language Arts – Inuktitut as a second language

Grade(s)	Application date
Grade 4	July 1, 2028
Grade 5	July 1, 2030
Grades 6 to 9	July 1, 2031
Grade 10	July 1, 2032
Grade 11	July 1, 2033
Grade 12	July 1, 2034

Table 3: Inuit Language Arts – Inuinnaqtun

Grade(s)	Application date
Grade 4	July 1, 2030
Grade 5	July 1, 2032
Grades 6 to 9	July 1, 2034
Grade 10	July 1, 2035
Grade 11	July 1, 2036
Grade 12	July 1, 2037

- (c) Section 3(1)(b) of the Schedule notes that timelines for the implementation of courses taught in Inuit languages other than Inuit Language Arts shall be specified in regulations. The current relevant regulation in this regard is the *Interim Language of Instruction Regulations, 2021-2022*.

Section 8 of the Inuit Language Protection Act

- (d) Bill 25 amended the *Inuit Language Protection Act* by adding new ss. (3) and (4) to s. 8 of that Act. Subsection (1), not modified by Bill 25, sets out a right for all parents with children enrolled in school in Nunavut to have their children receive Inuit language instruction. Subsection (2), not modified by Bill 25, sets out government obligations to design, develop,

and implement curriculum and training to support that goal. The new ss. (3) limits the application of this right to Grades 1 to 3, and ss. (4) applies the implementation period provided in the Table for Grades 4 to 12.

13. The stated purpose for modifying the prior framework, as expressed in the debates leading to the adoption of the amendments, is that dedicating resources to teaching Inuit Language Arts is the most effective way of building a sustainable and realistic foundation for bilingual education for Grades 4-12, taking into account available resources and capacity constraints – most importantly, a limited pool of available, qualified Inuit language-speaking teachers and a lack of standardized Inuit language vocabulary, especially for technical subjects. The Assembly expressed the view that the new framework constituted the best path forward to counter Inuit language loss.

(c) The plaintiffs' claim

14. The plaintiffs originally filed their statement of claim on October 13, 2021, and filed a further particularized amended claim on January 28, 2022. The amended claim asserts that the impugned provisions and regulation reviewed above are contrary to s. 15 of the *Charter* and should be struck down.
15. The plaintiffs also seek an order requiring the Government of Nunavut to (claim at para. 79):
 - (a) within five years, implement public education delivered primarily in the Inuit language from K-12;
 - (b) prepare detailed implementation plans for how it will achieve (a); and
 - (c) periodically report to the Court as to its progress toward achieving (a).

iii. **Basis for motion to strike: the claim discloses no cause of action – s. 15 of the *Charter* does not protect rights in relation to language or language of instruction**

16. The defendant the Government of Nunavut states that this claim discloses no cause of action and has no prospect of success, and therefore should be struck, for the following reasons.

(a) **The claim, in substance, asserts a right in relation to language and/or language of instruction**

17. In substance, the rights asserted by the claim are rights in relation to language and/or language of instruction.

18. At para. 64 of the claim, the plaintiffs assert that “Inuit students, unlike any other students in Canada, are deprived of the ability to receive education in the locally dominant official language, which is also the first language of most Inuit in Nunavut.” At para. 65, the claim states that “Inuit students are statutorily deprived of the right to Inuit Language Education from Grades 4 to 12” [Emphases added.]

19. The term “Inuit Language Education” is defined at para. 4 of the claim as “public education delivered primarily in the Inuit Language”.

20. Distilled to its essence, the claim advances a purported constitutional right to K-12 education primarily in Inuit languages, and a corresponding positive obligation on the part of the Government of Nunavut to make available K-12 education in Inuit languages in all subject matters. The claim necessarily depends, for its success, on the existence of such a right and a corresponding positive governmental obligation. The effect of the claim, if successful, would be the establishment of such a right and obligation.

(b) **Language does not come within the scope of s. 15(1) of the *Charter***

21. The basis for the existence of this alleged constitutional right and corresponding positive governmental obligation, as pleaded, is s. 15 of the *Charter*.

22. However, the law is clear that language rights, including rights in relation to language of instruction, do not come within the scope of, and are not protected by, s. 15 of the *Charter*. The *Charter* contains, in ss. 16-23, a comprehensive and complete language rights code, including in relation to rights to instruction in French or English where that language is of the linguistic minority population of the province or territory. The law is clear that one part of the *Charter* cannot be used to amplify or modify other parts of the *Charter*, and specifically that s. 15 cannot be used to either amplify or expand upon the scope of language rights and language of instruction rights as set out in those carefully-crafted provisions – whether for French, English, Indigenous languages, or any other language.
23. Accordingly, in seeking to vindicate language rights and/or language of instruction rights based on s. 15, the claim is without legal basis whatsoever and therefore discloses no cause of action.
- (c) Constitutional authority in relation to education, as well the preservation, use and promotion of Inuit languages, lies within the exclusive purview of the Nunavut Legislative Assembly**
24. In the specific context of Nunavut, it is all the clearer that the provision of Inuit language instruction – including the manner, scope and delivery thereof – is a matter that was left fully to the legislative authority and wisdom of the Assembly (a body elected by the voters of Nunavut, who are of course in large majority Inuit), rather than the courts.
25. It was open to the framers of the establishment of the Nunavut Territory (which included the plaintiff Nunavut Tunngavik Incorporated) to establish a similar, constitutionalized language educational rights regime as set out in s. 23 of the *Charter*, but in relation to Inuit languages, under either the NLCA or the Political Accord contemplated at Article 4 of the NLCA giving rise to the *Nunavut Act*.
26. The framers of the NLCA and of the Political Accord (including Nunavut Tunngavik Incorporated) put their minds to a range of socio-cultural rights and governmental obligations in relation to Inuit people, culture and education, and

educational matters generally, but elected not to constitutionalize an Inuit languages educational regime:

- (a) the NLCA sets out numerous rights and obligations in relation to Inuit and Inuit culture, and imposes certain governmental obligations in this regard, but is silent as to K-12 education in Inuit languages;
 - (b) the *Nunavut Act* contains an explicit legislative obligation regarding official languages (s. 38), but is silent as to K-12 education in Inuit languages;
 - (c) rather than constitutionalizing language rights, the *Nunavut Act* confers on the Assembly general legislative jurisdiction over education (s. 23(m)), as well as over “the preservation, use and promotion of the Inuktitut language, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the English and French languages” (s. 23 (n)); and
 - (d) the *Nunavut Act* provides for protection of separate schools, but contains no obligations or protections in relation to K-12 education in Inuit languages.
27. Instead, the framers of Nunavut expressly left to the Assembly the authority to determine the optimal organization, delivery, management, and provision of Inuit language education. There is simply no constitutional or legal basis for disturbing or interfering with that choice.
28. Further, to the extent that the plaintiffs attack provisions of Bill 25 itself as distinct from attacks on the *Education Act* and the *Inuit Language Protection Act* (see the definition of “Impugned Provisions” at para. 43 of the claim), those provisions are spent and can ground no cause of action.
29. Accordingly, the claim as plead discloses no cause of action.
30. For these reasons, the Government of Nunavut asks for this claim to be struck under Rule 129(1)(a)(i)

iv. The defect in the claim cannot be cured by amendment

31. The Court should strike the claim without giving the plaintiffs leave to amend.
32. The plaintiffs cannot advance a tenable cause of action for language rights or language of instruction rights under s. 15 of the *Charter*. As set out above, language rights and/or rights in relation to language of instruction do not fall within the scope of that section, and there is no other constitutional right in relation to language of instruction, other than language of instruction rights for minority rights-holders under s. 23 of the *Charter*.
33. The plaintiffs can make no possible amendment that could cure this defect. It is the foundation on which the entire claim rests. Accordingly, there could be no purpose to, and there is no basis for, granting leave to amend.

v. The action should be dismissed

34. The Government of Nunavut asks for this action to be dismissed under Rule 129(1)(b) because:
 - (a) the claim as plead discloses no cause of action; and
 - (b) no amendment is capable of curing the defect.

AND FURTHER TAKE NOTICE that in support of this application will be read:

- i. the Government of Nunavut's pre-hearing brief, to be filed;
- ii. the plaintiffs' amended statement of claim dated January 28, 2022 (appended to this notice of motion); and
- iii. any further material as counsel may advise and the Court may allow.

DATED at Vancouver, British Columbia, on April 4, 2022.



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Counsel for the plaintiffs

This motion has been filed electronically in accordance with Practice Directive #18.

IN THE NUNAVUT COURT OF JUSTICE

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Plaintiffs

- and -

**THE COMMISSIONER OF NUNAVUT AS REPRESENTED
BY THE GOVERNMENT OF NUNAVUT and THE
GOVERNMENT OF NUNAVUT AS REPRESENTED BY
THE ATTORNEY GENERAL**

Defendants

NOTICE OF MOTION

This notice of motion is filed by:

Maxime Faille, RAC No. RRMF230114-02-2 (issued: January 15, 2022, expires: January 14, 2023)

Guy Régimbald, Roll No. 2016028

Keith Brown, RAC No. RKB230301-01-1 (issued: March 10, 2022, expires: March 9, 2023)

Counsel for the defendants

Whose address for service in Nunavut is:

Attorney General of Nunavut
Department of Justice
PO Box 1000 Station 500
Iqaluit, Nunavut X0A 0H0

NOTICE OF CONSENT FOR ELECTRONIC SERVICE

Pursuant to Practice Directive #31 (Electronic Service of Documents in Civil Causes), the defendants consent to electronic service of documents in this matter, to be sent to all of the following e-mail addresses:

Maxime.Faille@gowlingwlg.com
Guy.Regimbald@gowlingwlg.com
Keith.Brown@gowlingwlg.com

Court File No. 08-21-463-CVC

IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

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Plaintiffs

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THE ATTORNEY GENERAL**

Defendants

NOTICE TO THE DEFENDANT

1. You are hereby notified that the Plaintiffs may enter judgment against you in accordance with the attached Statement of Claim, or such judgment as may be granted under the *Rules of the Nunavut Court of Justice*, without further notice to you unless within 30 days after service of the Statement of Claim on you, you cause to be filed in the office of the Clerk of the Nunavut Court of Justice either:
 - a. a Statement of Defence, or
 - b. an Appearance,and unless within the same time you serve a copy of the Statement of Defence or Appearance on the Plaintiff or the Plaintiff's lawyer.
2. The attached Statement of Claim is to be served within 12 months from the day on which it is issued.
3. Every Defendant should consult their lawyer, or refer to *the Rules of the Nunavut Court of Justice*, to determine their rights.

The attached Statement of Claim is hereby issued out of the office of the Clerk of the Nunavut Court of Justice at Iqaluit, Nunavut, on October ~~January 28, 2021-2022~~

Clerk of the Nunavut Court of Justice
Address of the court Office:
Nunavut Justice Centre, Building #510
PO Box 297
Iqaluit, Nunavut X0A 0H0

TO: **GOVERNMENT OF NUNAVUT**
PO Box 1000 Station 200
Iqaluit, Nunavut X0A 0H0

AND TO: **ATTORNEY GENERAL OF NUNAVUT**
Nunavut Department of Justice
PO Box 1000, Station 500
Iqaluit, NU X0A 0H0

IN THE NUNAVUT COURT OF JUSTICE

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Defendants

AMENDED STATEMENT OF CLAIM

A. OVERVIEW

1. Inuit are one of the Aboriginal peoples of Canada, with Aboriginal and Treaty rights in Nunavut and areas adjacent to Nunavut. They are the majority population in Nunavut, constituting approximately 85% of the population. Inuit students account for a majority of the student population in Nunavut, at approximately 94%.
2. The Inuit Language, as defined in section 1(2) of the *Inuit Language Protection Act*, SNu 2008, c17 ("***Inuit Language Protection Act***") and below, is a key component of the cultural history, identity, and survival of Nunavut Inuit. In keeping with its importance to the Inuit of Nunavut, the Inuit Language is an official language in Nunavut.
3. It is well established that the language of instruction used in an educational system can affect the preservation and promotion of linguistic and cultural vitality; in the case of Nunavut, education delivered in the Inuit Language is

vital to cultivating and maintaining the Inuit Language and, by extension, Inuit culture. Nunavut is unique in Canada, in that a majority of students belong to a cultural group whose mother tongue is the Inuit Language, not English or French.

4. Since the creation of the Nunavut territory in 1999, however, public education in Nunavut from Grades 4 and 5 onwards (depending on the school) has been primarily delivered, ~~and only completely so in all grades,~~ in English or French. In 2008, in recognition of the need for students in Nunavut to have available to them public education to be delivered primarily in the Inuit Language across all subjects (“Inuit Language Education”) for all grades, the Legislature of Nunavut enacted two pieces of legislation: the *Education Act*, SNU 2008, c15 (the “**Education Act**”) and the *Inuit Language Protection Act*. Among other provisions to preserve, protect and promote the use of the Inuit Language across all institutional sectors within Nunavut, the *Inuit Language Protection Act* affirmed the right to Inuit Language Education in Nunavut, and the *Education Act* and the *Language of Instruction Regulations*, Nu Reg 014-2012 (the “**Language of Instruction Regulations**”) required the ~~provision-~~ availability, by 2019-2020, of Inuit Language Education for a substantial majority of instruction time for kindergarten through Grade 9, and half of instruction time for Grades 10 through 12 ~~full post-Grade 3 Inuit Language Education in the Nunavut public school system by 2019-2020.~~
5. The Government of Nunavut failed to implement Inuit Language Education for all grades by 2019-20, as legislatively required, including failing to appropriately implement strategies and plans for achieving Inuit Language Education. Thirteen years after the legislative guarantee of Inuit Language Education in Nunavut was established, Inuit Language Education in Nunavut has been reduced, not increased. During this period, rates of Inuit Language use by the Inuit of Nunavut have declined.

6. In 2020, the Government of Nunavut proposed and secured amendments to the *Education Act* and the *Inuit Language Protection Act* that further diminish Inuit Language Education in Nunavut Schools.
7. The amendments to the *Education Act* and the *Inuit Language Protection Act* reduced the guarantee of Inuit Language Education to merely an Inuit Language Arts course – functionally, a language instruction course, rather than education delivered in the Inuit Language – between Grades 4 to 12.
8. Further, the amended *Education Act* and the amended *Inuit Language Protection Act* postpones the completed implementation of even that reduced guarantee until July 2039 – 18 years from now.
9. The Government of Nunavut’s failure to provide Inuit Language Education across all grades has harmed and will continue to harm the Plaintiffs, other Inuit individuals, and Inuit as a people. The public education system in Nunavut under the amended *Education Act* and the amended *Inuit Language Protection Act* harms the Plaintiffs, and Inuit students more broadly, by (i) causing Inuit students’ loss of the Inuit Language and Inuit culture, and (ii) undermining Inuit students’ ability to achieve their educational potential, and perpetuating historical disadvantages. These harms will likely continue and worsen for generations of Inuit students, threatening the existence of the Inuit Language in Nunavut.
10. The 2020 changes to the *Education Act* and the *Inuit Language Protection Act* set out in paragraphs 6-8 are a breach of the Plaintiffs’ rights under subsection 15(1) of the *Canadian Charter of Rights and Freedoms* (“**Charter**”) that cannot be saved by the application of section 1 of the *Charter*. The Plaintiffs seek relief from this Court declaring that the minimization and postponement of Inuit Language Education across all grades in Nunavut causes unjustified discrimination and is therefore unconstitutional. In the absence of such a declaration, and notwithstanding their constitutional status as one of the

Aboriginal peoples of Canada, Inuit in Nunavut will be denied an effective education system in their historical and current homeland.

B. THE PARTIES

Nunavut Tunngavik Inc.

11. The Plaintiff, Nunavut Tunngavik Incorporated (“**NTI**”), is a non-profit corporation with its head office in Iqaluit.
12. NTI represents the interests of all Inuit in Nunavut. It is mandated to protect and enforce Inuit Aboriginal and Treaty rights, including both those rights derived from the 1993 *Nunavut Agreement*, a Treaty for the purposes of section 35 of the *Constitution Act, 1982*, and those of a non-territorially defined nature, including Aboriginal rights in relation to education, language and self-determination. Such non-territorial rights were not directly or comprehensively addressed in the *Nunavut Agreement*.
13. As part of giving practical effect to its mandate, NTI, among other activities, engages in advocacy with elected law-makers and government officials regarding legislation, promotes and pursues laws and policies consistent with and supportive of Inuit rights and interests, and provides financial assistance and programming to Inuit. When needed, NTI takes legal action as a plaintiff to protect and enforce Inuit rights and interests.
14. NTI and its predecessor organizations, Tunngavik Federation of Nunavut and Inuit Tapirisat of Canada, have been extensively involved since the 1970s in advocacy and negotiating efforts to promote Inuit Language Education in Nunavut schools, and to support the development of Inuit Language Education across Nunavut.

Plaintiff Bernice Clarke

15. The Plaintiff, Bernice Tujjaaqtuqaq Clarke, is a 46-year-old Inuit Language Instruction student, mother, entrepreneur, and an Inuk enrolled under the *Nunavut Agreement*, living in Iqaluit.
16. Ms. Clarke was born and raised in Nunavut. She is fluent in the Inuit Language, as her mother tongue, and English. The Inuit Language forms a vital part of her connection with her Inuit culture. It allows her to connect with and better understand her family and to access and understand the deep knowledge of her Inuit family tracing back generations.
17. Ms. Clarke is the mother to her 10-year-old daughter, Alethea, who is also an Inuk enrolled under the *Nunavut Agreement*. Ms. Clarke taught her daughter the Inuit Language from birth and wants her daughter to continue to be able to speak the Inuit Language fluently. She wants to ensure her daughter possesses, throughout her life, the same depth of connection with the Inuit Language, her family, and Inuit culture.
18. Alethea attends the English stream Grade 5 at Nanook School in Iqaluit.

Plaintiff Lily Maniapik

19. The Plaintiff, Lily Anne Maniapik, is a 33-year-old Qikiqtani program manager with Ilitaqsiniq, also known as the Nunavut Literacy Council. She is a student, a mother, and an Inuk enrolled under the *Nunavut Agreement*. She lives in Iqaluit.
20. Ms. Maniapik's first language is the Inuit Language. She is fluent in both the Inuit Language and English, having originally learned the latter from Inuit who learned English as a second language. The Inuit Language is inseparable from her experience with her Inuit culture. Her foundation in the Inuit Language allows her to connect with her family and build strong Inuit cultural

competency. The Inuit Language is integral to how she learns Inuit cultural practices and teachings tracing back generations.

21. In primary school, Ms. Maniapik attended the Inuktitut stream until it became unavailable at Grade 5. The transition to education delivered primarily in English was highly embarrassing and traumatizing for Ms. Maniapik and she continues to carry a sense of embarrassment and resentment from this experience. The public education system also negatively impacted her Inuit Language proficiency, as she was not taught to write in the Inuit Language.
22. Ms. Maniapik is the mother to her 9-year-old daughter, Kukik Enook Maniapik Kusugak, who is also an Inuk enrolled under the *Nunavut Agreement*. Ms. Maniapik taught her daughter the Inuit Language from birth and wants her daughter to continue to be able to speak the Inuit Language fluently and thereby maintain a deep connection with her family and Inuit culture.
23. Kukik is in Grade 4 at Nakasuk School in Iqaluit. Due to her own negative experiences with the abrupt transition from the Inuit Language stream to the English language stream in the school system, Ms. Maniapik selected the English stream for her daughter. However, Kukik strongly wishes that she could have access to Inuit Language Education, as does her mother.
24. Ms. Maniapik is also the mother to a 3-year old son, Hudson Assaajuq Maniapik. As with Kukik, Ms. Maniapik has been teaching Hudson the Inuit Language from birth. Hudson is not yet in school, but Ms. Maniapik would place him in the Inuit Language stream throughout his schooling if a quality Inuit Language stream were available.

The Commissioner of Nunavut as represented by the Government of Nunavut and The Government of Nunavut as represented by Attorney General

25. The Legislature of Nunavut is empowered to enact laws relating to education in Nunavut, pursuant to subsection 23(m) of the federal *Nunavut Act*, SC 1993,

- c 28. The Government of Nunavut applies and administers those laws.
26. Pursuant to subsection 5(1) of the federal *Nunavut Act*, the Commissioner is the chief executive officer for Nunavut and is, pursuant to section 12 of that Act, part of the Nunavut Legislature.
27. The Attorney General of Nunavut represents the Government of Nunavut pursuant to section 5 of the *Department of Justice Act*, RSNWT (NU) 1988, c 97.

C. FACTUAL BACKGROUND GIVING RISE TO THE CLAIM

Majority of Nunavut Inuit Speak Inuit Language

Majority of Inuit in Nunavut Speak the Inuit Language

28. Pursuant to section 3 of the *Official Languages Act*, SNu 2008, c 10, and to section 2 of the *Inuit Language Protection Act*, Nunavut has four official languages: Inuktitut, Inuinnaqtun (together, the “**Inuit Language**”), English and French.
29. The Inuit Language has been spoken by Inuit for thousands of years, and long before Europeans arrived in what is now Nunavut. It continues to be the language spoken by the majority of Inuit in Nunavut today and the majority of Nunavut residents. Many Inuit are fluent only in the Inuit Language.
30. Inuit are recognized as an Aboriginal people under Canadian constitutional law and qualify as an Indigenous people under the *United Nations Declaration on the Rights of Indigenous Peoples*. The Inuit Language is a defining feature of Inuit history, identity, and culture. Almost all fluent Inuit Language speakers are Inuit.

Relationship of Public Education System to Nunavut Inuit

Inuit Have Been Deprived of Control over Education

31. Prior to contact with non-Indigenous people, Inuit taught their children and transmitted knowledge exclusively in the Inuit Language.
32. In the area that is now Nunavut (formerly part of the Northwest Territories), formal English language education became widespread in the 1950s, with the introduction of residential school hostels and day schools. Attendance at those schools was compulsory and, in some instances, actively coerced. Inuit had no control over the curriculum or language of instruction at those schools. Inuit students were instructed in English and were, in most schools, regularly forbidden from and penalized for speaking the Inuit Language.
33. In the 1970s, in response to Inuit advocacy, government initiatives in both Quebec and the Northwest Territories began to recognize the importance of providing education in the Inuit Language across most classes and all grades and facilitating a measure of Inuit control over education services for Inuit children. Inuit became members of local education authorities in every community in the Northwest Territories and played a central role in education governance in the territory. During this period, divisional school boards, supervised by Inuit, were created to facilitate more local, Inuit control of education. Schools offered Inuit Language Education up to Grades 3 or 4. After that, instruction took place only in English.
34. Following the creation of Nunavut in 1999, the newly formed Government of Nunavut assumed control over the public education system in Nunavut. The Nunavut Legislature dissolved elected Inuit supervision of the divisional boards of education, consisting of primarily Inuit members, in 2000.
35. Inuit participation and consistent control over the in-classroom operation of the education system in Nunavut has eroded since the creation of the Government

of Nunavut, further challenging the implementation of the strong Inuit preference for delivery of education in the Inuit Language throughout that system.

Public Education in Nunavut Is Compulsory

36. Inuit parents have no practical choice but to enroll their children in a public school system that teaches students primarily in English and French. The *Education Act* requires that Nunavut children between the ages of six and seventeen years be enrolled in school. Homeschooling and private schooling is permitted under the *Education Act*, but homeschooling and private schooling are not practical options for the majority of Inuit parents.

Despite Inuit Language Being the Majority Language and an Official Language, English is the Main Language of Instruction

Inuit Language Education Continues to be Largely Unavailable after Grade 4

37. Nunavut's schools offer education primarily in English, except for the French language school in Iqaluit (École des Trois Soleils). While students in many Nunavut communities receive Inuit Language Education from Kindergarten to Grades 3 or 4 (depending on the school), only very few students in Nunavut receive Inuit Language Education after Grade 4. In Grades 5 and up, public education is provided almost exclusively in English or French – languages with no linguistic similarity or connection to the Inuit Language.
38. The large majority of teachers (72%) and principals (77%) in Nunavut are not Inuit or Inuit Language Speakers. The small number of Inuit teachers primarily teach in the lower elementary grades.

2008 Commitment to Providing Inuit Language Education Is Unfulfilled

39. In 2008, the Legislature of Nunavut enacted two pieces of legislation related to Inuit Language Education: a revised *Education Act* and the *Inuit Language*

Protection Act. Together, those Acts imposed an obligation on the Government of Nunavut to provide Inuit Language Education. Section 8 of the *Inuit Language Protection Act* confirmed the right of parents in Nunavut to have their children receive Inuit language instruction. Together, the *Inuit Language Protection Act*, the *Education Act* and the *Language of Instruction Regulations* set out a phased plan for the implementation of Inuit Language Education for all grades by 2019-2020.

40. Since 2008, there has been limited to no improvement in the state of Inuit Language Education in Nunavut schools. To the contrary, Inuit Language Education has decreased. In 2020, as in 2006, Inuit students can learn in the Inuit Language until Grade 3 or 4 at the latest, after which the language of instruction switches exclusively to English (or, in the case of one school, French). In addition, the rates of Inuit Language Education up to Grade 4 have diminished. In 2009, 16 out of 25 primary schools in Nunavut offered some instruction in the Inuit Language up to Grade 4; by 2018, the number had dropped to 10.
41. The Government of Nunavut was aware, or had reason to be aware, of its failure to take the steps needed to implement Inuit Language Education across all grades as required by the *Education Act* and the *Inuit Language Protection Act*, including failing to adequately implement at least two territorial strategies relevant to implementing Inuit Language Education. In 2013, an audit by the Auditor General of Canada found that the Government of Nunavut was not meeting targets for implementing Inuit Language Education, including failing to train sufficient Inuit Language-speaking teachers and language specialists. The audit found that the pace of the development of Inuit Language curriculum and learning materials over a ten-year period was only at 50% of what was expected. The Government of Nunavut committed to take steps to address its failure and to facilitate implementation of Inuit Language Education in accordance with the *Education Act*'s mandated schedule. It failed to do so.

42. Instead, the Government of Nunavut has undermined the timely implementation of Inuit Language Education in Nunavut. The Government of Nunavut has continued to facilitate the hiring of non-Inuit educators that are not proficient in the Inuit Language, and has placed insufficient emphasis on Inuit teacher education programs and the development of an Inuit Employment Plan to recruit, train, support and hire Inuit educators. The Government of Nunavut has not provided adequate support to Inuit graduates with education degrees that are proficient in the Inuit Language, and many Inuit employed in the education system are hired as substitute teachers or as relief or casual employees without benefits or security of employment. Similarly, the Government of Nunavut has put up barriers to the District Education Authorities employing elders within their schools. The Government of Nunavut also fails to adequately fund or support the development of Inuit Language curricula and resources.

In 2020, the Government of Nunavut Reduced Guarantees of Access to Inuit Language Education through Amendments to the Education Act and the Inuit Language Protection Act

43. In 2020, by way of *An Act to Amend the Education Act and the Inuit Language Protection Act* (“**Bill 25**”), the Legislature of Nunavut further amended the *Education Act* and the *Inuit Language Protection Act*. Sections 42, 43, 97 and 123 of Bill 25 (the “**Impugned Provisions**”) amended sections 28 and 203 of the *Education Act* and added a schedule (the “**Schedule**”) to that Act, and they amended section 8 of the *Inuit Language Protection Act*. Those amendments introduced a range of changes to the government’s Inuit Language Education obligation, including:

- a. Replacing the requirement for Inuit Language Education with a diminished lesser Inuit Language Arts requirement. The amendments of §section 28 of the *Education Act* and section 8 of the *Inuit Language Protection Act* was amended to fully-removed the obligation for Inuit

Language Education—*i.e.*, instruction in the Inuit Language across subjects and grades. Instead, through the amended provisions and the addition of the Schedule, the government introduced a lesser requirement that the Inuit Language be taught as a subject matter course, referred to as “Inuit Language Arts”, with all other classes to be taught in English or French.

- b. Extending the timeline for any post-Grade 4 3 Inuit Language instruction. The deadlines for phased implementation of post-Grade 34 Inuit Language instruction were extended from 2019-2020 (as required under the previous version of the *Education Act*) until up to 2039, as set out in a the Schedule to the amended ~~Education Act~~ (reproduced below):

Table 1: Inuit Language Arts – Inuktitut as a first language

Grade(s)	Application date
Grade 4	July 1, 2026
Grade 5	July 1, 2028
Grades 6 to 8	July 1, 2033
Grade 9	July 1, 2035
Grade 10	July 1, 2036
Grade 11	July 1, 2038
Grade 12	July 1, 2039

Table 2: Inuit Language Arts – Inuktitut as a second language

Grade(s)	Application date
Grade 4	July 1, 2028
Grade 5	July 1, 2030
Grades 6 to 9	July 1, 2031
Grade 10	July 1, 2032
Grade 11	July 1, 2033
Grade 12	July 1, 2034

Table 3: Inuit Language Arts – Inuinnaqtun

Grade(s)	Application date
Grade 4	July 1, 2030
Grade 5	July 1, 2032
Grades 6 to 9	July 1, 2034
Grade 10	July 1, 2035
Grade 11	July 1, 2036
Grade 12	July 1, 2037

~~(Section 28 and the Schedule together, the “**Impugned Provisions**”)~~

c. Allowing for the suspension of the *Language of Instruction Regulations*. Section 203(3) was amended to empower the Minister to make regulations for interim or transitional matters related to the implementation of the *Education Act*. The Minister subsequently made the *Interim Language of Instruction Regulations, 2021-2022*, NU Reg 037-2021, which provided, among other things, that the *Language of Instruction Regulations* do not apply in grades 4 to 12.

44. In other words, the 2020 amendments reduced the commitment to Inuit Language Education in two respects. First, instead of committing to an educational program where the Inuit Language is the working language of instruction across most subjects, the Government of Nunavut now only commits to providing one course taught in the Inuit Language. The rest of the courses – constituting the large majority of hours of instruction – are in English or French. Second, the timeline for even that much reduced commitment has been delayed by up to approximately two decades.

Government of Nunavut’s Failure to Provide Inuit Language Education Harms Inuit

45. The absence of Inuit Language Education in Nunavut – a territory with a majority Inuit, Inuit Language-speaking population – harms and will continue to harm the Plaintiffs, many Inuit students, and Inuit as a people. The failure to provide Inuit Language Education results in loss of the Inuit Language, and, by

extension, Inuit cultural loss. It also poses major, and often insurmountable, barriers to educational attainment and economic prosperity for Inuit students.

46. The Plaintiff, Bernice Clarke, would like her daughter to attend the Inuit Language stream in school, but there is no option available to do so. Ms. Clarke is profoundly concerned that, with the passage of the Impugned Provisions and the failure to implement full Inuit Language Education, the Nunavut education system will erode her daughter's fluency in the Inuit Language, and thereby negatively impact her educational attainment and ability to connect with Inuit culture and her family.
47. The Plaintiff, Lily Maniapik, would like her children to have access to Inuit Language Education, but there is no option available to her children that would avoid the abrupt transition from education delivered in the Inuit Language to English that so negatively affected Ms. Maniapik. Ms. Maniapik continues to feel insecurities reading and writing from her experience with this transition. To avoid her daughter experiencing similar trauma, Ms. Maniapik has placed her daughter in an English language stream. Unfortunately, Kukik's proficiency in the Inuit Language has already declined since attending the Nakasuk school, which has negatively impacted her ability to communicate with family members.
48. Ms. Maniapik's daughter requested to have access to Inuit Language Arts classes at the Nakasuk school while in the English stream, but due to the lack of Inuit Language-speaking educators even that is not available to Kukik for the full school year and she was placed in French language arts classes instead. Being told she can only learn French and not the Inuit Language has been devastating for Kukik and is depriving her of an important way to learn her Inuit culture.

Failure to Provide Inuit Language Education Harms Preservation, Retention and Transmission of Inuit Language and Culture

49. The Government of Nunavut's failure to provide Inuit Language Education across all grades in Nunavut's schools – which Inuit students are required to attend – seriously and irreparably harms inter-generational transmission and retention of the Inuit Language.
50. Today, while it remains the majority language for Inuit, the health of the Inuit Language – an official language in Nunavut – is declining. Among other factors, that decline is caused by the Government of Nunavut's failure to provide Inuit Language Education for all grades, across Nunavut schools.
51. In addition to being a free-standing harm, reduced retention and proficient use of the Inuit Language impairs the preservation and transmission of elements of Inuit culture in Nunavut, resulting in an associated harm to Inuit culture, and the expression and enjoyment of Inuit cultural identity.
52. Loss of the Inuit Language and Inuit culture leads to a range of further harms to the Plaintiffs, to many Inuit individuals, and Inuit as a people, including to their senses of individual and collective identity, cultural vitality and belonging as Inuit of Nunavut.

Barriers to Inuit Educational Attainment

53. The Government of Nunavut's failure to provide Inuit Language Education across all grades also undermines Inuit students' educational attainment, including in the following ways:
 - a. Inuit students have higher non-attendance and non-graduation rates than their non-Inuit peers;
 - b. In the absence of Inuit Language Education, many Inuit students leave school without strong educational outcomes or proficiency in either the

Inuit Language or English; and

- c. Inuit students face greater challenges than their non-Inuit counterparts in school from the barriers caused by the failure to provide Inuit Language Education.
54. These harms, caused by the Government of Nunavut's failure to provide Inuit Language Education, create and/or exacerbate the gaps in socio-economic indicators, representation in public employment, and income between Inuit and non-Inuit in Nunavut. As a result of these harms, which will continue as a result of the Impugned Provisions, Inuit students are left further behind their non-Inuit peers.

Harms from Lack of Inuit Language Education Are Well-Documented

55. The consequences of the failure to provide Inuit Language Education across all grades in Nunavut have been studied and are well understood.
56. In 2006, retired Justice Thomas Berger released a progress report respecting the implementation of the *Nunavut Agreement*. In his report, Mr. Berger described the state of crisis of Nunavut's school system. He concluded that the single leading cause of the failure of the Nunavut school system was the failure to provide Inuit Language Education. The report identified numerous harms suffered by Inuit students as a result of the Government of Nunavut's failure to provide Inuit Language Education.
57. Other reports have similarly confirmed the importance of Inuit Language Education to the survival and health of the Inuit Language.
58. The Inuit of Nunavut have experienced the harms described in these reports, including declining retention and use of the Inuit Language, harm to Inuit culture, and Inuit students falling behind in the school system, facing barriers in reaching their educational potential, and having lower graduation rates than

non-Inuit.

Government of Nunavut Has Known for Over a Decade about Harms from Lack of Inuit Education

59. As a result of these reports, since at least 2006, the Government of Nunavut knew, or ought to have known, that the failure to provide Inuit Language Education harms Inuit students. The Government of Nunavut was also aware of the steps it needed to take to deliver Inuit Language Education across all grades. Notwithstanding that knowledge, the Government of Nunavut failed to take the steps needed to deliver Inuit Language Education, as it was statutorily required to do from 2008 until the passage of the ~~amended Education Act~~ Impugned Provisions in 2020.

With Appropriate Steps, Government of Nunavut Could Implement Inuit Language Education

60. Implementation of Inuit Language Education is feasible. It requires recruiting, training and retaining Inuit Language-speaking teachers, developing appropriate curricula, more broadly including Inuit in education governance in the territory, and investing in infrastructure.
61. Other circumpolar regions and countries, with similar challenges in relation to demographics, distance, operating costs and other factors, have succeeded in implementing bilingual education. For instance:
- a. In Nunavik, in Arctic Quebec, the Kativik School Board – a board delivering education in an area with a predominantly Inuit population – provides trilingual instruction in all communities, with programs in Inuktitut, French and English.
 - b. In Greenland, most schools, including colleges and universities, instruct students in Kalaallisut, a language within the broader family of Inuit Languages, and linked closely to Inuit Language spoken in Canada.

D. LEGAL BASIS

NTI Has an Appropriate and Sufficient Interest to Be Granted Public Interest Standing

62. NTI has sufficient interest in the subject matter of this claim to be granted public interest standing, in that:
- a. this claim raises a serious challenge to the constitutional validity and applicability of the Impugned Provisions;
 - b. NTI has a demonstrated, serious and genuine interest in the subject matter of this litigation;
 - c. Under the Nunavut Agreement, NTI is mandated to act on behalf of, and to be accountable to, Nunavut Inuit;
 - d. NTI represents the interests of nearly 40,000 Nunavut Inuit, all of whom have a direct interest in ensuring that Inuit equality rights are not breached;
 - e. the issue of whether there is a constitutionally protected right for Inuit in Nunavut to receive Inuit Language Education is relevant to all Inuit in Nunavut, given the public importance of reconciliation and protection of equality rights; and
 - f. it is unreasonable to expect individual Inuit parents or youth to independently bear the financial burden and undergo the lengthy process of bringing and carrying through to completion a complex legal challenge of the type set out in this claim.

Impugned Provisions Breach Section 15 of the *Charter*

63. The Impugned Provisions infringe the Plaintiffs' right to equality under subsection 15(1) of the *Charter*. They discriminate against the Plaintiffs (and,

by extension, all Inuit in Nunavut) on the bases of their race and ethnic origin and deny them the equal protection and benefit of the law.

64. Throughout Canada, education is provided to students in the locally dominant official language, English or French, or in both official languages where numbers warrant. By contrast, within Nunavut, the Government of Nunavut has established a compulsory public education system in which post-Grade 43 education is provided in the first language of only a small minority of Nunavut students (English or French). No post-Grade 43 education is provided in the locally dominant official language, the Inuit Language, even though the majority of students in Nunavut are Inuit and speak the Inuit Language. Through this system, Inuit students, unlike any other students in Canada, are deprived of the ability to receive education in the locally dominant official language, which is also the first language of most Inuit in Nunavut.
65. The Impugned Provisions create, codify, and perpetuate this inequality by permanently removing the requirement for Inuit Language Education, and by further delaying the timeline for any Inuit language instruction post-Grade 43. As a direct result of the Impugned Provisions, Inuit students are statutorily deprived of the right to Inuit Language Education from Grades 4 to 12.
66. The inequality created by the Impugned Provisions reinforces, perpetuates, and exacerbates numerous burdens and disadvantages, including by:
 - a. leading to potentially irreversible declines in the retention of Inuit Language and loss of elements of Inuit culture;
 - b. depriving Inuit students of adequate education, which is a basic human right;
 - c. posing major barriers to developing proficiency in any language for Inuit students;

- d. working against overall Inuit participation and achievement in the education system; and
 - e. sending a discriminatory message to Inuit youth that their language and, by extension, their culture, is inferior to English and French and, by extension, broader Canadian culture.
67. The inequality created by the Impugned Provisions reflects and reinforces historic discriminatory and assimilative practices. It perpetuates negative stereotypes and messages about the Inuit and their language, including that:
- a. the Inuit Language is less worthy of protection and maintenance compared to English or French;
 - b. by extension, Inuit culture is less worthy of protection and maintenance compared with non-Inuit culture;
 - c. the Inuit Language, which is a central feature of Inuit culture, is a language in irreversible decline;
 - d. the Inuit Language is unworthy of an equal place in the public education system;
 - e. the Inuit Language is less important than English or French for participation in public life, even in Nunavut, despite Nunavut being the Inuit homeland with an Inuit Language-speaking majority; and
 - f. Inuit will have more chances to succeed if they assimilate into non-Inuit cultures.
68. The inequality created by the Impugned Provisions is imposed on Inuit of Nunavut by reason of their race and ethnic origin, which are personal characteristics listed as enumerated grounds of discrimination under subsection 15(1).

69. Each of these burdens and disadvantages perpetuates prejudice and injustices to Inuit – a group that has suffered historical mistreatment and marginalization within Canadian society, and continues to today.

Infringement is not Justified under Section 1

70. The infringement of section 15 cannot be justified pursuant to the criteria of section 1 of the *Charter*, the burden of proof of which lies on the Government of Nunavut.

71. The Impugned Provisions do not have a pressing and substantial objective.

72. Even if the Impugned Provisions had a pressing and substantial objective, which is denied, the Impugned Provisions are not proportionate, in that:

- a. they have no rational connection to any such objective;
- b. their impairment of section 15 rights is profound and far exceed the minimal impairment threshold. There are less harmful means of achieving any pressing and substantial government objectives; and
- c. there is a gross disproportionality between the negative impact of the Impugned Provisions on the Plaintiffs' section 15 rights and any potential beneficial effect of the Impugned Provisions in terms of other societal goals, which is, in any event, denied.

73. The implementation of Inuit Language Education is time-sensitive, in that delay has immediate adverse impacts on the children of the Plaintiffs and current Inuit students and has long-term adverse impacts on the transmission of the Inuit Language and Inuit culture. Inuit Language Education must be pursued as an urgent priority. While the Impugned Provisions do not in theory prevent the Government of Nunavut from implementing full Inuit Language Education, they remove the legislative requirement that the Government of Nunavut do so

and thereby condone inequality in the education system. Despite developing various policies and programs relating to the use of the Inuit Language in public education, the Government of Nunavut has neither the intention nor a realistic plan for achieving full Inuit Language Education or avoiding the harms to the Plaintiffs alleged above.

Urgency of Claim and Past Governmental Conduct Merit Prescriptive Relief

74. As stipulated in subsection 24(1) of the *Charter*, the Plaintiffs are entitled to such remedy as the court considers appropriate and just in the circumstances.
75. Bare declaratory relief is not sufficient in the present case. Since the creation of Nunavut in 1999, the Government of Nunavut has or should have been aware: that Inuit Language Education across all grades is essential to protecting the equality rights of Inuit; that until Inuit Language Education across all grades is implemented, Inuit will face unequal linguistic instruction, cultural impairment, and higher barriers in reaching their educational potential in the public school system compared to non-Inuit; and that not correcting these issues leads to persistent marginalization of Inuit in their own lands, and to loss of the Inuit Language and, by extension, Inuit culture.
76. The Government of Nunavut has failed to treat this issue with the urgency it demands. It failed to properly fund and resource the development of Inuit Language Education, and consequently it has not met its own statutory educational deadlines for Inuit Language Education. There is no reason to believe this course of conduct will not continue, even as the prevalence and vitality of the Inuit Language in Nunavut continues to decline. To the contrary, the enactment of the Impugned Provisions demonstrates the Government of Nunavut does not intend to implement full Inuit Language Education at all.
77. The issues raised in this case are urgent. Until remedied, the Impugned Provisions will create irreparable harms, including undermining the educational

futures of Inuit students currently in school and further disrupting – potentially irreversibly – the transmission of the Inuit Language and Inuit culture.

78. In the particular circumstances of this case, the appropriate remedies include an order in the nature of *mandamus* directing the Defendants to take specific steps to remedy its ongoing breach of the Plaintiffs' section 15 rights, and to provide reporting to the Court with respect to its progress towards that remedy.

E. RELIEF SOUGHT

79. The Plaintiffs claims against the Defendant for:
- a. a declaration that the Impugned Provisions, ~~and~~ the amendments to the *Education Act* and the *Inuit Language Protection Act* incorporating the Impugned Provisions, and regulations passed pursuant to those amendments, unjustifiably infringe s. 15 of the *Charter* and are, to that extent, of no force and effect;
 - b. orders that:
 - i. the Government of Nunavut implement Inuit Language Education (i.e., instruction offered in the Inuit Language across subjects and classes) within five years of the date of this order, staged in such a way that Inuit Language Education shall be implemented for:
 - 1. Kindergarten - Grade 6 within one year of the date of this order;
 - 2. Kindergarten - Grade 8 within two years of the date of this order;
 - 3. Kindergarten - Grade 9 within three years of the date of this order;

4. Kindergarten - Grade 10 within four years of the date of this order; and
 5. Kindergarten - Grade 12 within five years of the date of this order.
- ii. the Commissioner introduce, within three months, a proposed scheme for the implementation of Inuit Language Education within 5 years of the date of this order;
 - iii. the Government of Nunavut, consistent with and reflecting these time frames, engage in consultation with NTI regarding development of an overall plan for the implementation of Inuit Language Education;
 - iv. within six months, the Government of Nunavut draw up an overall plan for the implementation of Inuit Language Education within 5 years of the date of this order as contemplated in paragraph 79(b)(i), with that plan providing for recruitment and training of Inuit Language educators, recruitment and training of Inuit Principals and Vice-Principals, development of an Inuit Language curriculum, and greater involvement of Inuit in education governance; and
 - v. the Government of Nunavut provide periodic reports to this Court setting out its progress in the previous period towards achieving the orders set out in paras 79(i)-(iii).
- c. in the alternative, an order that the effect of the declaration of constitutional invalidity or inapplicability be suspended for a period of six months;
 - d. costs, including special costs and applicable taxes on those costs; and

- e. such further and other relief as this Honourable Court deems meet and just.

F. PLACE OF TRIAL

80. The Plaintiffs propose that this action be tried in Iqaluit, Nunavut.

DATED at the City of Victoria, British Columbia, on ~~October 12, 2021~~ January 28, 2022, and delivered by ~~Sandra Omik, Legal Counsel, whose address for service is c/o Nunavut Tunngavik Incorporated, Igluvut Building #921, PO Box 638, Iqaluit, Nunavut X0A 0H0.~~

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IN THE NUNAVUT COURT OF JUSTICE

BETWEEN:

NUNAVUT TUNNGAVIK INCORPORATED,
BERNICE TUJJAQTUQAQ CLARKE, and
LILY ANNE MANIAPIK

Plaintiffs

and

THE COMMISSIONER OF NUNAVUT AS
REPRESENTED BY THE GOVERNMENT
OF NUNAVUT and THE GOVERNMENT OF
NUNAVUT AS REPRESENTED BY THE
ATTORNEY GENERAL

Defendants

AMENDED STATEMENT OF CLAIM

This Statement of Claim is issued by:

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