

TABLE OF CONTENTS

Avant Propos	ix
Acknowledgment	xi
Books by Joseph Eliot Magnet	xii
About Joseph Eliot Magnet	xiii
Chapter I: Injury to Aboriginal Culture: What is the Problem?	1
Chapter II: Representative Stories	13
People and Communities	13
Life at School	22
Compulsory Attendance	25
Legislation	25
Agreements	28
Chapter III: Liability	31
Cultural Damage Claims are Cognizable at Law	31
Principles of Interpretation	35
Breach of Treaty	48
Status of the Treaties	49
Interpretation of Treaty Texts	52
Remedies for Breach	58
Extinguishment of Treaty Obligations	61
Application to Education Clauses	61
Funding	67
Rupert's Land and North-Western Territory Order	73
Fiduciary Duty	80
Jurisprudence	80
Intensity of the Fiduciary Duty	88
Duty to Future Generations	95
The Collective Rights Cases	98
Analogies to Adoption, Custody, Education and Corrections	103
Apology, Law Commission Report and RCAP Report	109
Statutory Duty to Educate	116
Tort Claims for Loss of Aboriginal Culture	117

TABLE OF CONTENTS

Existing Claim 117
Novel Claim 119
Additional Impediments
 to Tort Actions 121
 Limitation Periods 121
 Burden of Proof 124
 Inter-Generational Damage 125
Non-Delegable Duties 126
Redress for Historical Wrongs under
 the Charter 134
Conclusion as to Liability 139

Chapter IV: Causation 141
 Common Law Principles 141
 Equitable Modifications 142
 Residential School Context 147
 Multiple Causes 152
 The Crumbling Skull Rule 155
 Inter-generational Impact 156

Chapter V: Should Courts Approve Claims for Injury
to Culture? 159
 Nature of the Injury 160
 Utility of Compensation 163
 Addressing the Cultural Deficit 166
 Alternative Options 169
 Individual Injuries 173
 Community Damage 177
 Normative Basis 177
 Precedents 178
 Belonging. Community. The Ties that Bind 179
 Communal Plaintiff 180
 Collective Rights,
 Collective Rights Holders 181
 Moving Forward 186
 Communal Injury and Communal
 Repair 186
 A Treaty Remedy for a Treaty Breach 191
 Treaty Litigation 194

Table of Cases TOC 1