

Legal Architecture for a Global Class Action Against the British Crown: Transatlantic Slavery, Indigenous Genocide, and Sovereign Unjust Enrichment

The pursuit of historical justice and reparations for the transatlantic slave trade and global Indigenous genocide has definitively evolved from a theoretical moral debate into a sophisticated challenge within international and domestic legal frameworks. For decades, the primary obstacles to holding former colonial powers accountable have been the rigid doctrines of state immunity, the expiration of limitation periods, and the stringent standing requirements inherent in traditional tort law. However, the convergence of novel private law theories, evolving interpretations of commercial activity exceptions within state immunity legislation, and a rising global consensus on reparatory justice has provided a newly viable legal architecture. This exhaustive research report provides a comprehensive legal roadmap for drafting, filing, and sustaining a class action lawsuit against the British Crown. It focuses on the continued retention of profits derived from the transatlantic trade of enslaved Africans and the systematic expropriation of Indigenous lands and resources worldwide. By utilizing the Federal Court of Canada as a jurisdictional anchor, and relying upon the private law doctrine of sovereign unjust enrichment, the integration of customary international law (CIL), and the strategic application of declaratory relief, it is possible to bypass the traditional procedural barriers that have historically shielded the British state from judicial scrutiny.

Part I: Identifying the Defendant and Establishing Jurisdictional Anchors

The foundational step in any transnational class action is correctly identifying the legal personality of the defendant and establishing the jurisdiction of the adjudicating forum. In the context of the British monarchy and the historical British Empire, the defendant is not the physical person of the reigning monarch, but rather the "Crown," a conceptual corporation sole that serves as the legal embodiment of the state and the executive government.

The Divisibility of the Crown

Historically, British constitutional theory operated under the doctrine of the "indivisibility of the Crown". Under this legal fiction, a single, unified Crown exercised legal authority and enjoyed sovereign prerogatives throughout every realm, territory, and colony of the British Empire. Under the indivisibility doctrine, the exact same legal entity that chartered slave ships out of London in the seventeenth century was the entity that signed treaties with Indigenous populations in North America in the nineteenth century.

However, modern constitutional law has evolved to recognize the "divisibility of the Crown". Following the Imperial Conference of 1926 and the gradual independence of Commonwealth nations, the Crown fractured into separate juristic entities with distinct legal personalities corresponding to each self-governing territory. Today, the King of Canada is entirely independent of the King of the United Kingdom, even though the same physical monarch occupies both offices.

This distinction is critical for litigation. In cases such as the *Indian Association of Alberta* (1982), Canadian courts affirmed that obligations initially undertaken by the imperial Crown were transferred to the Canadian Crown through the devolution of constitutional authority. However, a lawsuit seeking accountability for imperial policies directed entirely from London—such as the orchestration of the transatlantic slave trade and the original expropriation of colonial resources prior to Canadian confederation—must specifically name "His Majesty the King in Right of the United Kingdom" as the defendant. When sued in a Canadian court, the Crown in Right of the United Kingdom is treated legally as a "foreign state," completely distinct from the domestic Canadian government.

The Federal Court of Canada as the Judicial Forum

The Federal Court of Canada is the optimal venue for this class action. It possesses concurrent original jurisdiction in all cases in which relief is claimed against the Crown under Section 17 of the Federal Courts Act. Furthermore, Canadian courts possess the jurisdictional competence to adjudicate civil claims regarding international human rights violations and breaches of customary international law, provided that a real and substantial connection exists between the claims and the forum.

In a proposed class action representing Indigenous Nations of Canada and descendants of enslaved Africans residing in Canada, the domestic impacts of historical resource theft, cultural erasure, and intergenerational trauma establish the necessary territorial nexus. Canada's robust jurisprudence on Aboriginal title, its incorporation of international human rights norms into the common law, and its established mechanisms for the service of process on foreign states under the State Immunity Act make it a uniquely viable jurisdiction. Section 9 of the State Immunity Act explicitly provides the procedural mechanism for serving an originating document on a foreign state via diplomatic channels through the Deputy Minister of Foreign Affairs, triggering a mandatory 60-day delay before proceedings advance.

Jurisdictional Element	Legal Principle / Statute	Application to the Proposed Class Action
Defendant Identity	Doctrine of Crown Divisibility	Names "His Majesty the King in Right of the UK" to isolate imperial liability from modern Canadian state liability.
Forum Jurisdiction	Federal Courts Act, s. 17	Grants the Federal Court authority over claims involving Crown obligations, resource theft, and property disputes.
Status of Defendant	State Immunity Act, s. 2	The UK Crown operates as a "foreign state" within Canadian jurisdiction, invoking sovereign immunity analyses.

Jurisdictional Element	Legal Principle / Statute	Application to the Proposed Class Action
Service of Process	State Immunity Act, s. 9	Mandates diplomatic service via the Ministry of Foreign Affairs, adhering to customary international law regarding state sovereignty.

Part II: Piercing the Shield of Sovereign Immunity

Because the Crown in Right of the United Kingdom operates as a foreign state within Canadian jurisdiction, the lawsuit immediately triggers the application of the State Immunity Act (SIA) of Canada. Originating from the customary international law principle of *par in parem non habet imperium* (equals have no jurisdiction over one another), state immunity historically protected sovereigns from all foreign domestic litigation.

The SIA is a complete and exhaustive codification of Canadian law relating to state immunity from civil proceedings. Under Section 3(1) of the Act, a foreign state is immune from the jurisdiction of any court in Canada unless the claim falls within one of the explicitly enumerated statutory exceptions. The Supreme Court of Canada's ruling in *Kazemi Estate v. Islamic Republic of Iran* firmly established that the SIA acts as an absolute procedural bar, preventing domestic courts from adjudicating claims against foreign states even for severe violations of *jus cogens* (peremptory norms of international law) such as torture or crimes against humanity. The Court confirmed that there is no unwritten common law or international law exception to the SIA for historical human rights abuses. Therefore, any class action against the British Crown must meticulously frame its causes of action to fit squarely within the existing statutory exceptions of the SIA.

The Commercial Activity Exception (SIA Section 5)

The most potent mechanism for piercing the Crown's immunity in the context of the transatlantic slave trade and colonial resource extraction is the "commercial activity" exception. Section 5 of the SIA explicitly states that a foreign state is not immune from the jurisdiction of a court in any proceedings that relate to any commercial activity of the foreign state.

Section 2 of the SIA defines commercial activity as any particular transaction, act, or conduct that, "by reason of its nature, is of a commercial character". Canadian jurisprudence, heavily influenced by the Supreme Court's ruling in *United States of America v. Public Service Alliance of Canada*, employs a strict "nature versus purpose" test to determine whether an act is commercial. The court must look at the intrinsic nature of the activity (e.g., entering into a contract, securing insurance, issuing a charter) rather than its ultimate sovereign or political purpose (e.g., enriching the empire or funding a military).

The Royal African Company as a Commercial Enterprise

When applied to the British Crown's involvement in the transatlantic slave trade, the "nature" of the activity is undeniably commercial. The clearest evidentiary anchor is the Crown's direct establishment, patronage, and protection of the Royal African Company (RAC). Chartered in 1660 and re-chartered by King Charles II in 1672, the RAC was a joint-stock company granted a state-backed monopoly over the trade in West African gold, ivory, and enslaved human beings.

Headed by the monarch's brother, James, Duke of York, the company operated strictly for profit generation.

Between 1672 and 1713, the RAC forcibly transported between 300,000 and 450,000 enslaved Africans, explicitly treating them as merchandise and units of labor within a complex maritime supply chain. Enslaved individuals were literally branded with the company's logo—an elephant and a castle—signifying corporate ownership over human capital. Because the intrinsic *nature* of these acts involved the buying, selling, and financing of assets (albeit human lives illegally classified as chattel), the conduct falls squarely within the definition of commercial activity, stripping the UK Crown of its sovereign immunity for claims arising from these specific enterprises.

Maritime Law, Insurance, and the Commodification of Human Life

The commercial nature of the transatlantic slave trade was heavily codified in British law. The seminal *Somerset v. Stewart* (1772) case highlighted how British contract and property law was utilized to justify the ownership of human beings. Furthermore, the horrific *Zong* massacre of 1781, in which over 130 enslaved Africans were intentionally thrown overboard, was litigated in English courts not as a mass murder, but purely as a maritime insurance dispute over lost "cargo". This historical reality proves that the British legal system treated the slave trade as a commercial shipping venture, triggering the commercial activity exception under modern interpretations of the State Immunity Act. Financial institutions deeply intertwined with the Crown, such as the Bank of England, Barclays, and Lloyds of London, provided the commercial superstructures that financed and insured these voyages, generating an enduring financial benefit to the British state.

The £20 Million Enslaver Bailout as a Financial Transaction

Further solidifying the commercial nature of the Crown's conduct is the method by which the institution of slavery was formally ended. The Slavery Abolition Act 1833 did not confiscate the illicit wealth generated by the trade; rather, it initiated one of the largest financial bailouts in history. The British Crown allocated £20 million (representing roughly 40% of the government's entire annual expenditure at the time) to compensate the enslavers for the loss of their "property".

This compensation was essentially a massive issuance of government debt—a purely financial, commercial transaction that enriched the perpetrators of the crime while leaving the enslaved completely destitute. Strikingly, this massive debt was serviced by British taxpayers, including the descendants of the enslaved living in the UK and its realms, until the final bonds were fully retired by the UK Treasury in 2015. This modern, continuous financial administration of debt directly linked to the capitalization of slavery further roots the Crown's actions in the realm of commercial finance, reinforcing the applicability of Section 5 of the SIA.

The Personal Injury and Property Exception (SIA Section 6)

An alternative avenue for bypassing immunity is Section 6 of the SIA. This provision strips immunity in proceedings that relate to death, personal or bodily injury, or damage to or loss of property that *occurs in Canada*.

For the Indigenous Nations comprising the class, the expropriation of land, the violent enforcement of the pass system, and the physical abuses inflicted within the residential school

system squarely constitute personal injury and property loss occurring within Canadian territory. While the modern Canadian state has absorbed much of the direct liability for these later policies, the initial acts of land theft and the establishment of the legal frameworks for assimilation were directed by the imperial Crown.

For descendants of enslaved Africans, the application of Section 6 relies on the legal recognition of "intergenerational trauma" as a continuous personal injury. Scientific and sociological advancements increasingly recognize the somatic and psychological transmission of historical trauma, as seen in expert testimony in Canadian criminal sentencing (e.g., the Murdocca report in *R. v. Ipeelee* and *R. v. Sharma*). However, as demonstrated by the *Kazemi* decision, Canadian courts have thus far strictly interpreted the territorial requirement, holding that the specific tortious act causing the injury must occur *within Canada*. Because the forced transport and enslavement of Africans primarily occurred outside of Canada's modern borders (though slavery did exist in colonial Canada until its gradual abolition beginning with the 1793 Act to Prevent the Further Introduction of Slaves), relying solely on Section 6 for diaspora claims carries a high risk of dismissal based on territorial attenuation. Therefore, the commercial activity exception remains the primary, most legally sound mechanism for defeating immunity for the slavery-specific components of the class action.

State Immunity Act Exception	Statutory Standard	Application to the Crown's Historical Crimes	Viability Assessment
S. 5: Commercial Activity	The intrinsic nature of the act must be commercial, regardless of its sovereign purpose.	The RAC's slave trading, maritime insurance of human cargo (<i>Zong</i>), and the 1833 £20M enslaver financial bailout.	High. Operates on established principles of financial, corporate, and maritime law.
S. 6: Personal/Bodily Injury	The injury, death, or property loss must occur within the territorial borders of Canada.	Indigenous residential school abuse, forced relocations, land theft, and documented intergenerational trauma.	Moderate/Mixed. Strong for Indigenous territorial claims; vulnerable to jurisdictional challenges for transatlantic slavery claims.
S. 6.1: Terrorism Support	The foreign state must be officially listed as a state sponsor of terrorism by the Canadian government.	N/A (The United Kingdom is not a listed state).	None. Statutorily inapplicable to the UK Crown.

Part III: Substantive Causes of Action

If the jurisdictional and immunity hurdles are successfully navigated, the class action must present substantive causes of action that can survive motions to strike and overcome the expiration of traditional limitation periods.

The Failures of Traditional Tort Law

Traditional tort law has proven highly inadequate for historical justice claims. In landmark US

cases, such as *Cato v. United States* (1995) and *In re African-American Slave Descendants Litigation* (2006), courts dismissed reparations claims against governments and corporations due to a lack of standing, the expiration of statutes of limitations, and the inability to prove proximate causation. The courts ruled that plaintiffs could not demonstrate a direct, personal injury caused by the specific defendants, finding the causal chain between the defendants' historical conduct and the plaintiffs' modern socio-economic harm too weak to estimate damages without resorting to "wild speculation".

To circumvent the inherent limitations of traditional tort law, the class action against the British Crown must be anchored in the private law doctrine of **Sovereign Unjust Enrichment** and the public law principles of **Customary International Law (CIL)**.

Sovereign Unjust Enrichment

The law of restitution and unjust enrichment is uniquely designed to address the unjust transfer of value, focusing on the defendant's illicit gains rather than the plaintiff's individualized losses. Under Canadian and English common law, a claim for unjust enrichment requires the plaintiff to establish three core elements: (1) the defendant was enriched; (2) the enrichment was at the plaintiff's expense; and (3) there is an absence of juristic reason (or the retention of the benefit is unjust).

Legal scholars, prominently Britta Redwood, have pioneered the model of "Sovereign Unjust Enrichment" specifically to address the failures of previous reparations litigation. This framework provides several critical advantages over traditional tort claims:

1. **Bypassing Proximate Cause:** Unlike torts, which require a direct chain of causation demonstrating how a specific act injured a specific plaintiff, unjust enrichment focuses solely on the wealth currently held by the defendant. The claim asserts that the vast accumulation of capital within the British state—and specifically within the Crown Estate, whose assets are currently valued at over £16 billion—was seeded by the unpaid labor of millions of enslaved Africans and the theft of Indigenous resources. The remedy seeks the disgorgement of this unjustly acquired wealth.
2. **Solving the Standing Dilemma via *Parens Patriae*:** By utilizing a class action representing Indigenous Nations and descendants of the enslaved, or by having sovereign entities (such as CARICOM states) bring the claims under *parens patriae* standing, the plaintiffs represent the collective entity from which the value was extracted. This collective, sovereign approach nullifies the requirement to match an individual descendant with a specific enslaved ancestor, overcoming the standing issues that doomed the *Cato* litigation.
3. **The Absence of Juristic Reason:** While slavery and colonial expropriation were technically "legal" under the imperial laws of the era, the doctrine of unjust enrichment allows courts to assess the "gratuitousness" of the transfer. The fact that the Crown extracted centuries of labor and vast tracts of land without providing consideration or compensation renders the enrichment fundamentally unjust under modern equitable principles. The £20 million compensation paid exclusively to the enslavers in 1833 serves as incontrovertible documentary evidence that the Crown recognized the immense economic value of the labor but deliberately chose to enrich the perpetrators rather than restitute the victims.

Element of Unjust Enrichment	Legal Definition	Application to the British Crown
1. Enrichment of the	The defendant gained a	The Crown accrued massive

Element of Unjust Enrichment	Legal Definition	Application to the British Crown
Defendant	tangible benefit or wealth.	wealth via taxes on the slave trade, RAC dividends, and stolen colonial land now held in the £16B Crown Estate.
2. At the Plaintiff's Expense	The benefit was extracted from the claimant.	200 years of unpaid forced labor (Arthur Lewis's estimate of 15 million people's labor) and the violent expropriation of Indigenous territories.
3. Absence of Juristic Reason	It is unjust for the defendant to retain the benefit.	The extraction lacked consent, consideration, or moral justification. The 1833 bailout further proved the deliberate enrichment of perpetrators over victims.

Breaches of Customary International Law (CIL)

The second substantive pillar relies on the incorporation of Customary International Law (CIL) into domestic common law. The Supreme Court of Canada's landmark 2020 decision in *Nevsun Resources Ltd. v. Araya* fundamentally altered the landscape of transnational human rights litigation. In *Nevsun*, the Court ruled in a 5-4 decision that Canadian corporations could be sued in domestic courts for violations of CIL, including forced labor, slavery, cruel and inhuman treatment, and crimes against humanity committed abroad. The Court explicitly rejected the "act of state" doctrine, which traditionally shielded entities from liability when acting under the authority of a foreign government.

Applying the *Nevsun* precedent to the British Crown requires treating the Crown's historical corporate proxies (such as the Royal African Company and the Hudson's Bay Company) as commercial entities that violated peremptory norms (*jus cogens*). Because the prohibitions against slavery and genocide are universally recognized as *jus cogens* norms that bind all actors, the Crown's orchestration of these crimes constitutes a direct breach of CIL. While the *Kazemi* decision prevents using CIL violations to bypass the State Immunity Act procedurally, *Nevsun* dictates that CIL can serve as the *substantive cause of action* once immunity has been pierced via the commercial activity exception.

Tortious Claims for Indigenous Cultural Erasure and Resource Theft

For the Indigenous Nations comprising the class, the claims extend beyond forced labor into the realms of "cultural erasure" and "resource theft". Modern class actions in Canada have successfully recognized cultural erasure—facilitated through mechanisms like the residential school system and the "Sixties Scoop"—as a mass tort involving systemic discrimination, breach of fiduciary duty, and mass trauma.

The draft Statement of Claim asserts that the UK Crown claimed sovereignty and title over Indigenous territories through the illegitimate application of the Doctrine of Discovery, completely disregarding the pre-existing legal traditions and sovereignty of Indigenous populations. The subsequent extraction of timber, minerals, and agricultural wealth from these territories constitutes an ongoing process of primitive accumulation and resource theft. Current Canadian

compensatory mechanisms, such as the "Cows and Plows" agricultural benefits settlements under the Specific Claims process, are deeply inadequate because they rely on literal interpretations of treaty texts written by the Crown and fail to account for the massive scale of resource theft and the resulting socio-economic subordination. Because the UK Crown granted the original charters that facilitated this extraction, it retains liability for the initial dispossession and the resulting cascade of cultural genocide.

Part IV: Remedies and the Strategic Use of Declaratory Relief

The ultimate goal of a class action against a foreign sovereign is rarely a coercive order for direct monetary damages. Executing a judgment against the assets of a foreign state is legally fraught and politically explosive. The UK State Immunity Act 1978 and Canada's equivalent impose strict limitations on the seizure of state property, generally forbidding execution against sovereign assets unless they are actively used for commercial purposes (SIA Section 13). Furthermore, claims based on centuries-old conduct face the relentless procedural barrier of statutes of limitations.

To neutralize these barriers, the litigation strategy must center on securing **Declaratory Relief** rather than demanding coercive financial damages.

The Power of the Declaratory Judgment

A declaratory judgment is a formal statement by a court that pronounces upon a legal relationship or the rights of the parties, without containing any coercive order that can be enforced against the defendant. Because it does not compel the state to surrender assets or perform a specific action, it avoids the most severe restrictions of sovereign immunity regarding the execution of judgments.

More importantly, the Supreme Court of Canada has recently confirmed that declaratory relief can be granted even when underlying claims for damages are completely barred by statutes of limitations. In the seminal 2024 decision *Shot Both Sides v. Canada* (2024 SCC 12), the Supreme Court reviewed a historical treaty land entitlement claim brought by the Blood Tribe. The Court unanimously held that while the tribe's claim for damages was statute-barred (having expired under the 6-year limitation period), declaratory relief was still warranted given the severity of the historical wrong. Justice O'Bonsawin wrote that a declaration serves a vital role in identifying the Crown's dishonorable conduct, clarifying historical truths, and assisting future reconciliation efforts.

By seeking a declaratory judgment against His Majesty the King in Right of the United Kingdom, the class action effectively sidesteps the statute of limitations defense that destroyed previous reparations lawsuits. The plaintiffs do not ask the court to forcefully seize the £16 billion Crown Estate; rather, they ask the court to formally declare that the wealth held by the Crown Estate is the direct product of unjust enrichment, slavery, and native genocide.

Part V: Global Synergies and Geopolitical Implications

A successful declaratory judgment from a superior court in a G7 nation would act as a devastating legal and political lever. It would validate the factual and legal basis of the demands

currently being advanced by global geopolitical blocs, moving the conversation from moral entreaty to legal obligation.

Aligning with CARICOM and the African Union

The CARICOM Reparations Commission (CRC) has established a comprehensive 10-Point Plan for Reparatory Justice, demanding that former colonial powers, including the UK, engage in negotiations for comprehensive reparations. The plan calls for a full formal apology, debt cancellation, repatriation funds, indigenous peoples development programs, and psychological rehabilitation. Concurrently, the African Union designated 2025 as the year of "Justice for Africans and People of African Descent through Reparations," signaling a unified continental push for redress.

For years, the British government and the monarchy have expressed "deep sorrow" and "regret" for the transatlantic slave trade. However, they have steadfastly refused to issue a formal apology. As noted by a British cabinet minister in 2020, the UK avoids the language of apology out of fear that it constitutes an admission of legal liability, which would open the floodgates to financial reparations.

Forcing a Political Settlement

Public opinion is rapidly shifting against this defensive posture. A 2025 poll commissioned by The Repair Campaign surveying UK adults revealed that 85% of the public were completely unaware that Britain forcibly transported over 3 million Africans to the Caribbean. Crucially, the poll showed that 63% of the UK public now supports a formal apology, and 40% support financial reparations—both numbers representing significant year-over-year increases.

By securing a declaratory judgment through the Canadian courts establishing that the Crown was unjustly enriched by commercial enterprises rooted in slavery and genocide, the class action shatters the UK's legal shield. The legal validation of the claim would force the British Crown and the UK government to the negotiating table to avoid further judicial scrutiny and reputational damage. It transforms the CARICOM 10-Point Plan and the demands of Indigenous Nations from moral pleas into structured settlement frameworks backed by irrefutable judicial findings of fact.

Conclusion

The legal architecture required to hold the British Crown accountable for centuries of colonial exploitation is complex but entirely navigable within modern jurisprudence. By utilizing the doctrine of Crown divisibility to isolate the UK Crown as a foreign state, and anchoring the litigation in the Federal Court of Canada, plaintiffs can secure a robust adjudicative forum with a history of transnational human rights litigation. The absolute bar of the State Immunity Act can be pierced by accurately classifying the Crown's orchestration of the Royal African Company, the maritime insurance of human cargo, and the massive 1833 enslaver bailout as intrinsically commercial activities.

Substantively, the private law doctrine of sovereign unjust enrichment bypasses the insurmountable standing and proximate causation requirements of traditional tort law. By focusing strictly on the vast, illicit wealth retained by the Crown Estate today, the claim addresses the continuous nature of the enrichment rather than the historical remoteness of the

injury. When combined with the Supreme Court of Canada's recognition of customary international law in *Nevsun*, the legal foundation is extraordinarily strong. Finally, by seeking declaratory relief rather than coercive financial damages, the class action successfully circumvents statutes of limitations, utilizing the recent *Shot Both Sides* precedent to secure a formal judicial condemnation of the Crown's dishonorable conduct. This declaration would serve as the ultimate geopolitical catalyst, legally empowering global bodies like CARICOM and the African Union, and finally compelling the British Crown to enact tangible, comprehensive reparatory justice for the enduring legacies of the transatlantic slave trade and global Indigenous genocide.

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